

Agenda Date: April 28, 2004  
Item Number: C1

**Docket:** TR-021465

Company Name: Rulemaking – Railroad, WAC 480-62-125, WAC 480-62-320

Staff: Mike Rowswell, Rail Safety Manager  
Jonathan Thompson, Assistant Attorney General  
Ann Rendahl, Administrative Law Judge

**Action:**

Staff is ready, at your direction, to prepare and circulate a Rule Adoption Order for your review and signatures. The Order would adopt the proposed rules included in the CR-102 filed with the Office of the Code Reviser on February 18, 2004, as modified in this memorandum.

**Background:**

In the mid-1990's, railroads around the United States began using remote-control technology to operate trains without an engineer on board. Safety concerns were raised about the use of this new technology. The Federal Railroad Administration (FRA) responded by issuing a Notice of Safety Advisory 2001-01 on February 14, 2001. The FRA Advisory contains extensive guidelines addressing the design and operation of remote-control devices, training, operating practices, security, inspections and tests, and accident-incident reporting procedures. Many of the guidelines in the Advisory are not enforceable, although the Advisory references some existing rules that are enforceable. The FRA continues to study the problem, but has not made any final conclusions about the safety of the use of remote control or about what, if any, regulations are needed.

**The Rulemaking Process:**

On November 1, 2002, the Washington State Legislative Board of the Brotherhood of Locomotive Engineers filed a petition with the Commission requesting that the Commission adopt the FRA Advisory as a state rule. It contended that the safety issues were so important that the suggestions contained in the Advisory should be made enforceable by rule.

On December 31, 2002, the Commission denied the BLE's petition. Among other reasons, the Commission found that the FRA Advisory included some enforceable requirements that clearly preempted state action on specific matters such as operator training. Also, the statutory process for a petition to adopt rules did not allow sufficient time for Staff and other stakeholders to completely analyze the complex issues involved.

Despite the denial of its petition, the BLE raised sufficient safety concerns to warrant further review. In addition, Commission Staff had noticed potential problems in remote-control operations because of an accident in Shelton involving a runaway remote-control train, and because a train in Seattle operating under remote control was unsafely shoved onto a main-line track while an Amtrak passenger train was approaching. As a result of these concerns, the Commission issued a CR-101 Preproposal Statement of Inquiry on January 24, 2003.

The Commission held three workshops in this rulemaking proceeding, in March, August, and October 2003, to discuss remote-control operations generally and to discuss draft rule language. During the March workshop, the Commission gathered information about the various parties' proposals and positions. Prior to the August workshop, Commission Staff circulated a set of draft rules for discussion. Commission Staff incorporated comments received during the August workshop and circulated a new set of draft rules in October. During the October workshop, Commission Staff received additional comments.

The Commission has received comments during this rulemaking from over 60 individuals, as well as representatives of the Burlington Northern and Santa Fe Railroad Company (BNSF), the Union Pacific Railway Company (UP), the Brotherhood of Locomotive Engineers (BLE), the United Transportation Union (UTU), International Longshore and Warehouse Union (ILWU), the Washington State Labor Council, AFL-CIO, the FRA, the Spokane City Council, the Metropolitan King County Council, the City of Vancouver, and Clark County. Responses to these comments are reflected in three separate rulemaking comment summaries posted to the Commission's web site at [www.wutc.wa.gov/021465](http://www.wutc.wa.gov/021465).

Based upon the workshop discussions and written comments Commission Staff worked to narrow the issues for consideration. Three general areas emerged during the process of gathering public and stakeholder input: inclusion of definitions, refinement of existing notice requirements, and protection at the point of movement.

During the open meeting on January 28, 2004, the Commission sought information about whether to pursue point protection rules in this rulemaking docket or to consider point protection rules generally in a separate rulemaking. Following the open meeting, the Commission decided that safety concerns pertaining to point protection were not confined to remote-control operations. As a result, the Commission directed that a CR-102 (Notice of Consideration of Rulemaking) be issued in this docket on the definitions and notice requirements only, and that a CR-101 be issued on the general issue of point protection under Docket No. TR-040151.

