

**Railroad Companies - Operations Rules
Rulemaking Workshop
WAC 480-62
Docket No. TR-981102
September 28, 1999**

Attendees:

Rich Pennisi, FRA
Darryl Morrow, FRA
David Reeve,
John Hagenson, L.R.C. & Port of Benton
Tom Schlosser, Washington Shortline Railroad Association
Tom Retterath, UTU
Lori Olson, Private Citizen
Richard Gonzales, UPRR
Tom Foster, PS & P
David Lutz, Columbia Basin Railroad
Carolyn Larson, UPRR
Carolyn Simmonds, WSDOT
Pat Halstead, BNSF
John Trumbull, UPRR
George Thornten (Conference Bridge)
Ken Parrish, Military Department
Joan Sterling, Washington Military Department

WUTC Staff:

Kim Dobyms
Karen Caille
Mike Rowswell
Scott Barrett

VIA BRIDGE LINE:

George Thorton at the request of United Transportation Union

KD: Overview, welcome, housekeeping, introductions, ground rules.

After we went to adoption hearing which was last Wednesday on Chapters 480-60 and 480-66 (those were the clearance and sanitation rules) we learned that there were some people who were fairly upset with our premise that we had for the walkway rules. The Commissioners decided that rather than adopt the rules at that meeting they wanted more information on the walkway rule. We sent a letter out last Friday. The Commissioners asked for comments on four issues in that letter: 1) Defining the term what a regular work

RMS

area is around the switches - how often that is. 2) It asks if 1 ½ inches of crushed material around a walkway is adequate. 3) It asks if a minimum distance of 125 feet on each side of the manually operated switch stand is adequate - does it need to be more or less. 4) And it asks the term - in rule 480-60-035 (3&4) - the term "reasonably possible" - they asked for comments on how to clarify what that is.

When we went through the process on this, staff believed that this was not a significant financial impact on any of the railroad companies and for the most part that most railroad companies were already in compliance. Our SBEIS reflects that. Is this a significant financial impact on you? We want options from you. And if that would still allow for employee safety. The other thing we found out is that we haven't been very clear in letting you know what a rulemaking procedure is (explains entire process and where each railroad rulemaking stands in the process).

This is where we're at in these chapters and this is where the walkways is at also. But in this case there was enough concern about the walkway rules that it was held over - they set a date for October 13th and said they would reconsider at that time. They listed the four items they wanted to know more about in the walkway rule. It's held over and then staff needs to send out a letter to stakeholders. We've asked for written comments to be received on the walkway rule by October 4th. Then staff needs to take that information and make another recommendation to the Commissionrs. We have to have all of this done a week from Thursday. For an October 13 meeting we have to have everything done the prior Thursday. If the rules are adopted they go into effect 31 days after filing.

In Chapter 480-62 we're in the informal state. This is one of the meetings where we are talking about what staff is considering. Tentatively we were thinking we could go to the CR-102 in November and adoption in December. That's probably unlikely. When the CR-102 is filed it states when the adoption hearing is going to be. That hearing will occur no matter what. It may be a hearing that says we're not ready for adoption. No more than six months can elapse between CR-102 and adoption. Is there any questions about the process?

TR: I just want to make one quick comment. I've been pleased with most of what has happened so far. The one problem we had when we were talking, we talked around the table that a walkway rule was needed. We never saw the written form until the morning of adoption. It was hard to make comments on it at that time. It seems that when you have the final rule in place we should have one more meeting in person to talk about it rather than trying to do everything in front of the commission. I sent comments and I faxed them and Mike didn't get them, the Commission didn't get them. There was only one page that went through.

KD: I think we can make an improvement in this process and we have some options.

MR: Did you have a question Mr. Schlosser?

TS: I'll defer - thank you.

MR: In the past the way rules were adopted is staff would sit in secret meetings and draft something and then send it out for comment but by that time a lot of people thought those things were carved in stone. The process has been changed so institutionally that we get input before we start drafting. It's an idea, it's a proposal. And we've been getting them which is good because we want them. As Tom pointed out there has been a glitch in it. Which we try to avoid. Today we are really interested in giving you an opportunity to comment since you're all involved in the walkway rule about what was proposed and what might be clarifying language. Then I know Mr. Reterrath from UTU indicated that in some instances what he thought was more appropriate and what is the practice is one inch material or less on walkways near switches and yards. Certainly we want all the input we can get. We want a rule that actually one that serves a purpose yet still meets the needs of the employees on the ground.

KD: Did you want to ask a process question?

TS: I guess the honest answer to that is no. It's not clear to me why the WUTC is proceeding forward with certain walkway standards when there are standards in place and why it's necessary to put a rule in place for that, an overall rule, without respect to contractual issues that the UTU may have with Burlington Northern or with other issues with respect to their employees if it hasn't been proven there is a safety issue.

MR: There is a general concern that was addressed to us that workers who are on the ground on a regular basis are receiving injuries due to walking on larger balast. Our inspector has indicated that there are problems with maintaining walkways in appropriate form - they're put in but not kept up. The need for a rule of some sort where the government can assist the parties in keeping things in a shape that is appropriate for all to use - it was time to step in. Oregon was an example we looked to. They have had a walkway rule for over 20 years. They've withstood court challenges and complaints and now the shortlines are cooperating fully with the walkway rules they have there. So we were surprised when we proposed something much less onerous and we get this kind of resistance. If there is a major impact and if we've written it in a way that is harmful to employees, we want to change it.

DR: You just used safety for a rationale for the rule. In June 23, 1999 you wrote (reads) - to come back now and to say that you understand there are injuries goes contrary to the earlier letter to the commission that you don't have that information yet. There's nothing to show that Oregon has safer walkways than Washington does. You're making an assumption that because Oregon has something in place that it's necessary here to prevent

injuries and that's not been established in any of these hearings that we've had.

MR: The comment was directed toward whether to adopt Oregon's rule in total as opposed to a first step forward on a much lesser basis. And I don't feel we have enough information to adopt the entire scheme of Oregon as other state's have. The information we provided that was not rebutted by anyone is that employees are suffering ankle and leg injuries and maybe Tom has more info on that.

DR: You also said the issue was repair of the walkways not the nature of the walkway standard that was in place by the railroads. You wanted something to say this needs to be brought up to your own internal standards - not that people were being injured because the balast was too thick - those are separate issues. What we have done is gone off on this walkway statute without understanding where we are going.

MR: That is an option to take and if we don't get enough information between now and the adoption hearing to feel comfortable about what we're doing we will suggest that Commissioners continue the process for a brief period to look at that further.

TR: I looked at accident statistics for the nation in 1998 and there were 1,170 some odd injures walking on railroad property.

TS: Please understand that we are not . . .

KD: Could you please say your name for our minute taker?

TS: Tom Schlosser. I want you to understand that we aren't here to resist anything. It seems to me that it is our responsibility to comply with rules that are in place and there are rules in place for walkway standards established by the Federal Railroad Administration and this seems to me to be redundant. It is our responsibility to our employees to provide them with a safe working atmosphere. As a shortline we have been doing that. There are rules in place to address this issue and I think we are committed to comply with them. Additional rules aren't necessary at this point.

GT: Just so you understand my background. I see a small portion of some of the injuries that happen due to the nature of my practice and I've dealt with injury cases arising out of Oregon and Washington. There is a significant difference in the safety standards in Oregon versus the state of Washington. It is my perception also from my experience that conditions are generally safer along walkways in Oregon because of the standards that are there. I would suggest that you will be serving the safety of the community by having these rules in effect and the more it is similar to Oregon, the more you're going to assure safety standards across the board. I had an experience when I went to inspect a walkway recently in Washington and I went with a former Oregon inspector who now

works as a consultant . His comment was that the walkway was way out of compliance with what would be acceptable in Oregon. I believe that greater safety and fewer accidents would occur if something like the Oregon standard was followed.

KD: Any other comments?

CL: I have two comments: First that a change from 1 ½ to 1 inch rock would have a significant cost impact on Union Pacific - so that basic presumption that it wouldn't is not true in this case. Secondly, I think it's important - Mike talked with administrators in Oregon about how well the walkway rules work there - I think that the perception in Oregon might be different than that of the railroads because in terms of drainage issues at switches in yards there is a problem when you use smaller rock. It does create a problem when smaller ballast gets compacted into the switch areas creating drainage issues and slippery walkways as opposed to larger rock and deteriorating the ties. It isn't simply an issue of pulling out and putting in a smaller size versus benefits to the walking surface there's also the issue of the track structure.

DR: When you talk about the smaller ballast a change from 1 ½ to 1 inch would mean that virtually all of the walkways would have to be changed. I understand that they do put smaller rock around some switches on a basis driven by the safety committee meetings. You talked about the time period being short here in terms of a governmental agency. The same is true for the railroad. To do the survey would take up to six weeks. I'm not sure what the process that you have to go through to do it - but that was the answer I got when I asked that question to my client. Then talked about if you start to go outside the yard and are talking about switches that can be on the mainline where the standard is 2-1/2 inch rock there were concerns about what that means in terms of the integrity of the track structure around those switches and not just the walking surface but the safety of the track structure itself and the drainage. When you start talking about the Oregon statute there was a grandfather clause that didn't say you have to implement this rule tomorrow. It basically said that as you do this work let's upgrade the track structure and there's nothing in here that would allow us to improve as we go along. Lastly I have to comment that the anecdotal evidence with respect to injury is not something that I find very helpful. Just because there is a standard in place doesn't mean that you have adopted the best standard. The BNSF has tried to accommodate the drainage issues that are required in a yard and the walking surface and they came up with what they thought was a very viable and safe standard.

