

**Railroad Companies Operating Rules  
Chapter 480-62, Docket No. TR-981102  
Written Comments Summary  
04/30/99**

| Issue                                     | Comments from:  | Comment  |
|---|---|--|
| General                                   | <p>Robert J. Burke, General Manager, Columbia Basin Railroad</p> <p>Dean Dossett, Mayor, Camas</p> <p>Paul Mar, Community Services Director, Edmonds</p> <p>Paul Krauss, Director of Planning and Community Development, Auburn</p> <p>Michael L. Gehrke, Director Intermodal Services, Port of Tacoma, Tacoma</p> <p>Lois Stark, Assistant Town Administrator, Steilacoom</p> <p>David M. Reeve, Attorney for BNSF Railway Co., and Carolyn Larson, Attorney for UP Railroad Co.</p> | <p>Urges governing bodies to collaborate and reach a singular understanding on issues to avoid regulations that conflict. Consider the impact multiple rules from multiple sources have on the day-to-day rail operations.</p> <p>Supports the rules review and has an interest in all issues that may affect the Camas community.</p> <p>Supports rules that would require considering community impact in the decision making process.</p> <p>Asks the Commission to look at grade separation programs - increase railroad 5% participation rate.</p> <p>Would like to see WUTC rules mirroring existing federal and industrial rules ... with the addition of appropriate AAR regulations.</p> <p>Keep right of ways clean - several examples given of problems areas, including the railroad weed spraying program which was done after grasses and weeds had gone to seed.</p> <p>Recognizing that many aspects of the Commission's economic, and safety related regulatory duties have been preempted at the federal level, the railroads believe that perhaps the most meaningful way for the Commission to promote railroad safety is through participating in the many safety related rulemakings and advisory committees at the federal level.</p> |
| WAC 480-62-010<br>Locomotive speedometers | David M. Reeve, Attorney for BNSF Railway Co., and Carolyn Larson, Attorney for UP Railroad Co.   | Believe the Commission may be preempted by provisions of the Locomotive Boiler Inspection Act, Safety Appliance Act, and Federal Railroad Safety Act. In addition, each railroad has a local safety committee which are open to participation by the Commission.   |

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| WAC 480-62-020<br>Traffic control devices   |  |   |
| WAC 480-62-030<br>Flagpersons   |  |   |
| WAC 480-62-040<br>Exemption   |  |   |
| WAC 480-62-050, 060, 070<br>Passenger carrying vehicles,<br>general, equipment, &<br>operations |  |   |
| WAC 480-62-080<br>Accident Reports  |  |   |
| WAC 480-62-085<br>Annual Reports  |  |   |
| WAC 480-62-090<br>Hazardous Materials   | <p>Stan Tellvick, Secretary, Stevens County Fire District No. 6, Kettle Falls</p> <p>David M. Reeve, Attorney for BNSF Railway Co., and Carolyn Larson, Attorney for UP Railroad Co.</p> | <p>Supports a rule that would identify (placard) the type of hazmat carried on trains to enable fire fighters to respond appropriately to spills.</p> <p>Opinion that the Hazardous Material Transportation Act (HMTA), 49 USCA, §5125 et. seq. was adopted by Congress to establish national, uniform standards for railroads transporting hazardous substances and WUTC rules may be preempted.</p> |
| WAC 480-62-100<br>Bridge Safety Rules   | David M. Reeve, Attorney for BNSF Railway Co., and Carolyn Larson, Attorney for UP Railroad Co.  | Believe the Commission may be preempted by provisions of the Locomotive Boiler Inspection Act, Safety Appliance Act, and Federal Railroad Safety Act.   |

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| WAC 480-62-120<br>Train Operations | Ken Kubic, Manager of Yard Operations, Union Pacific, Tacoma, WA | Supports repealing train operations rule. Beleives GCOR's already address this issue more stringently in rule 6.16. Trains must stop and may not proceed until safe to do so. Sent copy of GCOR. |
| Clarifying Rules                   |  |  |