### **The Proposed Rules:**

The rules presented for adoption are attached to this memorandum in both clean and legislative format. These proposed rules include:

- Definitions of “remote-control area,” “remote-control operations,” and “remote-control zone.” The industry has begun to use these terms in specialized ways for operational purposes. It is important for Commission rules to be consistent with industry practices regarding definitions.

**NOTE:** The Commission may wish to modify the definition of “remote-control operations” in the proposed rule to more appropriately reflect the nature of remote-control operations, as follows:

“‘Remote-control operations’ means controlling the movement of locomotives through the use of a radio transmitter and receiver systems ~~that can be operated by a person~~ not physically located at the controls within the confines of a locomotive cab.”

These changes are included in the rule language proposed for adoption attached to this memorandum.

- An amendment to existing requirements that railroads report their intention to use remote-control operations by clarifying the information railroads must report, and requiring railroads to report the creation as well as enlargement of remote-control areas and zones. These reporting requirements allow Commission Staff to focus observation and enforcement efforts in the proper areas. They also give Commission Staff the opportunity to conduct diagnostic evaluations for safety problems before operations begin.
- Require railroads to report to the Commission their intention to use cameras for point protection at crossings. In a recent letter, the FRA suggested the use of diagnostic reviews by public safety, law enforcement, and public agency personnel before a railroad implements the use of cameras in remote-control operations. The proposed rule allows such diagnostic evaluation by requiring the railroads to notify the Commission of their intent to use cameras during certain remote control operations.

**NOTE:** The Commission may wish to modify the language in the proposed notice rule to change every reference to “operations” to “remote-control operations.” This change will make the proposed rule more clear. These changes are included in the rule language proposed for adoption attached to this memorandum.

A small business economic impact statement, or SBEIS, was not prepared for this rulemaking proposal. RCW 19.85.030 requires agencies to prepare an SBEIS “If the proposed rule will impose more than minor costs on businesses in an industry.” The rules proposed for adoption do not require a change in existing railroad operations. There is no indication that the notice requirements suggested for consideration pose anything but a

minimal cost or burden. As a result, the economic impact to railroads resulting from the proposed rules is not significant.

**Comments:**

In response to the Commission's February 20, 2004, Notice of Opportunity to Submit Written Comments on Proposed Rules, the Commission received comments from the Washington State Legislative Board of the Brotherhood of Locomotive Engineers and Trainmen (WSLB-BLET) and The Burlington Northern and Santa Fe Railway Company (BNSF) and the Union Pacific Railroad Company (UP).

The WSLB-BLET objected to the Commission's removal of point protection rules from the proposed rules for adoption in this docket. As discussed above, the Commission has initiated a rulemaking in Docket No. TR-040151 to address point protection issues generally, rather than to specifically address the issue more narrowly in the context of remote-control operations.

While the railroads do not object to the proposed definitions in WAC 480-62-125, the railroads insist that the Commission is preempted by federal law from requiring railroads to provide advance notice of remote-control operations in WAC 480-62-320. Staff respectfully disagrees. The proposed rules clarify an existing notice rule. The amendments modify the rule to include notice of intent to establish a remote-control area or a remote control zone; however, these changes better reflect the nature of remote control operations and are not significantly different from the existing notice requirements. Notice requirements are not a ban on remote-control operations, but simply a requirement that the railroad notify the Commission of its intent to initiate such operations.

**Conclusion:**

At your direction, Staff will prepare and circulate a Rule Adoption Order for your review and signatures. The Order would revise Chapter 480-62 WAC, the Commission's rules governing railroad operations, specifically WAC 480-62-125, relating to definitions for railroad operations, and WAC 480-62-320, relating to notice requirements regarding railroad remote-control operations, as described in this memorandum.

Attachments