MR: Could you provide the BNSF standards so that we could see exactly what they are? Tom Kimbrell - were you able to pull out the walkway standards for BNSF?

TK: I just got a brief copy of some ballast size information from the engineering department here at Spokane Washington.

- MR: Tom Reterrath has indicated that he has the standards so that we can use them as a tool to meet a reasonable requirement.
- JT: With new industry tracks we do have design standards that are very clear on walkways and I don't think it's a real problem. My concern is the existing older industries we are talking about expense to upgrade the walkways - I don't know what the older industries have. In the Union Pacific, generally new industry tracks are owned and maintained by the industry. They have to meet the standards, the FRA standards, so forth, but I wonder who's responsibility it is then when it comes to an older industry that does not have the standards that we're talking about and how that should be treated.
- TR: I want to make just a couple points. On the ? Standards it says that the standards would be different in different locales because of state rules and regulations. There's four different sizes for walkway standards: One is 1 inch or less; one is yard balast which is 1- 1/2 inch or less; one is fines which is 1- 1/4 to 3/4 inch; then there is waste and fines and ships. They actually have four different standards that they use all the time. In places we walk on a regular basis I would like it to be an inch or less. They have that standard and they use it all the time. (Gives example of situation in Spokane)
- GT: With respect to the industries (tape ends - missed some) . . . the carrier is in a position to warn industries that are out of compliance and require their compliance prior to allowing switching to occur so the carrier has the ability to influence the industries to comply with the standards.
- KD: Would anyone else like to comment on this issue?
- DL: No new point just to reiterate what has been stated - this seems to be driven not so much by statistical information re: injuries due to walkway conditions. It does and will represent a significant cost to all of the railroads involved including the shortlines . We're quite aware that there is an exemption process to apply for, but in a case like this we wouldn't be comfortable doing that because you'd be asking for permission to violate an established safety rule and in the event of an injury we're hanging out there rather far from a liability standpoint. Given our geographic location where we see 10 or fewer inches of rainfall a year - I think we could withstand pretty close scrutiny on most of our switches, the footing surface because in a lot of places it's a hard tamped soil that offers perfectly safe footing. To take areas that would be fine and safe and knowing that we accept the responsibility of injuries if that isn't the case - to make us put down something else is in our mind just a heavy burden that we wouldn't be anxious to take on.
- MR: I understand the legal argument is a problem for you but what about safety and can that be used against you. If there's a grandfather clause which a railroad is required to upgrade as they do maintenance or replace - whatever term is used - would that satisfy the

legal problem?

- GT: I think that if there's no requirement that it be done then there would no liability for violation so I think it would protect them legally.
- DL: It can still represent a rather large down side and it's a good basis for argument but I'm not willing to throw my arms around it here. I'd have to think through it.
- KD: When you file your written comments could you address that issue too?
- DL: Yes.
- DR: There is another factor that I guess we haven't talked about which is the impact that could exist for industries because there are requirements by contracts to pass certain costs through to them - which is something again that we haven't looked at because we were under the impression we were dealing with yards more so than switches. To the extent that we're dealing with switches outside the yard, certain of those costs are passed on to small business.
- KD: Could you clarify?
- DR: If you have to replace a walkway around a switch there are contracts that say that the industry will bear that cost. That means it would be borne by mom & pop rather than BNSF.
- KD: Did you follow that?
- MR: If you raised rates on the electric companies - they charge their customers more.
- DR: I think we need to remove this process from the rulemaking point where we are right now and get back to talking about some of the things we need to talk about before we make decisions. I don't think we have the information in front of us that we need to do that. I am getting information from people that wasn't available until now that is significant for the commission to know before they make a decision on walkways. I am an attorney representing a client and my silence in terms of an issue means that I'm not authorized to speak it doesn't mean that there's agreement.
- KD: We need to hear back on the issues and if we never hear back we assume it's fine. It doesn't mean you have to commit right here to something. I think maybe the railroads thought that we were pre-empted from writing any walkway rules and the commission doesn't agree with that. Maybe the focus was more on that we can't write these rules and maybe that's why we didn't get the feed back on the substance of the rule.

DR: Page seven of our submission we proposed language for a rule.

KD: We did look at those rules, we just didn't agree.

MR: We will make proposals and we are looking for objections or other suggestions. When we ask if there are any problems with this rule or doing it this way generally and we get no response - we have to go forward with what we think. If we don't know it's wrong we can't change it. We also understand there are some restrictions on speaking and if you get to that point you just say maybe and that's enough to alert us that we need to inquire further.

DR: That's enough.

TS: It appears to me that the financial issue here is significant to both the class I and shortline railroads. It is a consideration that is real. Ken you mentioned that if there is a large impact on the Washington railroads how can you help to mitigate those costs to help us be in compliance. Is the Commission at a point here to respond to that - what did you mean? Have we been able to identify the costs for all the Washington railroads as exactly what it would be to implement this?. May I ask what the second portion of your statement was as to "how can we help?"

KD: What it measures is the disproportional cost between small business and large business. The Commission can mitigate some rules to take that into consideration, if it's a disproportionate cost. The Commission can also say we think the safety concerns outweigh the costs. There's no requirement that you mitigate anything. When the SBEIS was done the assumption was that almost everyone was already in compliance so the cost was minimal - we find out now that's not true. So although the SBEIS measures the difference between the disproportionate costs and that's what it's designed to do - not to cause an undo burden on small businesses - we didn't think there was a significant cost to large business. So we were just looking at a beginning point - it's a safety concern. So when we say mitigate the costs, we're saying give it enough time or a grandfather clause or what can we do to help do that. I think the Commissioners want to go forward with a walkway rule so the best thing you can do is help us write it.

MR: If you don't think a rule is appropriate tell us that and why but also comment on what would be the best rule and how can we mitigate. Some of those ideas would help us put it in a form that gets us to the result that we're looking for and does it in a rational way. It is not our intention to impose a very costly burden unless it's clearly absolutely necessary and I think this is one that we believe that is appropriate and we will recommend probably to the Commissioners to go forward at some point - but it's not an emergency situation either.

DR: It's going to be virtually impossible to do that by Monday.

MR: I think it weighs towards a little more consideration on this. We have a limit on our CR-102 to have whatever we're going to do done by January or late December - filed - so that's the timeframe we are going to be looking at trying to get something done on a walkway rule based upon all the input we get. Don't limit your input. We are leaning toward a walkway rule but that doesn't mean that that's the way it's going to be. The Commissioners make the final decision.

KD: They do personally read all of the written comments.

DR: Does this mean we will be doing this over Christmas?

MR: We'll make it mid December.

KD: Are there any more comments on walkway rules? Are there some specific issues that you came to talk about that we can put up first on the agenda today?

JT: If we could start with the crossing surface situations that would help me.

LO: Probably the blocking of the crossings.

GT: I wasn't clear - I thought you were going to be talking about shuttle companies.

KD: After the break we can touch on it - we're not fully prepared to talk about it today.

GT: I happy to submit some written materials for you consideration.

KD: We did plan on holding that one over to the next meeting.

GT: That's best for me.

TS: I would appreciate if we could talk about remote control.

KD: On your agenda there is little parens after the end of whatever the subject is that tells us what page that staff's draft rule starts on.

*****BREAK*****

KD: (Intro following break)

We're going to start with the remote control. Page 12, line 459. This is basically a rule

that asks railroads to report to the commission if they're using remote control devices and how to do that.

TS: My basic question is why? On what basis is the Commission interested in whether a railroad is using remote control devices.

MR: There's several reasons for that: One has to do with problems that were perceived back east, it was an emotional, political issue, the FRA is interested and involved in looking at these operations and so is the State of Washington. There are no rules specifically governing them and we're not trying to establish rules, but when there is a debate about their use and a concern expressed by some parties whether it's realistic or not, we believe that we serve the public and the railroad by being aware of where these are occurring and learning about them so we can answer questions as they come up. Also the detail had to do with crossings. There was a concern that a procedure needed to be in place to ensure that crossings are not crossed by remote control without the operator having visual contact with the crossing itself because we had a complaint that cars were being shoved blind - we went out and checked and that was not what was happening. But we need to be aware of the operations and be able to answer questions and as problems develop to act on them quickly.

TF: A couple of questions: one is, we have notified the FRA when we were initiating remote control - I don't have a problem with notification - I have a problem with going through the steps here of whether they're going to travel at grade crossings or vehicular crossing and what crossings they will travel because that's what we do today when we have an engineer and a conductor on there. We do not do anything different except run one person who has joint duties. I don't see the point of being this specific as this rule is written. I'm thinking this notification - being quite frank here - is two sentences "PS&P will begin operation at Hoquiam and Aberdeen on such and such date and if you have problems just call me. I'll be glad to sit down and talk about it but we're not doing anything different from a safety standpoint with remote control. I just wanted to go on record I feel very strongly that we just give you a notice. I think the FRA is satisfied because I don't think it's any different than what we do with an engineer and conductor. I think this is something that's misunderstood in the United States today.

KD: Any other comments on that issue?

TS: Is it the intent of writing a rule for proposed remote control operations of the Commission to inspect the area ahead of time? Is it your intention to go and look at the area and give an opinion of whether or not you feel we should or can under the rule do that?

KD: I don't think we have authority to say yea or nay . . .

