

RR OPERATIONS RULEMAKING WORKSHOP
Docket TR-981102
June 17, 1999
9:00 a.m. - 4:00 p.m.

ATTENDEES

David Reeve - BNSF
Tom Retterath - UTU
Pat Halstead - BNSF
Carolyn Larson - UPRR
Larry Martin, Brotherhood Maintenance Way Employees

WUTC STAFF

Kim Dobyms
Jeff Goltz
Mike Rowswell
Karen Caille
Penny Hansen
Scott Barrett
Bob Johnston

KD: Introduction and meeting housekeeping

KD: We began our rulemaking informal workshops with an agenda back on May 27th and we did not get through all the issues. So this workshop is to finish the issues. This will be our first time through these issues. Any comments are valid. I sent out a tentative agenda to all the stakeholders. We are going to do a couple of changes to those. Passenger Carrier Vehicles, items 5A, B and C, those particular WAC's, we had some staff arranged to come in and speak first thing this morning on that. Unfortunately they've had a family emergency and had to leave. So we will take up those issues after the break or after lunch so that we can have some staff in here that is real fluent in those rules. We are also going to add, at the beginning of our workshop, a discussion about the possibility of defining what a Unique Local Condition may be. Staff was as surprised about that as the attorneys were. We think we might be able to come up with some general statements that we know that it's this and it's not this, so it's somewhere in the middle. We think the team in these discussions, what they thought was, if we can come up with some guidelines when cities and counties want to bring something before the Commission regarding such items as train speeds, there should be something out there that describes the Commissions scope of authority and that it is a Unique Local Safety Condition or unique local hazard. So at least cities wouldn't be surprised when they come and find out that they can't do what they think it is we should be able to do.

When Jeff Goltz comes in we will discuss Railroad Crossing Coordination with Community Comprehensive Development Plans and he will lead the discussion on the

Unique Local Safety Conditions.

Introduction of attendees.

WAC 480-62-010 *Locomotive speedometers*

MR: The locomotive speedometer rules that we have is obviously ancient. I suspect that the federal government has preempted most of this field. I just wanted to inquire of anyone if they felt differently or felt there was a need for a rule, that there was a hole in the federal regulation that might be appropriate to fill. My impression of looking at this rule that we haven't enforced it in years and years and years. We haven't looked at in years and years and years and we have had no complaints that I'm aware of about problems with locomotive speedometers themselves, in the calibration or there use, in this State for at least as long as I've been here and, I think, for a number of years before that.

But it's a rule we have and it's one that we would lean toward getting rid of unless there is a reason to have it. So, it's open for any comment that anyone would like to make.

TR: I can recall several instances where they've had speedometer problems in the past. From being way off to being non-working. We've had problems in the past, I can remember and I've been doing this job for sixteen years now.

MR: Would those problems be a violation of federal rules or would there have been a hole where a state rule would have actually been helpful?

TR: I believe that the federal rule would have covered it. As a questions to you, you have the authority to enforce all the federal rules, right?

MR: We have the authority to enforce most of them in many shapes and forms but not necessarily all of them.

TR: Do you have the authority to enforce the speedometer rule?

MR: I'd have to think about that. I'm not sure. That might be one use of the state rule, is to provide a state rule that is identical, that we can enforce or assist with the federal government.

CL: Actually, if your plan is to adopt a rule that is identical to the federal rule, that's not something which a state can do. When an area is preempted that preempts the state from even adopting the identical rule. What you'd need to do is you would need to get certified to enforce federal rule. If the WUTC staff isn't already certified in that area then it could get certified in that area to enforce the federal rule.

DR: I believe that the rules regarding speedometers are adequately covered by the federal government. I can't think of any gaps that would be covered by the state rule. I agree with what Carolyn has said that I think the most appropriate way to get involved in it is to

get certified to enforce the federal rule rather than adopting a questionable rule as to whether it could survive a federal railroad safety act challenge.

KD: Any other comments on locomotive speedometers? Any opposition to the WUTC repealing this rule?

TR: I just want to make sure that if it's repealed that it's covered by something else.

MR: That is definitely going to be looked at and discussed in our meeting, comments from both entities, and if it's not covered we will discuss it directly with the federal railroad administration to see where there might be room to make sure that all concerns are addressed.

WAC 480-62-020 Traffic Control Devices

KD: We'll move on to our next rule which is Traffic Control Devices. There is a law, RCW 81-53420 which requires the Commission to adopt rules regarding traffic control devices.

MR: State law requires us to have something on this. We have a rule that really is adopted and will need to be dovetailed with WSDOT rules. That's one thing we will be checking to make sure they are consistent with that. This covers situations where railroads, or working on crossings and reconstruction and that kind of thing and there are traffic control devices at any type of construction process. This just provides the details of what to provide. I honestly don't know, or we have not compared at this time, with WSDOT to make sure that they are consistent, but that will be done.. The whole goal is to provide safety for motoring public and the railroad employees at the site so that they don't get hit and so nobody hits them and they don't run afoul of the equipment that is operating there. Any comment or questions, concerns?

KD: Is everyone familiar with the Manual on Uniform Traffic Control Devices (MUTCD)?

General: Yes

KD: Since you are all familiar with the manual, I have a couple of questions. Is this manual adopted or updated annually? Does it pretty much stay stagnant?

MR: It's looseleaf and they do publish it in a book but it is not updated dated and published periodically but they make revisions every ten or eleven years or something like that. But they make revisions. Every now and then you get an insert for modifications. And that also has these kind of rules in them and we will be checking with them. I think WSDOT has adopted those except for some real tiny changes that they've made on them.

TR: Just for clarification and to get in the records, this talks about the construction of maybe railroad crossings and things like that and would not apply to train crews working on trains?