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| Notification Issue | <p>Gena Tolle, Mayor, Everson</p> <p>Robert J. Burke, General Manager, Columbia Basin Railroad</p> <p>Dean Dossett, Mayor, Camas</p> <p>Paul Mar, Community Services Director, Edmonds</p> <p>Gary Tomsic, City Administrator, Wenatchee</p> <p>Paul Krauss, Director of Planning and Community Development, Auburn</p> <p>Chris Branch, Community Development Consultant, Tonasket</p> <p>Lois Stark, Assistant Town Administrator, Steilacoom</p> <p>Lois Stark, Assistant Town Administrator, Steilacoom</p> <p>Evelyn Heider, Citizen, Ritzville</p> | <p>Supports notification rule.</p> <p>Opposes additional regulations. Believes existing legislation is sufficient. Rail Companies are already required to report accidents and incidents and any hazardous waste spillage to Transportation.</p> <p>Supports notification rule.</p> <p>Supports notification rule.</p> <p>Supports notification rule.</p> <p>Supports notification rule and asks WUTC to consider adding an expectation for impact mitigation and an appeal or dispute resolution process in the rule. Suggests issues to include in notification should be service level changes, construction, operational, and schedule changes.</p> <p>Supports notification rule.</p> <p>Supports notification rule for major maintenance activities such as rail replacement, track realignment, or crossing improvements.</p> <p>Supports notification rule and would like work coordinated with and approved by local fire districts which have unique knowledge of local areas. For example, in Eastern Washington track grinding should be done from November through June rather than July through October when fire danger is high.</p> <p>Supports notification rule</p> |

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| Notification cont. | David M. Reeve, Attorney for BNSF Railway Co., and Carolyn Larson, Attorney for UP Railroad Co. | The subject of notification of the commencement of work on planned construction projects and the associated road closures and traffic diversion is already addressed in the construction and maintenance agreements which each railroad enters into with the State or local road authority or it is handled as part of the permitting process. No need has been demonstrated for a regulation on this subject. In addition, each railroad's routine maintenance of grade crossing surfaces, such as crossing plank replacement, should be allowed to proceed as the need arises. A rigid requirement for advance notification will cause unnecessary delay and impede the Railroad's ability to perform required maintenance. This is not in the interest of public safety. NOTE: These comments apply to closing crossings work only. |

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| Blocking of Crossings | <p>Paul Scott, Washington Association of Railroad Passengers (WASHARP)</p> <p>Irving J. Snyder, Citizen, Stevenson</p> <p>Robert J. Burke, General Manager, Columbia Basin Railroad</p> <p>Stan Tellvik, Secretary, Stevens County Fire District No. 6, Kettle Falls</p> <p>Gary Tomsic, City Administrator, Wenatchee</p> <p>Paul Krauss, Director of Planning and Community Development, Auburn</p> <p>Carol Paul, Fire Commissioner, Lincoln County Fire District. Edwall</p> <p>Evelyn Heider, Citizen, Ritzville</p> | <p>Limit blocking crossing to no more than 5 minutes during normal train operations.</p> <p>Supports limiting the amount of time a train may block a crossing (his specific example documents numerous lengthy blockings at a private crossing- Snug Harbor).</p> <p>Opposes a new blocking crossings rule. “ When we legislate the impossible, we create an environment of failure.” An impossible requirement allows an attitude of “what difference does it make, we cannot comply anyhow.” The GCOR’s state, “if possible, not longer than 10 minutes.” Train crews make every attempt to comply, however there are numerous instances that makes this impossible (provides examples).</p> <p>Supports rules that would address blocked crossings.</p> <p>Supports rules that would address blocked crossings.</p> <p>This is a major issue for Auburn. Supports rules that would address blocked crossings.</p> <p>Rules should exclude trains from blocking all crossings in a town at the same time. Our fire department was unable to respond to a fire, 5 miles east of Edwall, because all crossing were blocked. Reardan fire department had to respond which was 20 minutes away. Most recently, all crossings have been blocked for time periods ranging from 20 minutes to nearly 2 hours.</p> <p>Supports a blocked crossings rule that would exclude trains from blocking crossings during hot summer months and harvest months. Believes this practices is an public hazard</p> |

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| Blocking of Crossings (cont.) | David M. Reeve, Attorney for BNSF Railway Co., and Carolyn Larson, Attorney for UP Railroad Co. | The delegation of authority to regulate the blocking of public grade crossings, pursuant to 49 U.S.C. § 20106, is to the “state” and not to a municipality or other governmental entity. Any regulation must be fashioned in a way that would allow the normal flow of commerce. <u>CXS Transportation, Inc. v. City of Plymouth</u> , 86 F.2d 626 (1996). Any state standard must recognize practical operating needs of the railroads and the convenience of the highway traveling public. Regulations must also recognize exceptions for circumstances where trains are stopped at crossings due to mechanical or other failures and/or delays due to the necessity of performing federally prescribed airbrake tests and other appropriate exceptions. There may also be places where, due to the location of a public grade crossing immediately adjacent to railroad facilities trains are assembled, exceptions to blanket provisions would need to be made. The Commission may wish to set up a small working group to address these issues. |