- MR: We are asking for 30 days notice beforehand and the idea behind that was to be aware of situations specifically where a controversy could develop and we would have an opportunity to discuss it beforehand, and going across crossings that we can at least ask further "what are your procedures, where is your person going to stand". We're not directing it at PS&P directly.
- TS: I understand that.
- MR: You're the start which means probably more will be doing it. There are shortlines in this state that we would be concerned about and we would want to know in advance. None of them are present in this room. Really we have good shortline operators in this state but there's always that possibility.
- TS: My final comment with respect to that is that I'm going to assume that you're not doing this to get into the rulemaking business for remote control operations and secondly remote control to a shortline railroad is critical in our survival. We need to have the flexibility to do projects like remote control in a safe and responsible manner to increase or efficiency and pass those efficiencies on to our customers so we can stay competitive. It's important that we don't get our hands tied with these types of projects. I will go on record that PS&P is very proud of what we've done with remote control and we are committed to safe operations and we are going to continue to do that.
- MR: We did not have and do not have an intention to get in and make a bunch of rules in this area. Most of the things that could go wrong are covered by federal rules anyway. There are just some specific areas that people have raised concerns about that we just want to observe. Only if an on-going abuse occurred would we want to get into a rulemaking in this area. I think it can also be a benefit to the railroads that we have this information on the record. I think that the method that the PS&P got into the business and have the FRA come out and observe and advise is a model of how those should be instituted.
- TF: The other thing is - what shortlines are suppose to do is develop business in these communities. The second thing is it provides a means to gain business which - ultimately very little of my business terminates on the PS&P. But this goes right to the class ones. We're providing a means to provide loads thereby creating more jobs on those railroads. We definitely need these things to stay competitive.
- TR: Representing UTU we're a long way from endorsing remote control operations. There's been some other attempts to use remote control equipment in the state including at one of their elevators up in Tacoma and they had a very bad experience. They evidently had some kind of accident and they've stopped using them. Remote control operations have not been without incident in this state.

- TF: We bought our remote control units from Temco. I think it was the fact that there was a lot of different people using remote control that probably weren't qualified and it was maybe a supervision issue. That's not the way we're operating.
- CL: Listening to this discussion reminds me of something I commented on at a prior workshop which is that I think it's important to define what remote control is. Use of the word remote control doesn't necessarily have a universally understood meaning.
- KD: Can you help us define that in written comments or can Tom? Can you offer us language that we could put in our definition section?
- MR: Any help there and all of your comments as well.
- TF: Carolyn and Dave told me the other day that nobody knew about remote control in this room until you came into the room a few months ago?
- KD: Scott knew about them.
- MR: There's nothing that's been said here today that would make us write anything more.
- TS: Our response to your request to more clearly define remote control operations would have to depend on what you consider remote control operations -- you're proposing the rulemaking. What is your concern? Is it what we're doing or is it about the remotely controlled locomotives as helper units in the freight train that's going up a hill? I wouldn't suggest that you look to us to define what remote control operation is.
- MR: Our intention is the type of operation you're performing. Those types of things. Not the positive train control or helper units or switches but the pure remote control on the ground type of situation.
- TS: We'd be glad to provide you with what it is we do.
- MR: We can keep the emotion down if we can talk about the ins and outs of this thing.
- DR: Does it cover what we're talking about just to say remotely controlled by an employee on the ground?
- TS: Actually we control the movements on equipment also with the remote control box on leading equipment so probably on the ground needs to be eliminated.
- DR: We can define that.

- MR: I think that Tom is probably going to provide us with a description that would work pretty well.
- KD: At this informal stage is your opportunity to provide the greatest influence on what these rules are going to look like. Left to our own devices you might not like what you get. Any more comments on remote control operations?
- TR: As a body the UTU is against all use of remote control operations.
- KD: Jeff Goltz is not here. I believe we are pre-empted from saying whether or not railroads can use remote control operations. We're just asking for reporting. Is that true what I said?
- MR: I have no idea.
- KD: Crossing surfaces.
- MR: This is something that I wrote and that did not get a lot of specific input. It's thrown out there as ideas. We were going to put together a working taskforce. I did not get participation from WSDOT for a working group so I did not have a lot of expertise to draw on from highway authorities. As a result this is what is being proposed right now. There is a specific need for some standards whatever they might be for maintaining crossing surfaces. The railroad is responsible by state law if it's a single track - 1 foot outside of each rail and in between the rails. If there is more than one track at a crossing the railroad is responsible for 1 foot outside of each outside rail through the entire crossing. That could be up to a 100 feet of roadway as well. That's not my interpretation - that's a state law. When you sit down and read it that is specifically what it says. There may be some more discussion on this one. We have situations out there where we have extremely rough crossings. We need to establish some sort of objective standard so that we don't have to wait for crossings to be extremely dangerous. It gets pretty nasty out there and people are in danger at crossings. We need your help in crafting something that can be complied with.
- DR: I understand you to be saying that there is a law out there that covers the responsibility of the railroad to maintain crossings and that you are enforcing that and you are ready to assess penalties based upon the existing statute. What in addition to that does the rule need to cover?
- MR: The rule needs to cover a standard that is something short of an emergency situation. We need to be able to say you need to correct this situation in a reasonable period of time even though it's not an emergency and that's what we're looking for.

DR: So the standard you're looking for is one that would indicate that there is a risk of something happening and it needs to be rectified as opposed to a standard that says this is what it should look like when you're done constructing a crossing.

MR: A standard that says that if left to deteriorate further it could lead to a situation that is unsafe. If your road surface is an inch down that makes it a rough crossing. But if it's two inches from the top of the rail then it starts to slow people down. We need to be able to write a defect and expect some remediation prior to getting to the point where it's a danger. We're looking for ongoing maintenance of a crossing so that it remains safe at all times.

DR: You're looking for something that you can enforce prior to it becoming a risk of danger to someone. What difference is there between the speed of the highway that it crosses. If we're talking about a road that is 25 miles per hour certainly the drop is not as significant as the 55 miles per hour.

MR: That is obviously a consideration we can apply. If keeping them even . . . I don't know. That's why I'm asking for some help. We do write defects and we do ask people to fix them and in many cases they do but in many cases they don't. What the standard should be for a 25 mph road as opposed to a 55 mph road maybe there could be a difference.

DR: I'm not advocating anything on the part of my client. I need more information before I can do that.

DL: When we get a notice of a rough crossing from a WUTC inspector, what is he enforcing at that time? I'm a little bit unclear of what jurisdiction he is operating under.

MR: 81.53.090 - RCW - duty to maintain crossings.

DL: Having not read that - it doesn't have specific criteria and this is what we're trying to build into that area of your responsibility?

MR: Correct. It says that the area where it is appropriate should be maintained and repaired by the railroad company.

DL: Again what has driven this are those instances where there was no response or a response that was so slow that it couldn't be considered reasonable. I guess what I'm getting at is that you've got something to enforce crossing surfaces with, is there more needed? You've got a situation where a guy isn't going to respond to your requests or defect notices. Going into this process is that you're trying to make one shoe fit too many feet. It could be almost unenforceable or if it is enforced maybe not done reasonably.

- MR: If they're really tight we would not enforce them everywhere probably because it would be unreasonable. We could just pick on those that we wanted to .
- DL: You've got different crossing surfaces in different instances. Having any criteria at all in some cases doesn't help at all because the people that you're approaching aren't complying and aren't going to. That's a local single problem but most cases is that the railroad and either the WUTC inspector seem to work together fairly well. Maybe drawing this strict criteria might set things up for being hard to enforce or hard to comply with might not be worth the effort.
- CL: I agree with what both the Dave's have said about what the need is for a rule in this area. It seems as though at prior workshops what was suggested as the problem was getting a railroad to respond when there was a rough crossing not trying to determine whether the surface was rough. We've just talked about the speed of the road and whether there is a stop sign before you get to the crossing. How much traffic is on the road. How many people does it impact. Looking at what is in the draft it looks as if those are for a perfect crossing. We know that with heavy trains going over it, with trucks hitting it from both directions, that it's going to be deteriorating from that standard. Probably a new crossing that's on a super-elevated curb is never going to meet this criteria. I think that trying to make the rule more and more detailed so that we can cover every eventuality - that's not really workable.
- DL: This occurred to me the other day. Like Carol was saying, it's the response. Who do I talk to get my crossing fixed? This is the real rub. Why not approach this from a standpoint that every railroad will supply every road officer, whether it's county or state whatever, with the name and the number of the individual that's responsible for the crossings in their jurisdiction. Make the rule that the responsible people are going to find each other and they've got to work to some conclusion.
- MR: I think you've raised a very good point as far as getting the people together. There are times when railroads can't get cooperation from cities, counties and even the state. We should do probably more to get them to have that information and maybe a rule is appropriate.
- DL: Yeah sure there are situations where everything is fine but the approach to it is what is the problem.
- MR: We do write defects to cities, counties and to the State and a lot of times that transition between the railroad and where the crossing surface begins - that's the problem. The crossing surface might be beautiful. The railroad might be nice. But then you've got chunks of asphalt gone from the transition.