- MR: I can't think ofapply to train crews on the trains themselves. It would be the maintenance way people that would be affected by this.
- KD: Right below that particular WAC 480-62-020 says when the railroad is doing these specific things what they have to do. Our idea was to adopt by reference which is the reason I asked the question of what the date is. Unlike this rule that is in here, we have to adopt by a specific date and we have to keep updating that date as there are changes made to that manual to have the most current version in order to be able to enforce that or seek compliance from the railroads. So this one says "engages in construction, maintenance or repair of a crossing or overpass". So right now that's all it's applying to.
- CL: One comment I received from Union Pacific's engineering department with reference to the MUTCD is that they understand that the WSDOT has already adopted this. It might be useful to look at the wording used by WSDOT to make sure that there aren't two separate versions being referenced in those in the various regulations.
- MR: That's a good point. There's nothing more frustrating than having to look up five different places and find out there's five different rules and not which one covers.
- CL: I guess I was wondering if there could be a way you could just refer to the WSDOT rules rather than having two different agencies attempting to re-look at their rules at different points in time and updating them.
- KD: Good idea. We hadn't considered it and we will.
- MR: There is a railroad element to it. A train operations. There might be. We need the expertise from both sides because there are situations that might arise that WSDOT might not think of. I can't think of one off the top of my head but, at the same token, railroad operations are a little different from road operations. There's really kind of a junction of the two. Definitely making sure the two rules are the same, or as similar as possible with any exceptions pointed out so that everyone knows where to go and what they are.
- KD: That might be a way to make the rule real easy too. That is, if we adopt that whenever you're doing this we've adopted by reference this and then just list if there is any exception to it or any differences.

Any more comments on highway traffic control devices during construction?

WAC 480-62-040 Flagpersons

- KD: One item that is not here in this box discussion is, what do you think about using the term "flaggers" instead of flagpersons?
- MR: Again this is a rule that's required by state statute and it's basically in conjunction with the traffic control devices to some extent. But also, there may be situations in which flaggers are needed at crossings when there are malfunctions. Some of that is covered by

federal rule also. Our goal is to make sure that everything is going to be consistent and there are not separate rules. That's one of the things that we need to do. We've looked at some these different types of qualifications, such as "being of average intelligence" etc. How do you measure that or what does that mean. Unfortunately the MUTCD and L&I all have those same rules and to be consistent we will probably end up leaving them in. The state statute also says that specifically. I don't even know what else it says but there might be some awkward language there. I guess is what I'm getting at and it's going to be because the state statute is awkward and the MUTCD is awkward and WSDOT is awkward and L&I is awkward. I don't know where we got off on this area, but it's a strange type of thing. We are considering trying to adopt by reference as much as we can, so again we have a consistent set of rules. We're interested in what the railroads do to qualify flaggers and whether there's a certification requirement and what's done there.

KD: Offered copies of WAC 296-155-305

DR: With respect to flaggers I, perhaps Mr. Martin might know a little more about whether the maintenance way people have some kind certification. I'm not aware of any. I provided Penny with a copy of our C-1 contract, which is an attachment that we attach to our contracts, which require independent people that are going to be working near the tracks. So if somebody is laying a cable along side the track there's certain requirements they have to comply with. One is reporting to the flagger and that type of thing, for safety briefing. I'm not aware of what rules or certifications the railroad has, if any, for it's own flaggers. Do you know Larry?

LM: I think, as far as the traffic part of it, there isn't any exact certification. The people we do have are rules qualified and in the rules, under the maintenance way operating rules that they have to comply with daily, they do get their instructions and pick up and see what else they have to do that complies with state and federal requirements at the time. It's a process that normally there's a seniority of filling the job and they are usually older people because of who's involved in it and they do know what's going on and they are qualified to flag for the railroad as far as stoppage and proceeding with trains and stuff. So as far as intelligence and everything, that part is there.

DR: I only know of one example of a bridge that collapsed, or started to collapse, up on the Skagit River. There was a requirement for flaggers to bring the trucks in and out and we went to an independent flagging company. I know that their employees do some kind of training and school and had a certificate for being flaggers. That's the only example I can think of when non-railroad employees have been involved in that kind of thing.

LM: They do but it's still part of the agreement with maintenance way that anything to do with it that comes in with would follow the track that maintenance way personnel are out there to do that flagging.

DR: Good point. These were a little bit remote from the railroad tracks. That's right. I think Larry makes a good point that our employees are all rule certified for our own rules so they don't go out there with no training at all or no understanding of what's going on

there.

MR: I think that's a requirement in the federal rules, as far as, especially the railroad operations. I find it just a little bit interesting that police officers and other officials of the city or county or the state can flag at crossings without an awareness of railroad operations or what's going on there. I think, at this time, that railroad personnel who are very familiar with that side can flag at a highway railroad crossing without a lot of training or the same type of training that a police would have for traffic operations. And it just seems to be a potential for a problem in the future for both ends. It seems like a overall awareness is something that's important for both sides of the operation. The highway side and the railroad side. That's kind of the concern we're looking at. Making sure that's covered in some way, shape, or form and that there are no holes where someone could be flagging. That is very good on one aspect of the operations going on at a crossing and not the other. I saw a flagger at a crossing, it was a signalman maintainer, and he was doing his darndest to do a good job and he actually was safe, but you could tell it was real awkward for him to try to figure out how to get traffic and which traffic, and on what side to go and that kind of thing. There may be some need for some training, hopefully just slight, on the traffic side at crossings.

KD: Again, the Commission is required by statute to adopt rules on flagpersons or flaggers. Since you had asked about this lets take just a second and you can read through. If shortlines were doing one of these projects and perhaps their employees would be in your union, or not, I'm not sure.

LM: They could be, but not all that often. Most of them at this point, especially in western Washington, are not organized by labor.

KD: When we write this rule you need to keep in mind that we may be addressing people that don't have any kind of organization that would train them and have rules. Although I guess if the FRA has them that would apply to them.