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| Remote Control Trains | <p>Robert J. Burke, General Manager, Columbia Basin Railroad</p> <p>Daniel R. Elliott, III, Attorney &amp; Tom Retterath, legislative Director for United Transportation Union</p> <p>David M. Reeve, Attorney for BNSF Railway Co., and Carolyn Larson, Attorney for UP Railroad Co.</p> | <p>Any related rules on this issues should wait until FRA testing is completed and eventual FRA rules should be used by all authorities.</p> <p>Opposed to any rules that would promote or otherwise permit remote control operations. Provides fatality statistics regarding power haulage operations - 9 in 1998 and 13 in 1997.</p> <p>BNSF and UP do not presently have any remotely controlled locomotive operations in the State of Washington. The FRA has clearly expressed its intent to preempt this area and exercise jurisdiction over railroad operations. The FRA specifically assumed responsibility for any proposal to operate remotely controlled equipment in the test plan which was issued in 1994 and Vol. 50 No. 222 of the Federal Register on page 59826.</p> |



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| Motor Track Cars | Robert J. Burke, General Manager, Columbia Basin Railroad | 49 CFR Part 214 governs |

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| Post Accident Alcohol and Drug Testing | <p>Robert J. Burke, General Manager, Columbia Basin Railroad</p> <p>David M. Reeve, Attorney for BNSF Railway Co., and Carolyn Larson, Attorney for UP Railroad Co.</p> | <p>49 CFR part 219 governs</p> <p>The Commission is clearly preempted in this area as the FRA has occupied the field and expressly forbids routine testing at grade crossing accidents under 49 CFR § 219.201 (b). The only exception concerns authorities with responsibility for enforcement of the state criminal statutes who with probable cause may require such testing. Since the Commission is not charged with responsibility for enforcing those criminal statutes, no rulemaking in this area is necessary.</p> |

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| Commuter Rail                             |  |  |
| Railroad Special Police                   | <p>Paul Krauss, Director of Planning and Community Development, Auburn</p> <p>Raymond L. Paoella, City Attorney, Yakima</p> <p>Lois Stark, Assistant Town Administrator, Steilacoom</p> <p>David M. Reeve, Attorney for BNSF Railway Co., and Carolyn Larson, Attorney for UP Railroad Co.</p> | <p>Supports identity and contact information about railroad police and also requests the same info about dispatch and train control centers to better coordinate emergency responses and other public safety matters.</p> <p>Raises numerous questions and issues regarding railroad police jurisdiction, arrest powers, funding for incarceration and due process proceedings, certification, licensing, equipment and uniform identification, and need identify responsibilities.</p> <p>Citizens call to report safety problems that pose hazards to trains such as rail bed wash outs, trespassers and dangerous trees. It unclear to town staff how, where and who, to report these safety concerns - would also like to know how the railroad would want the information conveyed - FAX, letter, telephone? Clarification would be appreciated.</p> <p>Railroads have no objection to providing information about their police forces. Emergency Numbers: BNSF police services 1-800-832-5452; UP police 1-888-877-7267. A rule in this area may not be necessary.</p> |
| Petitions for Grade Crossing Improvements | <p>Paul Scott, Washington Association of Railroad Passengers (WASHARP)</p> <p>J.C. Yarde, Public Works Director, Airway Heights</p> <p>Paul Krauss, Director of Planning and Community Development, Auburn</p> <p>Lois Stark, Assistant Town Administrator, Steilacoom</p>                     | <p>Supports streamlining WUTC processes.</p> <p>Supports improving petition process.</p> <p>Supports procedural improvements.</p> <p>Supports process improvement for petition crossing improvements that would include public input into evaluating crossing improvements.</p>  |

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| Crossing Surface Standards                    | <p>Paul Scott, Washington Association of Railroad Passengers (WASHARP)</p> <p>J. C. Yarde, Public Works Director, Airway Heights</p> <p>Gary R. Tomsic, City Administrator, Wenatchee</p> <p>Paul Krauss, Director of Planning and Community Development, Auburn</p> <p>Lois Stark, Assistant Town Administrator, Steilacoom</p> | <p>1. Eliminate use of wooden planks (Ritzville), require concrete or rubber, wooden plank crossings are dangerous to the public;<br/>2. Close as many public crossing as possible to increase public safety.</p> <p>Supports standards and upgrading wood crossing surfaces.</p> <p>Supports rules that would address maintenance and standards for crossing surfaces.</p> <p>Supports rules that would address maintenance and standards for crossing surfaces.</p> <p>Steilacoom has 3 crossings, one of which is in good repair. We've asked for the other 2 wooden crossings to be examined and needed repairs to be done, however, we were informed they meet the minimum standards. It is unclear to us what the current standards require.</p> |
| Signal and Circuits Maintenance and Standards | <p>Paul Scott, Washington Association of Railroad Passengers (WASHARP)</p> <p>Robert J. Burke, General Manager, Columbia Basin Railroad</p> <p>Paul Krauss, Director of Planning and Community Development, Auburn</p>   | <p>Require faulty signals to be upgraded as ASAP.</p> <p>49 CFR Parts 234 and 236 govern.</p> <p>Supports rules that would address maintenance and minimum standards.</p>  |