- JT: I appreciate the chance to get together and talk about these things. I've dealt with these for years and years. I know that a railroad and a highway are two totally different types of roadbeds when they come together. There's always the transition that is a rough situation. What you have is a huge difference in tonnage. There also is federal funding available for road crossings. What the Union Pacific standard is now is concrete panels. When we put those in we go right down to the sub-grade. The transition with the roads is a lot better. My suggestion, if we can get together, if somebody is getting a complaint about a rough road crossing - the WUTC, the railroad and road authority go to the crossing and look to see what needs to be done from all sides.
- MR: My intention was to get comments and I think I'm getting them.
- LO: As a private citizen, I would like to see some more specifics out there. I think "boy that's awfully rough" and wonder who to contact and do I have any right to do that. You go to different authorities and you get the run around. If we're harvesting and the trucks are going over the tracks and we're causing some damage, do we contact you to tell you to come and check the crossings? What do we do? Every time we come into this situation it goes on and on. I want to know what is a problem crossing.
- MR: Let me give you an example of what has been a problem. There was a large railroad in a town far away from here that was contacted by city officials because there were potholes adjacent to the crossing. This was a huge pothole. The railroad said we don't have to fix it. The railroad wouldn't cooperate. The private citizen called our office and we called the railroad and they fixed it in one day. That's the education problem that I think we have. I think we should work on that avenue no matter what we do. It will take commitment from the railroads to interact with cities. That's not an easy commitment to make.
- KD: Are there any more comments on crossing surfaces?
- TR: It's a lot easier if there are standards. If there are none - well then we're told there's no money in the budget. It takes a while for the next fiscal year to come.
- DL: Is line five correct or is that backwards?
- KD: Subsection 5 on line 649?
- MR: That's what I've noticed out looking at crossings - the larger gap - 4 inches is probably too far.
- DL: You want your wider gap on the outside?

- MR: That's where they exist now. That's where the flange is going to be running. I've got it backwards don't I? Then I don't know why the larger flange is on the outside, but it generally is.
- DL: I don't know . . .
- MR: I don't know. I don't have that information. I took what I saw out there and threw it down for comment. That's why I did that.
- RG: The wider gap is on the inside of the flangeway so that our wheels have a little bit of movement in there, not on the outside. In fact on the outside with our new kind of concrete crossing it kind of butts right up to the rail to there is no gap there.
- MR: That's what I was thinking about - the flange being on the wider part - that made since to me. Maybe that is backwards.
- RG: . . . the Union Pacific does allocate X amount of dollars to renewing roadways. We don't have a problem maintaining the roadway within our track structure. We actually maintain a 10 foot width so that cities, etc. can pave right up to our tracks or do maintenance to our tracks without us being out there and we'll provide a flagman. When you've got two rails say 100 feet apart, that's a lot of maintenance for Union Pacific to maintain since it's a public roadway and we don't feel we should be responsible for maintaining a highway because we happen to be 100 feet apart. I agree with John that we need to sit down and try to work up some specifics that we can all live with.
- TF: One of the things is - listening to this comment on standards and things like that - if you set these standards as tight as what you're talking about we're going to be working on every crossing. We do not have the financial resources to fix every crossing. We do work on crossings (gives example of Hoquiam repair). I want to handle these with the individual people. I appreciate knowing about the federal funding under 130. We don't always know about things. Try to work with the people locally - that's our idea on this. I like the idea of the phone numbers and web site.
- MR: I think the web site type thing is going to become more common and if we have the correct web sites people will be better able to use the contacts. The problem with the road authority is a definite problem. We have asked on a number of occasions for the road authority to come out and grind down the approach. My sense is the specific standards especially items four and five are probably something we really need to talk about and I intended that. I did not intend for this to be a final rule. Possibly a work group like we talked before but we do need some highway engineers to get involved.

KD: Any more comments?

RG: For us to go out and renew a crossing is running us about \$1,300 a track foot to make those repairs. We need to be careful how we write these things because if you make them too general then we do run into a problem.

MR: There's a catch on each side of the spectrum in being too general or too specific and the idea is either have a rule or have one that is reasonably understood. I want to re-emphasize that relationships between railroads and local road authority is important. We want to help develop those from the state level so a lot of these problems are solved.

TS: I'd offer one final comment. Again we're talking about an economic issue. You get into finger pointing - is it a railroad problem or is it a combination of problems. Perhaps we would want to look at a proposal to have the road crossings funded somehow by the state or through federal funds on a basis other than what we know today rather than trying to assign certain percentages.

MR: That's a good comment and worth checking into. The Section 130 funds - and you might want to check with the WSDOT people - Dave Mounts is the person who administers that fund and his number is 705-7380. It's my understanding he would not authorize a funding for crossing surfaces - it's signals and gates but I could be wrong.

JT: I think it's up to each state what they spend their 130 funds on but I think they try to get the best thing for the buck by putting just signal lights and gates. I just found out today, one of the things I like to do, if somebody had a rough crossing problem, generally what they would do is go to the road authority. It's just a matter of them calling the road authority. From that point they'd either call the WUTC or the railroad. I have had a lot of luck with sitting down with communities. Maybe we can do a 1 or 2 crossing a year plan until we get all these crossings taken care of.

RG: What we did before was when we had crossing problems was we would write to our vice president of operation (tape ends - missed some).

KD: Any more comments or questions on road crossings?

TF: This is directed to Mike. When you site somebody for violation, what's the fining process there? What's keeping that from taking place?

MR: There is several statutes that we can impose fines. We don't feel that enforcement at that level is as useful as ongoing relationships. It's only in those situations where we do get non-compliance and non-response that we would look that way. Historically we haven't but that's changing now. The statutes are up to \$100 per day for these types of defect

violations and \$1,000 shots on one-time incidents. The internal process hasn't been fully developed because we don't have specific rules to enforce. We feel we would have to hold a formal hearing before an administrative law judge to impose fines.

TF: Is that because there's not the specifics that you are talking about in this rule today.

MR: Not as specific as I put it here - but not even a generalized like the first part - #3 "roadway approaches" (reads) - that is subject to a reasonableness standard. But that isn't something that I would be afraid to go in front of an ALJ to have interpret if that happened to be the case.

TF: I know what Mike is saying is true - I believe they don't want to have to impose fines. I've never even heard of that.

MR: It's just nice to have a stick when you absolutely have to have it.

KD: I think what we decided is that we want to form a workgroup outside this larger group and come back with something. Is that what you heard Mike?

MR: Yes.

CL: I still very strongly disagree that there is a need for specific standards. The problem is the compliance with that - not "what is a rough crossing"? I feel as though it's going to be difficult to come up with something that takes into consideration everything you should be considering such as speed of the road, amount of traffic. I really do believe in people getting together using common sense - taking it on a case by case basis and figuring out something that's reasonable. I strongly disagree that there needs to be detailed standards.

MR: That should be a topic of discussion of any working group as well as specific standards.

TS: I just wanted to concur with Carolyn.

DR: I also concur with her and would point out that it was Roy Cross from Kennewick who came in and was very vocal about crossings in Kennewick and said once we got the railroads attention they came out and the crossings were taken care of.

RG: Have we received a rash of complaints, written complainant, about rough crossings? I didn't realize we were receiving complaints.

JT: Mike you might be able to answer that question better than me. I'm not sure what railroad you're talking about there with the potholes. But if there was that situation on the UP we definitely would want to take a look at that and work with you to fix that up.

KD: We need to wrap up on this issue. I think we have enough information in order to have a starting point for a work group. Mike will contact those people who have expressed an interest in that. (Explains commission process on mailing lists by docket number, etc.) If you're not on our mailing list - stop by records center and make sure they add you to our list.

TF: Where is that you need to go?

KD: (Explains where records center is - what gets filed in public file, etc.)

****LUNCH****

KD: Overview of procedures for sending in written comments.

Issues for this afternoon include: Blocking Crossings, Public Notification and we're going to add Accident Reporting and a request to touch base on the Passenger Carrier Vehicles.

Page 16 of the draft - Blockage of Public Grade Crossings.

MR: This rule grew out of about 3 years of complaints from cities, town, police and everywhere we went on the last speed increase hearings. People weren't upset about the speed increase - they were most upset about blocking crossings for extensive periods of time. We heard a lot of anecdotal stories about blockings (gives examples from all over the state). That is the reason for the rule. It was made very simple. The general code of operating rules - we cite (reads). Not blocked for more than 10 minutes if possible. The second part responds to the emergency services situation and it is just a further definition.

KD: So we're all in agreement with this rule?

RG: Blocked crossings for 10 minutes - how about a moving train? Is this for a standing train or a moving train?

MR: Both. This is to cover the situation that was occurring in Stevenson where they knew that under the GCOR they could not block a crossing for 10 minutes if it were standing. They would slow down to about a half mile an hour or a mile an hour and go through town at that speed and doing that at an on-going basis.

RG: Was this recently?

MR: About 3 years ago.

- RG: Most of our tracks are controlled by central traffic control devices and they only have X amount of time to get from point A to point B and it's all controlled by a dispatcher. I can't imagine a train slowing down on it's down just to block crossings.
- MR: I don't know - that's what was observed.
- RG: Well if I've got a westbound train that's approaching and an eastbound train - we could actually be moving in opposite directions and block that crossing for more than 10 minutes.
- MR: I'm not sure if that's possible unless you're going about 5 mph. I'd have to calculate that out.
- RG: If I'm going into my siding(?) At a slower speed and then I'm going to sit down there to wait for the other train to come by - it could take 10 minutes. Then I'd pull back into my main again and I'm on my way.
- MR: I think that's the exception rather than the norm.
- RG: Just recently we went out and marked all of our crossings and we painted on the rail that they could park no closer than 250 feet of the crossing just to alleviate these problems. And this is a rule our train would have to enforce or they'll be disciplined.
- KD: So as long as you're doing that it shouldn't be a concern.
- RG: It just seems like this rule - like the last one we talked about - we haven't received that many complaints on rough crossings. I don't know how many official complaints we received from the state where we're blocking crossings. I'd like to know how many complaints we've received officially telling us that we have a problem. If we have a problem our managers would be more than happy to meet with the cities to resolve these problems.
- MR: The UP hasn't been a large problem because they don't have as many operations in the state. But the Flora Road in the Spokane Valley was being blocked - and they'd block it for 30 minutes to an hour. Tom worked extensively with the people there in Spokane and we documented two pages of blocked crossings in six months. So it does happen and they worked it out. There is a problem and even if your not being officially notified we're getting on-going complaints and we're not doing anything about it because we don't have a rule to even address the situation. The moving train situation - the "if possible" language probably covers that.
- LO: I was wondering if this also applies to equipment on the tracks. (Gives example where

there was a problem with equipment blocking in an emergency situation).