LM Normally in a procedure like this it would seem to me that if the rules were written up as to what's required of them that that would be passed on to the flagger and he's going to get that checked out. That would be our normal procedure that our people would work under to make sure that they're safe because of the traffic conditions. They are always looking for other ways or other advice and their knowledge with the track and that would preclude having somebody else out there doing that flagging.

KD: Read through L&I WAC.

MR: I think one of the things that really needs to be considered is, obviously some training is needed, that should it be a set of requirements or a set of procedures that the railroad trains their own personnel and certifies or is it something that should be like the Labor and Industries (L&I) rule which requires training every three years in accordance with the American National Standards Institute of MUTCD and having a valid certificate? I'm not quite sure. I think that's a two day course from my understanding. If that was

required, as it is of anybody else who is out there flagging at a construction site, or whatever, would that be an exceptional burden on the railroad or could it be handled in a different way. I'm just kind of looking for options.

DR: The thing that comes to mind immediately is, I don't know how that interacts with the collective bargaining agreement. I don't know if you know, Larry?

LM: Right now there's no restrictions to such as what's being brought up so it would be just the opposite of the agreement.

DR: I don't understand.

LM: If you pose restrictions in schooling on somebody, and we always say our people should be trained in all aspects, then if you put other aspects on since that came in and if it's adding in different, it would not comply with the agreement as it is today.

DR: What's the implication of that? Does that mean we would be violating the collective bargaining agreement if we tried to do that or would that be a matter of someone could take it but then someone else could then submit a slip for it and get paid for it.

LM: Put in a time slip because it is designated as our work under the agreement. If our people are trained, if there's going to be a set of rules, that should be something that would be negotiated and given time to get the people trained properly into what additional aspects they'd have to make so all people would have a fair shot at the agreement. With the work schedules out there you're looking at a couple of years to give everybody the opportunity to be trained unless the railroad somehow makes some kind of monumental effort to get everybody updated right away.

DR: Another question is who do you train if it's just a Washington standard? Are there other people than just from Washington that we would have to train? People that would be on gangs that would come across the border?

LM: It would be, yes, gangs across the border. Right now, with the new seniority line districts stretching into Montana and northern California, you're talking a great number of people.

DR: I think the answer is that I'm going to have to talk to some other people to get a response. I can't respond off the top of my head on this.

LM: I think one of the things in changing this, or if there's additional things in the safety and rule training, which every two years the people have to take and are refreshed in the off years, if something was added in to that to make sure that they're aware of any highway rules or things that they have to comply with, that would probably be the simplest and I think for the overall you would need what the questions are here today.

MR: I think that the goal is to find a way that training can be provided that gets around any problems that are being raised here. I think I need to investigate a little further what the

"course" is that is provided by outside people or the state. I think that it may be not necessarily two days . Look at the rules that are provided. They're pretty simple but pretty basic. It may be a type of training that Larry's mentioning.

DR: The training may not be as problematic as the certificate. I mean ,requiring them to have a certificate would be more problematic then saying these are rules you have to follow when you're out there doing this job.

MR: The railroads are real good at providing training up to a point. Look at the accident statistics in the state. We've had one or two fatalities this year on train crews or employees and before that it had been several years before we've had really a major incident. This is a fairly decent record and all the statistics show that accidents are going down. Providing the training is probably something that can be done. It's the question of a certificate and how we handle that.

KD: Would requiring the railroad personnel department just maintain in their file that training was provided for this employee on this date and it's provided. Would that be problematic?

DR: It's part of my job to go through the personnel files of people and there's no receipts in there of things like receipt of the general code of operating rules, or receipt of the safety rules. If there were, for the maintenance way people, a receipt of these rules that would show that they got them and that they would have read them but we really don't have any record of what at the safety meetings or the safety training or the safety merit laws, those kinds of things. It's problematic to get an accurate record of what was done.

LM: I would differ with that because of the job I'm in and the kinds of meetings or kinds of investigations I get into with the railroads. They can bring forth documentation and show when those people have had that exact training, if that's the case, and maybe from the part that you look at you don't see it but I do know that there are records and what kind of training they have and, especially for the maintenance way. When we have this, we have sign-in rosters that these people find when they go in to attend those classes so their names are on them and any kind of training that I would be interested in to see if our people got. I do know the railroad could show me that copy. Now this might be something different than normally you handle or look at.

DR: It may be outside the personnel file.

LM: They're personnel record, not the personnel file.

DR: So it may be possible then. I'd have to go look at that.

KD: I'm thinking like about when you take a first aid class. At the conclusion of the class you get a little card and you put it in your wallet and you have it with you and you as the person who had the training, you know when it expires. I think the one fear of the

Commission, having a requirement that you do this but there isn't any documentation to prove that it's been done, so worst case scenario, a flagger gets killed or doesn't flag properly and a pedestrian or motorist gets killed. We go in there and we say "did you have the training" and the employee says "no" and management says "yes". So the position the Commission is in is we don't know what the truth is. So for every requirement we need to make sure that we have a rule that we can enforce or discuss compliance with. We would go in and we would do a compliance audit and we want to look at records requiring your employees to have alcohol and drug testing and you need to have something in your file that show us when that happened and we need to see what your program is and that other training programs that your employees have gone to this training, drivers hours of service training. And there's a requirement that something is in the file. Then just in the compliance audit, when we're going in and doing the compliance audit, we can say "your not in compliance in this area because you don't have the documentation that proves that". That doesn't mean a fine that means that this is the first time and we're going to help you set that up and show you what that needs to look like. So it's not to be a hammer, it's just, the Commission, if there's no documentation there's no sense having a requirement from our prospective.

TR: I'd like to expand on that. Lot of times information is provided but you don't have time to really sit down and digest it. I think right now somebody told me that the current rule book of training people is like forty-one pounds of information that they have to carry with them and a lot of times you get information and you're not trained in it. That appears to be a problem at times.