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| <p>Procedures for Implementing Whistle Ban Requests</p> | <p>Paul Scott, Washington Association of Railroad Passengers (WASHARP)</p> <p>Rolando Mendez-Treneman, City Council Member, White Salmon</p> <p>Robert J. Burke, General Manager, Columbia Basin Railroad</p> <p>Paul Krauss, Director of Planning and Community Development, Auburn</p> <p>Lois Stark, Assistant Town Administrator, Steilacoom</p> <p>Michael J. Delaney and Liesl B. Morgan, Citizens, Cheney</p> <p>David M. Reeve, Attorney for BNSF Railway Co., and Carolyn Larson, Attorney for UP Railroad Co.</p> | <p>Opposed to Whistle Bans. This practice is unsafe for the public.</p> <p>Supports whistle bans and process improvement in this area.</p> <p>Require those who petition for the whistle ban to accept the liability that the whistle ban creates.</p> <p>Supports procedural improvements and asks WUTC to consider adding noise abatement criterion.</p> <p>Supports rules that would identify what safety standards need to be met before a whistle ban could be implemented.</p> <p>Supports whistle bans or at the least a noise abatement program in their area. Cheney area has over 280 blasts of 130 decibels per day.</p> <p>In April 1995, the FRA issued the "National Study of Train Whistle Bans," which found that crossings with whistle bans experienced an average 84% greater frequency of accidents than those without whistle bans. In 1994, Congress enacted legislation in which it clearly delegated to the FRA responsibility for determining when the blowing of the train whistle is not required. 49 USC § 20153. When FRA issues rules later this year to implement its authority, it will clearly pre-empt the ability of municipalities to enact and enforce local whistle bans of the authority is not already preempted pursuant to 49 USC § 20106. Therefore, the most efficient use of the Commissions resources would be to review and approve grade crossing modifications which are proposed as a part of a FRA waiver request.</p> |

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| Miscellaneous Reporting Requirements | <p>Robert J. Burke, General Manager, Columbia Basin Railroad</p> <p>Paul Krauss, Director of Planning and Community Development, Auburn</p> <p>David M. Reeve, Attorney for BNSF Railway Co., and Carolyn Larson, Attorney for UP Railroad Co.</p> | <p>Opposes additional regulations. Regarding timetables, bulletins etc. see 49 CFR Part 217. Federal rules seem sufficient.</p> <p>Supports ownership change notification rule, Company timetable, bulletins, and notices rule.</p> <p>Regarding ownership changes, the railroads do not object to providing information need by the commission, but would recommend any additional reporting requirements be included as a part of the annual reporting requirements.</p> <p>Regarding requiring railroads to provide the Commission with copies of its timetables, bulletins, and notices would be expensive, onerous and difficult for the railroads. Much of the information is redundant and voluminous. The railroads believe that the Commission's need for information is better accomplished by specific request rather than rule. Railroads do not object to providing information, upon request, consistent with the 49 CFR § 217.7 (b) obligation.</p> |

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| Train Speeds  | <p>Paul Scott, Washington Association of Railroad Passengers (WASHARP)</p> <p>Irving G. Snyder Jr., Citizen, Stevenson</p> <p>David M. Reeve, Attorney for BNSF Railway Co., and Carolyn Larson, Attorney for UP Railroad Co.</p> | <p>Supports increasing train speeds to the federal level. Put forth an argument that high train speeds are safer than low train speeds because crossings are blocked for a shorter period of time and drivers are less likely to attempt to beat a fast train.</p> <p>Opposes train speed increases when clearance and sight distance is inadequate.</p> <p>The Commission already receives notice of changes in FRA regulations for classes of track in 49 CFR 213.9. The Commission's federally certified track inspectors are aware of these federal regulations and their application to particular rail line segments. Although the FRA track classes establish the maximum allowable operating speed for a particular line of railroad based on the condition of the track, the Railroads' operating rules determine the maximum speed at which trains are allowed to operate on the involved rail line. The Railroads routinely provide advance notice to affected communities before implementing changes in operating rules to increase the maximum allowed speed of trains through residential or industrial areas. The railroads do not believe that a new rule on this subject is necessary.</p> |
| Railroad Crossing Coordination with Community Comprehensive Development Plans | <p>Dean Dossett, Mayor, Camas</p> <p>Chris Branch, Community Development Consultant, Tonasket</p>   | <p>Supports rules that require considering the current Growth Management Act, Shorelines Management Program, the Endangered Species Act and the national Pollutant Discharge Elimination System Permits, related to storm water control in the decision making process.</p> <p>Requests that the WUTC develop rules that require all planning of railroad activity is consistent with a community's comprehensive plan.</p>  |
|   |   |  |