- MR: The situation where crossing is closed down for repair work would probably not be included in this rule and that's one of the reasons for the suggested notification of planned maintenance so communities will know when and which crossings might be unavailable so that plans can be made to re-route in advance. But if a crossing is ripped up it's ripped up and that has to be done on occasion. If a piece of work equipment is blocking a crossing it should be moved.
- LO: It was amazing that within ten minutes of getting notification from their boss - the crossing was put back together. There was a hang-up in the communication there. The next closest crossing is 5 miles down the road. That fire traveled approximately 90 mph and you don't have a whole lot of time to respond. We had water tankers that were caught up and were going across the tracks themselves.
- MR: That's a very interesting point we hadn't thought of and it's something we should at least talk about.
- RG: Let me say when we close a crossing in its entirety UP - we obtain permits from the various cities, counties, etc. when we are going to close the crossing and we hire barricade companies to obtain these permits for us because there's a lot of detouring involved. That's our standard practice now to obtain permits from the various governmental agency to ensure that if there is a problem they know we're doing the work and they can detour their traffic. I would hope that anyone from the Union Pacific if they knew there was an emergency there they would arrange to get the emergency vehicles across the tracks.
- KD: Any other views on blocking crossings?
- TR: As trains get longer and train crews get smaller the problems have been increasing. There's a lot of problems in a lot of areas. The main reason the crossings are blocked and it takes a long time to unblock them sometimes are twofold. Years ago we had a caboose on the rearend and anytime you needed to clear a crossing you could just back up because there was a man on the caboose watching. Now if someone needs to make a reverse movement and somebody has to get from the engine to the rear of the train and it's 7,000 feet long and you're walking on rough rock and various terrain it takes a long time to get back there. The train crew sizes are getting smaller and smaller. I can just imagine somebody with a black box by himself on a locomotive walking 7,000 feet to the back of the train to try and clear a crossing in an emergency. It's not going to go away - it's going to get worse.
- RG: Cutting a string of cars - our trainman is going to have to walk back there, break the cars,

clear the road crossing and now the real problem occurs when he needs to put that car back together. He needs to back up, test his air, maybe release some hand brakes. Cutting the crossing could take us a half hour. So, instead of blocking it for five or ten minutes we could block it for a half hour or an hour.

- LO: In Ritzeville where we live the railroads cut the town in half. I know there's no notification when those cars are dropped off and those crossings are blocked and lots of times I know it's for more than 10 minutes. Yes we do have an alternative route. But if we had an emergency we would have to detour for about 3-5 miles. That's a huge concern. I've seen kids crawling under those trains when they are there for that long.
- CL: In Oregon I'm probably able to better address where there are crossing blocking problems. I'm not familiar with where the problems are in Washington. In Seattle I'm not sure if you even assert jurisdiction over crossings in that city. Just generically what happens in Oregon the kinds of situations that create crossing blockage problems - there's always the things that make you mad - where you could see that somebody did something wrong. I'm not saying we shouldn't have a rule because of that. Where I do see problems is where there really is no good solution for the crew. Like operating in an urban area where there are crossings at nearly every block. No matter where the train is it's blocking many crossings at the same time. Usually in urban areas you're going at a much slower train speed. In places where there is crossing after crossing there is just no spot to sit and wait for another train to go by. Another situation where there are a lot of problems is at the throats of rail yard where trains may need to be going back and forth to make up a train to leave town. Those movements back and forth can create blockage problems. I'm not saying there can't be a rule - I'm just saying that passing a rule doesn't mean there aren't going to be any blocking problems.
- LO: Would it be possible not to do it in the high traffic time of the cars, maybe later in the evening? I know I'm talking specifically about real small towns here and I know by 10:00 at night there aren't a lot of people out driving around.
- RG: The Union Pacific is always ready to discuss these types of solutions. A lot of times is that the shipper who is receiving the grains is working between the hours of 7:00 a.m. and 5:00 p.m. He needs his cars when his people are working. It might not be worth it for him. We are willing to go out there and meet to discuss these problems. Somebody just has to tell us that this is a problem and set up a meeting.
- MR: A lot of points have been raised that are really valid. Some things that need to be worked out with the community and that's something that we encourage all the time. There have been instances that the towns have been just told to go fly a kite. We will try to act as a facilitator to work out problems as much as we can. If you at a meet it might be 12 to 15 minutes and you might be blocking for more than 10 minutes and it's not worth breaking

the train. So that's open to some flexibility that's why we left "if possible" in there. It's the situations like Wenatchee where their crossings are blocked every day for 1 to 1-1/2 hours everyday at lunch time. That's not reasonable. That's the type of thing we're looking at. We need that kind of tool to talk about it.

TF: If somebody's making a crew change and it's taking an hour - that's not an employee issue that's a management issue. I thought maybe the word "standing" because invariably you're going to switch back and forth. We're a proponent of this 10 minute rule. Our goal is to not block a crossing for more than 10 minutes. If we have to shove back and allow people to cross we will. It's not worth the hassle. I was thinking standing railroad, standing train or something like that. I know no railroad wants to block for more than 10 minutes.

MR: The moving part is something that's a little different and something that needs to be talked about. That's an understandable discussion point. The other aspect of this is if a law enforcement requests or emergency vehicle approaches with lights flashing that should be a firm signal to an engineer to move his train in the fastest way possible.

LR: With the trains that long the engineer might not even be aware of what's going on at the crossing.

LO: I'm still concerned about that possibility of the worker being concerned about making a decision on his own without clearance from the head office. Is that going to make those guys hesitate to make that decision?

RG: I don't know the circumstances, but in some cases where you have a siding he's stopped there because he has a red light and he knows he's got an on-coming train. If he were to pull out and run the red light we would have a train collision. He's waiting for the dispatcher to give approval. The dispatcher might say no until that train gets by.

LO: In this situation the track was closed. It was a complete reconstruction. It is a different situation here.

CL: I don't have any objection to subsection 2. With the caveat that if the crossing is being approached by law enforcement with emergency lights flashing that has got to be something that the crew can see.

TF: I agree with Carolyn. I think if we saw anything there our crews have standing instructions to cut that train and get off of that crossing one way or another. Our goal would be to cut the crossing. I don't have a problem with 10 minutes and I don't have a problem with 2 or 3.

- RG: Our crew members are part of the community. They are part of the community and I'm sure they're concerned. Most of our crews are really concerned about the community.
- TR: As far as emergency vehicles, if they see the lights coming they'll go out and cut those cars as quick as they can. But there's just so many times and so many situations where the logistics in moving the trains and especially in areas where the traffic is so heavy. They stop where they normally don't stop. There's just no way to cut all the crossings. We want to help as much as we can but with the reduced crew sizes and the length of the trains and urban growth and more and more crossings, it's really hard to keep the crossings clear.
- MR: That's a point well taken. I'm not quite sure on the caveat about emergency vehicles whether you thought that some additional language might be necessary. (Tape ends - missed some here) . . . for example there are requirements that you do have to walk a train before you can move it. I think that's a mandatory caveat and I'm not sure if Carolyn's caveat is covered also that the crew has to be able to see the situation.
- CL: When the train crew is aware that something is happening - either when the dispatcher has been called and has called the crew or the crew sees the vehicles approaching.
- DR: I going to have to reserve in terms of comments here but I would like to mention a couple of things. I'm not sure about the general code of operating rule but I understand it's intent was only to apply to standing trains, not moving. I think also that there is a preemption issue that arises when you are trying to control the time that a crossing is blocked by a moving train that the legal staff should look at. I think it's CSX v. Plymouth. The only other thing that comes up with the conversations I have heard is what do you do if you are blocking for 11 minutes and you know that if you break the train it's going to take 30 minutes for you to get back together and out of there. Do you break the train and allow a 30 minute delay - even though you know if you could have just waited 1 more minute than allowed you could have moved it out of the way. Do you follow that?
- MR: I follow that and I can't believe anyone would do that - choose to break it for a half hour rather than 11 minutes. I think it's obvious under the rule the "if possible" - we want to keep people from thinking that way.
- DR: The person who's out there for fifteen minutes and you cite him for violating the rule - he's going to have to come in and will say he was being rational. So I bring it to your attention. I don't know if that's what we want. I'll be putting more comments in written form.
- MR: Certainly that's worth talking about to prevent more of a problem than we're trying to

correct. It's going to be real rare that a UTC inspector is going to be out on the ground and people are going to complain and we're going to do an investigation.

DR: I'll think about that for my other comments.

KD: Some people from the Military Department are here - emergency management area - we're going into their areas next.

Our next rule is Railroad Community Notice Requirements that begins on page ten.