LM: I would like to expound on what he said. I agree with what he's saying, that part, and that's why I suggested that yearly, when they do their rules examine, or their rules update, that this be brought up and included as part of that as an additional period. I think if you got down to it, it's not going to require two days or even one day it would be even less than that and after the initial class it would be basically an updating thing. That way they would be getting the information first hand and you would have signatures because the guy signed in to the class and we know those people would have it.

KD: Could you provide us with a copy of rules that you were talking about earlier that you operate under with regard to flagging?

LM: There's a series of rules. There's safety rules, maintenance rules, maintenance way operating rules and then also our people are governed by the engineering instructions. When you refer to forty-one pounds of stuff, my questions are, since our people have to have that stuff available, if they're going to start furnishing our people with trailers. I do have copies. I can show you what I'm talking about and I'm sure we can get with the right people to have them send you copies of them. I don't have extra copies, but before we're done today I can bring them in.

KD: OK, that would be great. We are interested in having rules that are measurable that we can make a determination, is there compliance or is there not. The way the flagperson rule is written right now is not measurable. It says a flagperson needs to be of average

intelligence, in good physical condition, mentally alert, have a courteous but firm manner, have a sense of responsibility for safety of public and crew.

LM: When they give these rules tests with our people there's basically two kinds. One for the average person out there in the foreman's test and very seldom is just the laborers test given. Just about everybody is qualified under the foreman rules. So they are taking a stricter test and they are passing them and they do need to know that. There's something else before they can go out there and do any flagging or any of that stuff, they have to be FRA qualified along those lines. So there are guidelines coming in from different angles and different things that people do have to meet. We do know that four of the major railroads of people we represent, that they are taken care of and that they are knowledgeable and if there's a change in something that's going on the big thing is just being sure they have the information so they can follow-up.

KD: So those tests can be a form of measurement that to be a flagperson you would have to take this test.

MR: To be honest Kim, from my viewpoint, I'm not worried about the average intelligence at all. If you're out on the railroad and you have less than average intelligence you don't last very long. The people that are out there working, at least from what I've seen and from what I've heard everyone talk about, are very capable people. They have to be to remain safe.

KD: I guess we don't have to write a rule that talks to these things. I just know that this language is here because of what was in the statute. But I guess it doesn't say that we specifically have to write a rule that measures intelligence or physical condition.

MR: You could and you could be really involved(stopped to turn over tape)...It's not something I think that we are going to be very concerned about. Maybe that's something that we can delete from rule and not worry about it. But if we adopt by reference then MUTCD, like everybody else has I think in the United States, it refers to average intelligence and this kind of stuff, courteous and that kind of thing. So, it may be just kind of a guidance type thing and if something comes up where someone is rude to a motorist is can be talked about as a basis of this is an expectation, I guess is maybe a way to put it rather than a real rule. But it is something that there and it is good expectation to have generally in society be courteous and polite especially in heated situations such as when rail crossing are closed for maintenance.

TR: Have you had many instances of reports of problems.

MR:: No

LM: I do think that would be pretty well be governed within its own structure with something like that. I would be real easy to get straightened out in a hurry.

MR: The people that we encounter from all railroads that are out in a public setting are

complying with basic courtesy and common sense. Their out there and they're part of the public themselves. It's not a concern but there are exceptions. There's always somebody that is going to step out of line and since it is a rule in the MUTCD I think it's just something that we're going to have to live with, to be honest.

CL: I'm not sure whether the statute that requires regulations in the area of flagperson uses that language "as necessary"? If it does that might give you an out for not talking about things that you don't know how to measure anyway and haven't been a reported problem.

KD: Jeff Goltz is joining us now and it looks like he does have his statute book. We're looking at statute 8153-410 & 420.

JG: Reading from statute. "Flagperson shall be provided for as necessary to adequately protect the public and railroad employees. Flagperson shall be responsible and competent to possess at least average intelligence, vision and hearing. They shall be neat in appearance and courteous to the public" You don't have to have a rule that defines what neat is. You could, but I suspect that if a person were to show up, this is a requirement of this person's job that if this person were to not be that way that would be a statutory violation subject to civil penalty probably.

KD: The other one is the one that directs the Commission to adopt rules on this issue. I think 420. I think it was.

JG: It does say "rules adopted by the Commission shall specify ...(cannot hear tape)... duties, procedures and equipment to be used by the flagperson required by 81-3410". I'm not sure that you would have to ...(cannot hear tape)... violated any law by not specifying this.

KD: With regards to the L&I rule it sounded like to me that the potential conflict we may have would be in item five that requires the training every three years and item six that requires us to have the certificate? Or was it just item six?

MR: It's both. There's some potential problems with both and any after this meeting, any suggestions that come in from anybody would be welcome so that when we do get to the stage of actually proposing a rule, hopefully it will come out as close as possible to what we can all live and what's appropriate as providing for the safety of the employees and the traveling public. Again, the process, as Kim has said, this is the beginning stages and we're kind of up in the air looking at a lot of different things and so nothing hard and fast comes out of these meetings. What happens is we'll go back and start drafting and at some point throw out some proposed rules that hopefully match a lot of the problems we've met. But that provides you another opportunity to comment and bring up some things that we can change again. In fact, the sanitation and clearance rules will be going before the Commissioner's next Wednesday and then going out for comments and further discussion. So, there will be plenty of opportunity, I think it's ninety days or sixty days, after the CR-102. Is that right.

KD: I think on break you and I need to clarify that.

MR: This is a discussion, it is truly a workshop.

TR: Do you have a copy of draft rules yet?

KC: Yes, close.(cannot hear tape)

DR: I have a real quick question. Is this then the 102 notice that we keep hearing about?

KD: Yes

DR: So that ones going to the next stage of ???

KC: This is the CR-102 proposed rules that are going before Commission.

KD: Jeff we are going to take a break and when we come back we're going to take on those two issues you are working on. The Unique Local Safety Condition discussion and the last item on the agenda that was the comprehensive plan idea.

BREAK***BREAK**

KD: Jeff Goltz, as I told you, is the Assistant Attorney General that's working with us in Ann Rendahl's absence. On the second page of the agenda, Part 3 - Other Issues Raised by Stakeholders, 1). Railroad Crossing Coordination with Community Comprehensive Development Plans. And we also added something to our agenda and that's a discussion on defining the possibilities of Defining Unique Local Safety Condition. So Jeff you can start with whichever one of those you'd like to.

Also, during the break we had supplied to us a; David can you tell us what this is?

DR: I can tell you that I looked real quickly to find a case that talked about local safety hazards and I should provide it with the caveat that I haven't shepherdized it. I don't know if it's current laws. I think it is, but I haven't done that work. So, I'm providing it basically because of the examples in there of what was not considered to be a local safety hazard and that's down on page 307 of this decision, Herriman.

KD: In all fairness they only had an hour notice that we were going to put this on the agenda.

JG: This is one where they actually found one?

DR: They didn't find one. This is one where, the argument that they made in this particular case was that in this area because of other lights that look like the locomotive headlight that, it was deceptive and that is a car came up to the crossing and they would look down and see all these lights that all looked like stationary lights and that they wouldn't be able to distinguish that from an on-coming locomotive. And they said that's a local hazard, it's local to this hazard and they said no that's not a local hazard. Then they gave some

other examples down below of crossing, let's see, crossings with multiple tracks and where cars had been parked that obstructed the view wasn't a local hazard. A Heavily traveled crossing adjacent to two chemical plants was not a local safety hazard. What I got from this case, reading it, is what is a local safety hazard is very, very narrow concept. It really didn't give any guidance as to what standard you would apply it, other than a few examples.

JG: What we have is a laundry list of things that it is not.

DR: Yes. And it doesn't really give a good...

JG: But in theory there has to be something out there that is one. Otherwise the congress wouldn't have mentioned this. There's got to be one out there.

DR: I would think so, and as I was going through this I kind of started to wonder what is that local safety hazard, what is the hazard that would qualify under that. And I didn't come up with a very good example. I didn't come up with any example right off the top of my head. Do you have one?

JG: You know it when you see it. I don't know, and maybe that's what might as well talk about this aspect of the rulemaking, because the question I gather is whether or not the rules, what should the rules say, if anything, about unique local safety hazards and how that fits in with say train speed petitions, particularly with train petitions. My recommendation to the Commission would be to include it for purposes of discussion and the reason is really two-fold. One is at least generate this very discussion that we started with this case so we reach a better understanding as to both what is not a unique local safety condition and maybe more important what is. I know we've looked, and especially Ann's looked at a bunch of cases, and I think they are like this, they list things that they are not. But there ought to be some things that are and it would be useful to have some sort of understanding about that between the Commission and among cities and the railroads. So, it would be useful from that point. The second reason why it's useful, I think, is to have something in the rule. It may not articulate, may not define, what a unique local safety condition hazard is. Right now I think many members of the public or the cities, realizing that train speed conditions come before the Commission, may have unreasonable expectations of what Commission can do and that can be lead to disappointment. It can lead to a whole bunch of public outcry that can't be satisfied. It can lead to raised expectations. If something can be in the rule can spell out what has to be, sort of in a petition, what has to be and anyone who wants to contest it, what sort of things they should argue, so it makes it very clear that they have to have to articulate a unique local safety condition and, to the extent possible, it might be useful to spell out some parameters of what that term means. It may be easier to spell what it is not than what it is. But that would even be useful, because then somebody might say, wait a second we've got a bunch of lights down at the end of the track or the bend and it looks like another one of those lights and that's pretty unique and low and behold at least one court had said that is not. I think we might be able to glean something from these cases and maybe these people have got some articulated principle that could be used as a

starting point from this. It's just simply saying unique local safety condition, that's better than nothing but it doesn't get people too far. ...(cannot hear first part of sentence on tape) ...cities are going to say anything, it's unique, it's in a city, it's unique, it's within a mile of the school. You could go on and on and both those things I'm pretty sure would not be.

DR: The only thing I could really gather from it is when they say unique, they really do mean unique. They mean it's something that's not repeated elsewhere. So the fact that these crossings are in the city is not unique to the state because there's other places in the state .

JG: That makes no intuitive sense because it's sort of, well this is wide spread may be we can't control it. But if it's just a little tiny unique I generally sense that we can't. The presumption is that if congress would have thought of it they would have put it in.

DR: I think that the presumption is that if it was something that was not unique then it should be handled uniformly by the federal government. Maybe that's part of the thought process too that should be contained in the rule, that that's why it has to be unique because the...

JG: The other thing that it might be useful for is giving notice that maybe the way to solve these things or resolve these issues is through the judicial process. I just noticed there's and unpublished case in the court of appeals, that you were involved in, that just came out a couple of days ago. It was a certain different issue but that was one of those train speed issues that was conditioned upon putting up fencing and that certainly can eliminate a unique local safety condition, I suppose.

DR: I don't think we ever agreed that it was a unique local safety condition.

JG: Of course not. Just out of curiosity, next time you guys check with your headquarters can you find out if anywhere in the country, anytime, any railroad has ever admitted to what one was? I'm interested in that and I think that would be useful to know. If you're going to define a rule and you have something that shows here's a unique local safety conditions and you draw a circle around that and you say, what is that, then you say well we know some things that it's not. So you can carve out a chunk. Also, there may be some things we know that it is and there may be something that is. So, I guess I'm looking for some sort of minor concession that there is something out there that would just be useful.