Penny Hansen - she is our public involvement coordinator - she's recommending that Community Notice Requirements go into all rulemakings. She's out sick today. This was her initial draft and we're going to take comments on it today.

MR: Part of this is intended to try to provide a community notice to make alternative plans for emergency services and traffic flow and traffic control when a crossing is going to be taken out of service for repair. That's the spirit of the rule and hopefully that comes across in the writing as well.

RG: Before we can go into any public roadway and close it, the city, the county and the state require us to get permits. We pull those permits and they want to see detour plans and a sketch of what we're doing. They in turn tell us who to notify and I think we're already abiding by this rule.

MR: I wasn't aware that permits had to be obtained to resurface. There are situations happening out there and that's what we're responding to. We have seen problems and there have been complaints. The spirit of it is a coordination thing. If it's already happening - then great! We're not trying to discourage that.

KP: I run the states 24 hour emergency operation center. We man the operation center on a 24 hour a day basis. We operate approximately 34 telecommunications systems so that we always have the ability to talk to the local jurisdictions regardless of what the circumstances are or what disaster we may be involved in. We wanted to provide some input to this particular section because even though you may go get the required permits the left hand is not always aware of what the right hand is doing. We function as the 911 center for all local jurisdictions in the state and we have contact on a 24 hour a day basis with all emergency services in all jurisdictions in the state. What we would ask is that in light of the fact that there may be a circumstances where you may have notified the local community about a project that you are working on that may cause a blockage, we think that we could expedite the notification process if we were contacted. We are in contact with them on a daily basis, numerous times. Additionally we also deal with the various federal agencies that you are required to report to on a daily basis. They come to us to

find out what's going on in Washington State. Based on that, we would like to see the language added particularly in subsection G of that section that we be contacted. The service we could provide would actually benefit all parties. We never close and we contact individuals regardless of the time of the day.

RG: Where's your number?

KP: It's not on there currently. We are proposing that we are added as a point of contact. In many cases what we find is that the entity does not know that they have a local office of emergency management and that local emergency manager is who we deal with. In some cases it may be the sheriff or a locally appointed or elected director. We know who it is and we have the points of contact. We could help make sure the right people are contacted when we know there are situations that may cause a blockage.

KD: We were not aware that the military department even provided this service. One idea would be what if they just contact the military department and they just give us the information.

MR: Use the EMDS as a one stop shopping point for that purpose - because if they have that facility and that ability it would certainly be helpful.

KD: Well in this rule we've written that they have to contact the governing authority of the community and it sounds like the EMDS already knows who that is but the railroad might not know.

RG: That's why when we go to the local community depending on who's going to do the work - he's going to do some major repairs on a crossing - so he goes down to city hall and talks to the director of public works - sometimes they will give us the detour plan. My problem with contacting the military department and all these other people is that our managers have been trained to go to the local city hall to pull permits. We're assuming city hall knows who to contact. I don't want all these different agencies saying - you're manager needs to contact all these people. He won't know who they are. That's why we go to the city hall because we assume that they know what they're doing.

LO: Don't you need to get permits from them to do this work?

RG: We always get permits from the local city hall and we furnish detour plans or they give us detour plans.

LO: So you have that stop to make and now they're requesting that you call over here and the military - that's only two more calls - that's not that much.

RG: It's easy for us to say that's not much. I have managers who go to city hall. But they won't do it. How many more agencies are they going to have to contact to close a road?

LO: You're not contacting them to close the road - you're contacting them in case there is an emergency so they can help route the traffic.

RG: When we go to the city - they contact the fire department, etc. to make sure these individuals are contacted. They charge us a fee to close the road and they're responsible to contact all these different emergency people - that's why we pay them a fee and it's substantial.

KD: Could you send us in a copy of whatever this permit is?

RG: Every city and county is different.

KD: Can you send me an example of two different ones?

RG: Sure.

MR: I'm curious if BN follows that procedure of getting permits and paying for them from cities and counties?

DR: I don't know.

TF: It's a coordinated effort. You can't take these crossings out of service without going to the public entity and talking to them about this. You coordinate with that city or public entity to do that. I think the contractor we used probably got the contracts. That's a process that you go through. I also understand what Richard is saying too. It's not an easy process to get these people to do what you want. It's a problem. I believe everybody has to go get these (permits).

DR: I didn't mean to imply that there's no coordination. I don't know what format it takes. With the people on the ground, if they know that they need to make a phone call they are going to do it. I think the idea of being able to call someone and have them help people get notified is great.

TF: I applaud you for coming down and bringing this up. It's not something I ever knew about. I'll be honest with you I didn't think about 911 and I probably should.

CL: You probably wouldn't want to call 911 and tell them you're going to be blocking a crossing in 10 days. That's not the kind of calls that 911 wants. I was wondering if it would be better for the cities to include you in the people they contact when they know

that some work is going to be going on that will impede traffic.

KP: We're on their list because they know we're the state point for requesting any type of resource including fire mobilization, law enforcement mobilization and military support to civil authority. They associate us more with the major events. But additionally we have grown tremendously in the last few years. So, we cover a lot of bases. They know we're there. For them to know to call us, we probably wouldn't see that. In many cases it is either a manpower related issue or again they are not talking to their local emergency manager. A lot of it has to do with the education of who we are and what we do. If we were contacted we could at least forewarn the local emergency management people.

RG: One of our concerns is that - why we like to deal with the local people - is that sometimes we tell them we're going to be out there on Monday. Then something comes up and we're not going to be out there on Monday. So we can call them and tell them we're not going to be there until Wednesday. If we have to call you and all the other people, what happens if they don't call you and you're assuming the road is blocked on Monday.

JS: It is an educational process. Most communities do have a local emergency manager and have emergency management plans. That is an opportunity for us to ensure that if notification . . . but what we were trying to do is offer a service. I do want to clarify that when you call our 1-800 number for emergencies it's not the same as calling your local 911. This is more for emergency response issues.

KD: It's a different telephone number?

KP: It's a 1-800 number. It's the number the locals use to contact us

LO: I'm assuming that this is a fairly advanced technology that you have so that if he doesn't show up on Monday you can let that other entity know immediately. (KP agrees) To me the excuse of maybe not making it there is not a good excuse.

KP: We have multiple communication links with every jurisdiction and that includes radio, satellite, telephone as well as our standard hard lines in addition to the national warning circuit that links our counties as well.

LO: I think this would be a good situation that not just the railroad but any kind of construction crew that is out there have them call you. I'm sure you won't be insulted if you get calls from two different entities.

KP: No - it happens all the time.

KD: Is there any comments on the specific elements that we're asking for?

- CL: I have a comment about subparagraph 1. I would prefer that if we have any notification requirements that we specify what kind of circumstance it is. I don't like the term "that may have a significant impact" because that means so many different things to so many different people. I don't know what that means. If we're talking about events that are going to impede flow across the crossing then at least we've got a handle on it and we know what you're talking about.
- MR: I think that's a fair comment. I think we left it open in draft to see if there were other circumstances other than the crossing situation that might be appropriate and then maybe redraft it. We crafted this in a way to try to evoke some specifics from people. Are there other situations that a city should be made aware of?
- CL: I can hardly think of any situations that you would know ten days in advance that you're going to be blocking a crossing for more than ten minutes. The only thing that I can think of is a construction situation. You don't know when the opposing traffic is coming through. That one should be completely eliminated. I think that there are also going to be emergency situations where you're not going to have ten days and you don't really want to delay it for ten days. If you can work it out with the city why wait ten days?
- MR: There probably needs to be an exception that you could agree in advance with the city or local entity to do things on short notice. The planned action was a word that would indicate that it wasn't an emergency situation. We will try to craft something that will try to take some of those concerns into consideration.
- RG: Why are we doing anything when we are already dictated by the city or the county to do something?
- MR: I know of no rule that requires you to get permits to do work on the crossing. In fact the state rule says that you will perform maintenance and repair on the crossing. I'm not sure that you have to and that's why I was asking. That's why we're doing this - that there isn't a requirement out there that you notify or work with the city on these things.
- RG: Maybe it's a city rule.
- MR: But there's counties, state - and if the city doesn't have a rule then there needs to be one to cover that situation too.
- KD: These rules aren't designed to beat up on anybody. It's already happening, we just want to formalize them. There is a Commission expectation that this is going to occur. It's not designed to do great harm and shake up the industry.
- DR: It's fine to say that there will be benevolent enforcement of a rule but if the rule exists

and somebody wants to enforce it in a way that's not benevolent then you have to live with it because it's a rule. The way to address that is before the rule is formalized so that you can take care of those issues and know what is and is not expected of you so you can comply.

MR: There's a balance between the two. What you're describing and what we're describing. Trying to find that balance is why this process is as cumbersome as it is.

LO: Some of these things that you are addressing, those gray areas when we had questions about law enforcement, fire precautions, we couldn't find any laws that just pinned you down. We need more specifics. I think crews need to be protected. I just think it's a good way to cover everybody's bases.

MR: I appreciate the viewpoint that you are expressing. We don't often get that.

TF: One of the things in section 2A - I think that should be that "disrupting use of a crossing", I think the word public should be inserted there.

MR: I think that was the intent.

TF: I'm sure it was. Thank you.

CL: I think you only have jurisdiction over public crossings - is that right?

MR: We also have jurisdiction over operations to the extent that we're not preempted.

CL: I was just thinking that about if you used the word "public" in this particular rule and you don't have it in other rules - what's the impact of that?

TF: I think that just leaves it very gray and I would like that public in there. Please consider it.