DR: I will certainly be glad to check with my people and find out what they have to add to it and I'll do a little more research too.

JG: I don't know when that statute was enacted. That was a fairly old statute isn't it? What is it, ten years?

DR: I don't know.

JG: I'll think that over, whatever period of time that is in the fifty states and plus a couple territories there ought to be at least one of them.

MR: There's a couple of things that have happened in this state that would be interesting to know if anybody would ever admit to a unique local safety condition. The railroads end up not contesting it because they recognize it's a hazard and they reduce speed and agree to a lower speed limit without admitting that it's a unique local safety condition. The one I'm thinking about that's got to be the clearest example in this state is Camus and the BNSF tracks that go right through the middle of the mill where forklifts are coming out of a warehouse eight feet from the track and crossing to go to the other part of the mill and there's a corner, a blind curve, coming into that area. So if that's not a unique local safety condition, nothing is. But again the railroads seem to recognize a lot of time when there's an unsafe condition. Part of our job is to try to persuade them where there is one, or at least discuss it. But it really would be nice, if at some point, a little more guidance could come from what the railroad was thinking. I know it's a hard thing to do, like Jeff was saying, but there definitely does have to be some area that is workable and I know that the cities around here have high expectations, as Jeff expressed, and we are coming up with five petitions. Actually there's seven cities involved. Two we don't get involved in and that's Tacoma and Seattle. Puyallup, Kent, Auburn, Sumner and I think Tukwila and already the Puyallup City Council is very adamant that things need to be looked at carefully and we'll be going through a fairly large process. But with some guidance or some things that would be looked at as conditions such as the Ritzville where it was thought for a long time that the signal conditions there were not a unique local safety condition. Yet, the road has agreed not to increase speeds until the problems are taken care of. That's nice, and it works, but it would be nice to have some guidance that people could look at that these are the issues that will be addressed. Maybe an issue type of thing.

Ritzville again, there was a school on one side of the tracks and a residence area on the other side and the crossing, the kids had to walk a quarter mile one way, cross, and a quarter mile back to go at a crossing. So they were going across hundred feet instead. It was agreed that fencing would be appropriate to get rid of that trespass problem.

Another area is some of the fairs. The fair in Monroe. The trains work with the cities to slow down during certain events where they know that the crowd control is a problem. It only happens in a short periods every year. If some of those things could be mentioned or examples of situations that could be considered. I don't know what you could do.

DR: I'm glad to hear that we work on things that are considered to be hazards but I don't think just because it's a hazardous doesn't necessarily make it a unique local safety hazard. I agree that it's a nebulous kind of concept and it's going to be hard to work it out. But I'll do what I can to try to come up with something for all of you.

JG: Analogizing this that dangerous situation may not fit the statutory criterion. But it still might be useful in the rule to suggest a structure for the community input into this process. Because, even as you said, if it's not a unique local safety condition, if it is a

dangerous situation that is still something that the Commission ought to know about and the railroads ought to know about. And those concerns will be accommodated.

DR: What I'm thinking right now, obviously again I haven't really looked at this, but if we can go through these cases I should be able to get authority to do that research and basically look for the things that it's really saying. Why is this not a local safety hazard. It's got to be because it exists in other parts of the state. So one of the criteria then is whether the same condition exists somewhere else would be a factor. Maybe we can develop a set of factors that will arise out of these. I'll try to do that for you.

KD: Does anyone else have any other comments they want to make on that? Any other examples they want to make sure we consider?

OK, then we can go on to the next one.

JG: This is on page 18 of discussion paper, the last item. I guess I don't know who all has given comments. It sounds like it was probably the cities or local governments that suggested that any rules regarding crossings, locations, openings, closings, be coordinated with community comprehensive development plans. I assume by that it to be sort of any local ordinance. Kim asked me to talk this and my answer is that I don't know. But let me just kind of structure the discussion. I mentioned this case came out unpublished and what happened there was a railroad, I gather was putting up a fence along a track and that installing a fence was a condition of the WUTC train speed order. So, the railroad went anyway to the city and said we need a shoreline substantial development permit to do that and it went through the process and the permit was issued and the neighbors who saw this fence going up or heard about it were concerned that it was going to block their view so they kind of protested that through the shoreline permit process. In the course of that, I gather if you were involved, attempted in effect challenge the order of the WUTC.

DR: They weren't specifically challenging the order of the WUTC but they were saying that the issuing of that permit violated their comprehensive development plan because it really was an expansion of railroad use along the right-of-way because of increased speed. That was kind of their argument. They were saying that we aren't going to challenge whether you properly increased the speed but we're going to say that increasing the speed violates their local comprehensive development plan..

JG: I gather though that the board found that it wouldn't.

DR: I haven't skimmed it yet.

JG: OK. But it kind of raises Resolves the very issue we're talking about. What I gleaned from this was, implied in this was, the underlying requirement that if the Commission says you do this, that doesn't necessarily mean that all other applicable laws are excused. Now it sets up a problem, hypothetically. What if their local plan had said, there shall be no fences constructed within X number of feet of the shoreline? But yet

this fence was to be located within that for safety reasons. Which one trumps the other? The WUTC one or the local development program? This case has kind of threatened to pose that issue but I think that the court said kind of said well no this is a permissible use. The issue that's been raised in these comments is that it may be, at least in terms of this case that we have with train speeds the comments that refer to crossings, that it may be that in addition to the Commission decision to approve or not approve a crossing, there may be some other local requirements out there that govern that. It might be traffic requirements. It might be some comprehensive development plan. It might be a shoreline provision, whatever. We also have a SEPA requirement inherent for Commission decisions. The sort of threshold question is, is there a legal requirement that the Commission crossing decisions, do they trump, in effect preempt local decisions along that line? I don't know the answer to that. That's one that we ought to probably try to figure out. At least get a tentative conclusion on. If they don't, then these comments by local governments, they've got their own or certain other controls. But if they do then the question is to what extent in those decisions by the Commission, should the Commission in effect include those things in its own consideration. I think they probably do anyway.