MR: Certainly. We'll also look at Carolyn's concern of that may have implications where we don't use the word so we need to be careful that we're not making up an interpretation that was not intended elsewhere.

KD: I think we need to take a break.

TF: Can we get to Track Equipment and Train Speeds?

KD: Our next one we're going to do will be Accident Reporting. Then we'll touch on passenger carrying vehicles but because we're going to postpone that we're not going to

take a lot of comments on that.

*****BREAK*****

KD: Accident reports which starts on page ten (tape ends - missed some here). . . report of any event connected to the operation of a railroad which results in (a) the release of hazardous materials (b) death of any person (c) injury to any person involved in a railway/highway crossing accident which requires treatment in addition to first aid or damages of \$500,000 but we want to reduce that to \$50,000 and we looked up the federal regs and they said \$6,600. Then it says reports of incidences must be made by railroad within four hours of the event and then we want a written report by fax or e-mail. Reports must be made to the telephone numbers, e-mail and/or fax numbers that we provide to the railroads, etc. The emergency management people also had some comments on this issue.

KP: This is an area where we do comply with both federal and state requirements for notification, public alert and warning of any hazard presented within the state of Washington. We have a legal requirement under RCW 38.52 and WAC 118 to make these warnings and notifications. Consequently tied to those are various state emergency response plans - the largest one being the CEMP - which delineates how other state agencies, boards and commissions - what roles they fill with respect to any type of emergency event in the state of Washington. What we are asking is that language be included to ensure that we get notified in the event of an accident involving a railroad. The NRC immediately turns around and faxes to us their automated accident report form which also lists who contacted them from the railroad and what other federal agencies were notified. What we are asking for is that if the railroads were to provide us notification to the 24 hour emergency center to the duty officer, in many cases we could cut the mandatory requirements for notification to the local jurisdictions and other federal agencies we could cut that time drastically. The key purpose is we are talking life safety issues. We're the responsible agency within the state to address the life safety issues at a local level and their impacts not only to the jurisdiction where the event takes place but the surrounding jurisdictions and again we're mandated to do that. If we were to receive the call from the railroad instead of waiting for that NRC automated fax we could immediately begin a public alert and warning and then additionally it allows us to be able to deal with media. The media know who we are. We've done numerous live feeds for CNN from the state emergency operations center. What we attempt to do is control damage control with our trained public information folks. We want to make sure that the governor and the legislature aren't held up to conflicting reports and stories so we try to begin to manage an incident the instance it happens. If we know that an incident is pending we'll have them standing by. If it happens in this state the press is going to call state emergency management try to talk to one of our PIO's. By the railroads contacting us we're actually getting more detailed information that allows us to do our job with

respect to early notification and public warning but also have some substantial facts about what happened so that our press folks can deal effectively with the media. But we're making a concentrated effort to talk to the local PIO so we can do coordinated releases so that we're speaking with one voice. We think we've been really successful in that the stories that usually go out have been coordinated locally. The priority is life saving issues. Then the media issues are secondary.

JS: Basically what we wanted to do again is that we are offering a service. This is just one way to make it a little faster for all of us.

KD: On one of the breaks you had indicated you thought maybe we should add derailments - was that in this section?

JS: I think that was in another one.

CL: Derailments can sometimes be very minor. I don't think you mean any derailment.

KP: Not anything that's not going to create a problem. All hazardous materials spills and there are regulations that require if a certain amount of a certain chemical are spilled we would have to be notified. We would understand that if it were a minor situation, a minor derailment there's no impact to local infrastructure then it probably wouldn't be necessary.

CL: I did have a couple of questions for Ken. What is the lag time you're experiencing now between the time when the railroad might make the report to the federal agencies and it's faxed to you?

KP: Normally when the call taker at the NRC takes the call, as soon as he hits enter on his keyboard it automatically faxes that information to us. What we run into is because it's done very quickly it doesn't cover all of the specifics. We inevitably call the railroad dispatch center to get more specifics. What we get from the NRC is a snapshot. It doesn't answer all the questions that we know we're going to get. It forces us to take time and start making phone calls. The NRC fax lists all of the federal agencies that have been contacted by them and also it will list us. What we find happening is that those federal agencies know that we are a good point of contact to start coordinating our arrival so they'll call and ask our help and assistance. Whereas as if the railroad contacted us directly we could have a lot of answers to a lot of questions. We see it as the ability to cut the time down and number two providing service to the railroads.

CL: Are you suggesting that different information be provided than what is on this list?

KP: Exactly because - I'll pass around these worksheets - this is information we are required

by law to find out one way or another either from the railroads or whoever is responsible, federal agencies or whatever, this is the information that Washington state requires us to get and it's more information than we get on the NRC fax. The back side of this form is all the agencies that we are required to call. Our required mandatory notifications that we have to make and in some cases we can contact these agencies in a faster manner because we maintain their normal operating hours and telephone numbers but we have a contact or contacts with each agency 24 hours a day.

CL: Are you suggesting that the WUTC amend their rule to require that we furnish additional information to what is in the proposed rule directly to you?

KP: Basically what we are asking is that you call us and our duty officers would ask the pertinent questions. They have just a few questions that they would ask. It's information related directly to the scene rather than getting a call from out of the area.

CL: I'm not sure who makes the federal contacts from UP so I don't know whether it goes through a couple of people or what.

KP: It's usually a fairly quick turnaround on the NRC - it's just that we don't get the whole picture and we want to talk to somebody on the scene locally.

MR: It sounds to me that it's a case of tell me now rather than later. So the railroad is going to get bugged by the EOC one way or another. If you can eliminate having to call us, which everybody does. We'd certainly work with the emergency management to provide them with the questions that we would like so there is only one contact. They have an 800 number that's manned all the time and the BN and the UP are doing a good job with that. What we're trying to do is eliminate a step and facilitate quicker emergency response if it's called for.

TF: With regard to ABC & D of 1 that fits with everything you require doesn't it? Does that fit with what you require or what comes under your jurisdiction? The one thing that really interests me here is this four hour time limit is onerous on everybody. If you could do it with Ken and his folks we would use that.

KD: We think we're talking about shorter than four hours though.

CL: We're talking ten minutes.

TF: No, I'm talking about the turn around time. You have to report this within four hours.

KD: Emergency Management needs to know quicker than that. The UTC is third, fourth or fifth down the list of who you call which is why it's four hours.

- TF: I think we're saying the same thing. If I've just got to call one person then lets say this form satisfies everybody then I would be very supportive of something like that.
- MR: Let me tell you what . . .
- TF: We just send you everything now is what we do.
- MR: What we do we're required to investigate every fatal accident. In our opinion there are certain circumstances where if we don't respond quickly we aren't able to do a thorough investigation. Many times that's not true - we can wait until the next day. We also are allowed and we do investigate many other types of accidents. We are not an emergency responder. So we don't need to be first on the list. We can be contacted a little later in most cases. To make it easier to have one number that's manned 24 hours a day and they have a list and they call us. That fills our need and eliminates a call for you guys and also provides information faster. Sounds like a win/win situation.
- DR: The only question I have is whether we're going to be calling the emergency operations center with information you don't need.
- KP: I would say that we get calls like that all the time. There's already a requirement associated with water born vessels in the state of Washington and we get calls daily from the smallest fishing vessels on the sound. Not so much to say damage but because the law says they have to. We take the information. Damages of less than \$50,000 and no impact to life or whatever I would say it's not a requirement but it gets logged. We've had situations where the EPA has attempted to cite for violation and community right to know laws and it turns out we had a record where the responsible party did in fact call us and they were covered and the EPA was forced to back off.
- MR: I'm assuming that you would be willing to gather the basic information that we are requesting here and pass it on to us even though it didn't meet any of the criteria that you needed to respond to and we can keep that to a minimum. What we need immediately is to be able to make a decision and be able to report to the Governor.
- DL: Are we going to use the same criteria as the guidelines for notifying the NTSB or FRA incidents or is this going to be a different set of guidelines?
- KP: We wouldn't get in the way of any mandatory requirements that you have with respect to the FRA or NTSB. We would basically follow the rules for notification that are mandated and within the state. In effect this one form that we passed out for hazmat we designed it to cover all bases - federal and state. If there's something unique about the railroads then we can very easily put together . . . So we have forms designed for the duty officer to ask specific questions of the essential elements of information would be.

MR: The requirements here are in addition to FRA requirements.

DL: They are beyond . . .

MR: Yes because the FRA doesn't require telephonic notification. They don't even investigate deaths unless there's more than four or five. So it's up to the state to cover that gap. That's why it's a little lesser threshold. Still it's very basic information so we can respond to it and make decisions. We need the initial report to make those evaluations.

KD: We have 45 minutes.

CS: We work very closely with Amtrack. Just so I'm clear on it - if there was a major derailment with Amtrack - their first contact would be with your office and then you would be contacting BN and all the other people?

KP: If we were the ones that were contacted first then we would comply and go through notification.

CS: Because if a major event did happen we also have a chain of command that gets notified. I just wanted to get this clear in my mind so if I go back into my office should I recommend that they contact you.

KP: Depending on what their own procedure dictates. Does it say that they would contact you? Then I would just say that we need to be an additional unless we work out an agreement that your agency wanted us to be the point of contact. That's what we've done with the Department of Ecology. The same thing with Department of Natural Resources. That would be something that would have to be worked out.

KD: It's clear to you that this commission does not regulate Amtrack?

CS: Right, so that would be something we need to work out with Amtrack as to who's going to be called and in what order.