DR: I was going to say doesn't the city get noticed? I'm sure they do get notice of closings or proposed changes in crossings and have an opportunity to comment as to whether it complies or doesn't comply with their local development plan.

JG: I don't know if you've had any experience in this state or other states where you do have those kinds of closing things do conflict. As I recall the case law, in this state if you do have, statutory process is fairly comprehensive, it's almost like a federal preemption analysis. But it's a little different, theoretically, but it's almost like the state one kind of dominates it and there's not room for the local governments to be messing around in that.

DR: With some exceptions, I think that's true.

JG: If you people have any experience with that, that would be useful. If, in fact, the Commission is totally in the drivers seat on these crossing conditions, legally to the exclusion of local government or other authorities, then that speaks toward maybe being a little more cautious about accommodating those local interests.

DR: I know at the oral argument on the City of Edmonds case the City of Edmonds attorney came in and said we'd love to have control over speeds through our community but we don't.

MR: Speeds is one issue. But the other issues are locations and conditions that we put on up there. We have the federal problem with that, but the problem we're looking at is how much can the city tell us, not as to speed, but as to the comprehensive plans for opening and closing crossings and those kinds of things? That's a tough issue. Winlock was a, talk to Rexann about that. She might have some insight because that was a classic case where the city came in and provided an excellent case for keeping a crossing opened based upon a lot of traffic factors that....

- DR: In terms of serving the industrial area and a lot of that wasn't it?
- MR: Emergency response. The ability of traffic to maneuver through the other part of the crossing. The economic impact on the city. All those issues came before Judge Wallis.
- JG: Let me add a hypothetical that could apply, that I could see applying either in a crossing situation or in a train speed situation. And that is where there might be a curve or not a curve, but there's some visibility problems because of a bunch of trees. So you're kind of in a rural area or undeveloped area, but there's lots of trees. You could condition the train speed on doing some clearing so you'd have better visibility condition to crossing for better visibility. Requiring cutting down a whole bunch of trees. What if you have a local ordinance that limits tree cutting. I don't know the answer to that. I suspect, my gut level tells me that the WUTC order would trump that over a local issue, unless, of course, there's an endangered species in the trees.
- DR: That brought to mind a situation where we had that and we needed to cut some trees in order to increase visibility and the Department of Fisheries said no you can't do it because it's a habitat.
- JG: So they won?
- DR: Well it wasn't fought, so they won. It raised a whole other set of issues.
- CL: It has always been my opinion, and the way that we've operated, that we understand that WUTC can trump the local body in terms of where a crossing is and whether it can be closed. From a practical standpoint, that means that we are either going to have a contested case or a non-contested case before the WUTC if we, for instance, want to close a crossing. We do try to work with cities and counties to resolve differences and when we can't that's when we have a contested case hearing.
- JG: I suspect that closing a crossing might be less likely to violate a city's local or comprehensive plan than opening a crossing. But that's not necessarily true because the closing of a crossing has the effect of diverting traffic and so that could have the same effect.
- MR: The 54th Street, Carolyn that you were involved in, that closure was hard fought, actually before the city the citizens, before it got to the WUTC because of all the impacts that were going on in that little area. Lot of the fight can occur before it actually gets here.
- KD: At the last stakeholders meeting this got expanded a bit and it might cross over into the notification rule in some way, the possible notification rule, in some way. I think it was Puyallup or Steilicomm that said when the railroad has plans for construction they wanted that to be coordinated with the city so that, conceivably, they would only have to tear up their road one time when they were also doing construction. That wouldn't be a crossing or an opening or closing that would be just general information and is that something we would need to have in a rule or not have in a rule or maybe a possible notification rule

would address that?

If we had a rule like that and the railroad went to the city and said, OK in the next two years we are going to be doing this, so we're going to need to tear up this road and we have it scheduled for June 2001 and the city said we have it scheduled for June 2005 and that's what our budget says we can do so that's when we want you to do it. What would be a method to resolve that?

CL: I have a comment that's relating back more to the comprehensive plan issue. What I have experienced, not so much in the state of Washington but elsewhere, as being a problem is when a city or county will authorize development that requires use of a private crossing without any notification to the railroad, that now this single family development that was one house that was served by a private crossing, has now been authorized to be developed into multi-family housing. The railroad doesn't necessarily get any notice of that kind of a change and yet that has a big impact on safety to change the use of a crossing which is probably is un-signalized and maybe acceptable as use for a occasional use, but isn't acceptable if the use changes dramatically.

DR: We've had cases where a farm is bisected by the railroad track and so when it's bisected there's a crossing agreement that's made that you can take your tractor back and forth across the railroad track. That then becomes a multi-family development on the far side of the railroad track and we've had trains come around and all of a sudden almost hit a mobile home being pulled across this little crossing that suppose to be for tractors. We ended up, in that particular case I'm thinking about, locking, fencing it, and litigating it because it created a hazard and we weren't willing to accept the risks.

That was the same instance that we had looked at cutting down the vegetation and the Department of Fisheries.

KD: So, in the notification, which is kind of the community comprehensive plan, we would like to see if we write something like that to see it go both ways.

CL: I think it already does go both ways. We already do have to notify a city if we want to change a crossing. It's the other way around that if a city or county wants to change the use of property, by changing the zoning perhaps, that dramatically changes the use of an existing crossing that the railroads are not necessarily notified in advance.

MR: Has that been a problem with public crossings as well as private crossings? That where there's an expanded use of a public crossing where maybe we have one set of lights only and no gates and suddenly you've tripled the AADT (Annual Average Daily Traffic for Vehicles) and suddenly you have a situation that's become unsafe just because of the increase.