KD: Train Speeds and On Track equipment and Passenger Carrying Vehicles.

TR: I just want you to know that the regulations as written were for railroad-owned vehicles. The railroad also contracts out with private carriers that carry crews to various points and we've had some problems in the past with some of these carriers and the WUTC has investigated some of these carriers and cited them. The cites and some of the WACs aren't in the rules now. I was just hoping that someplace we could have a rule that would show which WACs and regulations you enforce as far as these carriers go.

- KD: There's a whole other chapter of rules for charter carriers and those would not be in the railroad regulations because the authority over railroads is to regulate the railroad companies. There is another chapter, I think it's the charter rule, when the Commission does an investigation on them those are the rules that apply. But if you're talking about the draft that we used in household goods - is that what you're talking about?
- TR: I gave Mike a copy of what I ... The Commission has adopted by reference quite a few CFR's with regard to driver qualifications and things like that. I just wanted to make sure you are aware of that and that your investigators have used those in the past. I thought it might be o.k. to say that the commission also regulates these vans. I don't know if you need to or not.
- MR: One of the reasons that we don't have a draft on passenger carrying vehicles is that I have not had an opportunity to look at the chart and references Kim prepared for me. It includes some of those issues. What we could do is indicate in a rule just a statement of fact that when third party contractors are used to transport employees that certain rules do govern as a point of information. This is something we can look at really hard.
- TR: I wasn't sure if you regulated it or not. I just wanted to make you aware that we were concerned about these things.
- MR: Karen Caille also did some brief research - maybe it would be appropriate to mention what you have determined.
- KC: I did some preliminary research and it looks like you would be covered under FELA. The man that came in and spoke at the open meeting, since he's your attorney I was wondering if you might ask him just to verify. The specific example that comes closest is where the railroad has a contract with a hotel and something happens to the employee there - FELA applies. I see that as analogous to that contract with a third party van.
- TR: The problem our members have is if they are riding in a van and that van gets hit by somebody else and it causes an accident. Under FELA to collect damages from the company you have to prove fault against the company. The company didn't cause the accident. The third party that was driving causes the accident but the railroad requires us to get in the van and while they're doing this they are hit by somebody and they get hurt and they're not covered in any way because they are not covered by workmen's comp.
- KC: Do you have any specific situations where this has happened?
- TR: I'm sure there are some available. Maybe the person who was on the line this morning could come up with some.

- KC: We'll discuss this some more too but any help you can give would be appreciated.
- MR: Or from Mr. Reeves, if you have some input that you are willing to provide I would appreciate it.
- DR: I don't understand what the issue is. If we're talking about trying to change federal law to address workmen's compensation I think that's a great idea. Something short of that I'm not sure how we can decide how to change federal law.
- KD: We're not trying to change federal law. We did discuss this issue a little at the last stakeholder meeting. What the commission had considered was - would it be appropriate for the commission to say to the railroads when you have a third party contract with a charter service you must ensure that they carry uninsured motorist coverage on their vehicle. Frankly we didn't understand the issues well enough ourselves to decide if that was an appropriate solution. That might jog your memory a little bit.
- DR: That's certainly what I need to know. If we're going to talk about what the commission can impose in terms of insurance requirements for the railroad now that's something we can look into.
- MR: That seems to be the issue. The third party situation - underinsured motorist coverage. The railroad is requiring the employees to get into contract vans and they don't have insurance to cover a situation where an outside party strikes them.
- KD: Let's move on to - On Track Equipment - page 17 and 18.
- TF: Under line 696 it says "stop if necessary to avoid an accident." The concern that we had is that putting the total onest on the railroad to make the stop when you're in a high rail vehicle and what responsibility does the person driving the car on the highway have? Does the way this is written put it totally on the railroad? Because they have an obligation to stop too. The way this reads the only person who has an obligation is the high rail vehicle.
- MR: As far as liability goes there's a lot that goes into different requirements and there are always exceptions. Last clear chance doctrines there's other ones that apply. This is other than trains. But a lot of times on track equipment will trigger or not trigger railroad crossing devices.
- TF: I will tell you that we do stop. The instructions I received were - stop at the crossing because a high rail vehicle does not activate the crossings.
- MR: I'd be real surprised that if a person on the road is doing something screwy that you'd be

held liable. I think we're talking general principles of liability. It does put the primary responsibility - it doesn't take away the responsibility from the driver of the vehicle.

DR: There is another class of equipment in between locomotives and high rails that do shunt and activate the rail crossings and operate at the track speed at least as I understand it and I am assume that they are not covered by this?

MR: What class are you talking about?

DR: They call them grinders and different things like that.

KD: Those would be the kinds of equipment that would drop the gates or . . .

DR: Would activate whatever type of warning devices that are there - are we still required to stop if there is somebody approaching?

MR: I'm not familiar . I've seen them but I don't personally all of the ways those things operate on track.

DR: I again intend on doing a written response and I'll try to add some more detail.

MR: That would be very helpful and certainly I'll talk to the person I know that has been working on this - Mr. Kimbrell and others - to get more education for me as well.

CL: My silence does not mean I don't have any comments on this . . .

MR: It does remind us that we can't depend on that so I appreciate you doing that.

CL: It sounds as though that Ken does approve of this rule.

KD: That's why we invited him . . .

MR: Any other comments?

KD: Procedure to Set Train Speed Limits. That begins on page four. This was our first shot at it. The commissioners even have a concern with it. There a concern in the community of what the Commission can and cannot do with train speeds. Communities say don't let them go that fast. The commissioners are the driving force. They specifically said that we want clarification on what this commission does with regard to train speed limits. This is staff's first attempt at doing that. What do you think?

DR: I'm going to have to talk to some more people and get back to you in writing. Certainly

the first things that come to mind are preemption. Certainly to the extent that you're looking at local safety hazards the focus of the rule should not be one of setting speeds but looking at local safety hazards. Another concern is defining what a local safety hazard is. I think a local safety hazard is something that is defined by federal rule, federal law. An attempt to define it in the rules is just going to cause it to be. . . If the case law or the authority is inconsistent with the rule then the rule would be misleading.

MR: That was the intent to distill some experience from the last go around with train speeds to provide information to people to what we think the federal law might allow us to consider as to - first we were going to outline what are unique local safety conditions. Beyond that it's hard to tell. The considerations that were derived out of the case law that our attorney looked at were these things we put in subsection 3. Within that you'll notice it says whether We recognize that basically you have four solutions to a hazard and one of them is speed. We'll you've got to do the other three before you go to the speed issue. One issue that may be coming up too, is what happens if a railroad says in writing that increasing train speeds is dangerous until such and such happens. Then they ask the commission to increase the speeds anyway because it's not a unique local safety condition but they have put on record an admission that it is dangerous to do so. I don't know what happens there. We appreciate the concerns you raise because they are concerns for us.

KD: We're trying to alleviate those concerns by making this rule that outlines the process.

MR: One of the things it can do is inform the communities of how difficult it is for the commission to set a limit lower than what the federal law requires. By outlining what is needed it really does say to the communities you've got to look at other things besides reducing the speed.

KD: Are there any other comments?

CL: Silence doesn't mean . . .

MR: We do expect other comments to be coming in on this one so we know that quietness doesn't mean assent on this one.

KD: I was wondering . . .

MR: There are four rules that are addressed for one specific purpose. That is the track safety standards, the crossing signal circuitry standards - that's C & D on the agenda and L is the hazardous materials regulations and O is the roadway worker's safety and operating rules and statutes. The purpose of those four rules is not to adopt a new state standard for railroads to follow - to allow us to put penalties on railroads in addition to the federal

rules. Those are all federal rules and requirements. What it is designed to do is give clearly federally certified inspectors the authority to enforce federal rules and submit violations to the federal government as part of the participation program.

TF: Are you saying then they are identical to the federal rules?

MR: We're just adopting straight across the board. The only exception I can think of is . . .

TF: I knew there would be an exception.

MR: Crossing signal circuitry. Industrial railroads have crossings and we do have jurisdiction over those crossings. We are adopting these standards for them as well as far as crossing signal circuitry so they have to maintain them and they have to do all the things you do. But that doesn't apply to railroads that are here today.

TF: Are they following those today?

MR: No. We're going to make sure that it's covered because we were challenged on it. This is going to take care of that so that those crossings are as up to snuff as you guys keep yours.

TF: I deal with Simpson timber quite a bit and they are a very concerned citizen of the community in Mason County. Are they on the mailing list for these things?

MR: Yes - they should be.

DR: I just want to let you know that I have to leave and please don't take my absence as assent.

KD: We need to schedule our next meeting. How much time do you all need to respond - would 30 days be enough?

MR: Someone had comments and concerns in the written comments about adopting federal rules by reference and we were hoping that the second paragraph of each of those that say that all violations will be submitted to the FRA for enforcement would take care of your concerns and if they didn't is there anything that can?

CL: They do largely address what our concern was which was the dual enforcement - whether we've got any other language clarifications to suggest - I don't know. We may have some to further draw those lines. I don't know if there is better language.

MR: The intent that I am describing to you that it is for the state participation program only - I

~~assume that intent is what we want to cover and that would take care of your concerns.~~

CL: That is the intent we wanted covered.

KD: I'll try to schedule our next stakeholder workshop for 30 days from now. I will also send out another letter and include these other rules that haven't been distributed yet except for this workshop.

Thank you for coming today. Your input is valuable.

MR: I appreciate the Emergency Management people for coming. Even if we don't address specifically in our rules those things I think we can build an on-going relationship.