DR: Wasn't that a part of the problem in Winlock was that the crossing that they wanted to close was that there had been an increase in industrial traffic and then one of the trucks high-centered there and an Amtrak train hit it?

MR: It hasn't been an increase. The plant has been there for years and years and occasionally a chip truck will try to go over at that crossing, and they never should, but once about every ten years they try it and don't make it.

CL: Obviously crossings that are getting increased use start making it up the hazard index and they get into the priority listing for getting signalized and there's a process of doing identifying and addressing the issue with the public crossings but with private crossings we don't have any similar method of addressing that kind of a hazard.

MR: One thing I don't believe we have jurisdiction over is private crossings as a Commission is my understanding. If there is a way around that or if there is something you would suggest as far as a notification requirement. I don't know. I'm just trying to say that we have a problem from our end here because of the potentially lack of jurisdiction. Part of that depends upon the definition of what a public crossing is. That's something that in the near future we'll have to wrestle with. What is that definition and what does that mean in terms of a public crossing? I've heard one opinion that anything that's open to the public, whether it's owned by a government agency or not, is a public crossing. It doesn't take a hearing, it just is, it exists. I've heard other people say otherwise. It's an issue that needs to be addressed and until we really know I'm not sure what we can do. But if you have a suggestions that might be helpful to the railroad, certainly that poses a safety problem that comes out of nowhere.

CL: Actually, in the situation in which you've got a private crossing that's actually being opened to the public because of a subdivision being put in where there was a farm before, in essence that's like opening a public crossing, but yet without WUTC authority.

DR: The problem is there is you then have public utilities going in, public services going in.

JG: That's right, the statute turns of whether it's a highway or not. Definition A153010. Highway says and includes, so it doesn't say means, it says "includes all state and county roads, streets, alleys, avenues, boulevards, parkways and other public places actually open and in use or to be opened and used for travel by the public". So, the question is, does that mean it has to be a publically owned road? Probably all publically owned roads aren't public crossings. One can envision a public road that is not in use or be opened for use of travel by the public. It might be opened but it might just be in effect for county vehicles or something like that. The other thing is this may not necessarily mean that you couldn't have a private road that's in effect open and used. An example you would use there would be you've got some development that goes in and it is a private road to that development that crosses a railroad track, even though that might not be in state or county or city ownership. It is open to the public to get to this development. Then all of sudden this would be, in effect it might be, an opening of a crossing and it might take WUTC approval.

DR: What if it's a gated community as opposed to a community that is not gated? Can they retain their private aspect of this community by saying, we don't open this to the public because we have a gate here and only members get to come in.

MR: Historically there's a problem to because a lot of these private crossings were on a handshake or a piece of paper, in the 1890's that subsequently disappeared. Technically one way that we could look at it and I'm not saying that we would, it's railroad problem. You have a private agreement. You allowed the private crossing and so you enforce the excessive use by going to court. But, that's one way to approach it. But at the same time, it does pose a public safety problem, so we need to be at least aware and do what we can to assist everybody in assisting and making things safe. It is a true argument. One where you actually want us to be around.

KD: (turned tape over)...community development without prior notification to the railroads that the developer will be responsible for the cost to upgrade the crossing.

DR: Do you have authority to extract that kind of punishment against the developer?

KD: I have no idea it's just a brainstorm.

MR: I know it, I'm brainstorming with you. I don't mean to be critical. Actually, when we have come up with developments and the question has been, "Will you permit us to cross your railroad track?". We have gone into some developments and said we will work with you to allow you to cross the railroad tracks and what you need are signals, you need lights, you need bells and whistles. We've actually worked with developers to put those in to protect the development and it's worked fine. But that was a case where it was clear that they needed to get a permit to cross the railroad track. I don't know if the Commission has authority over somebody other than the railroad.

KD: Well, I know we don't have authority over anyone other than the railroad.

MR: We do at times. A city, or county, or the state has to come to us to open a crossing. We have authority over them in those circumstances, at least.

DR: So, do you have authority over people whose actions affect the crossing?

MR: If it's a private crossing, I'm not sure. I'd certainly have to defer. One of the things, just as a thought, if we're responsible for passing a opening or closing of crossing, then maybe we need to define, we need to look at defining, what opening a crossing means and maybe opening a crossing becomes one of the circumstances you're talking about. I think Kirkland is an example where it would be easy to define because they bought the right-of-way on either side of a private crossing, allowed the public to use it, but it was still posted as a private crossing and basically has become a main thoroughfare. That's something, I don't know if it's appropriate, I'd have to get some advice, but a rule that you could not change the use of a private crossing to a public crossing without WUTC approval. I think that might be OK, I don't know.

JG: The statute says that if the railroad is going to cross a highway it has to petition. If a local government wants a crossing altered it has to petition. What you have here is the dirt road, the private road, crossing the railroad tracks and all of a sudden by use you have it

becoming a crossing. So that private road becomes a "highway". The railroad can't all of a sudden stop operating and now petition the Commission for permission to cross. It seems to me that that can't be the result. That also, by increased use, the railroad has an obligation to come here. There may be no petition, maybe the local people, the development don't want to alter the crossing. It's just fine to plain use it. I wonder if there's's a little gap in the statute.

DR: I haven't read the statute in a little bit, but does it indicate that the municipality or the government, before it opens a crossing, shall petition for permission to have the crossing?

MR: I think it does somewhere Jeff, as I recall Ann telling me. That if a municipality or whatever. A developer can't petition. A private person cannot petition to make a crossing public.

DR: Certainly when someone wants to do a development and do a subdivision, part of the subdivision says to the governmental agency I'm doing a subdivision I need your approval to do the subdivision.

MR: Except in the area of Castle Rock.

DR: Well they've changed it now. If you approve a subdivision don't you then implicitly create this public crossing and if you do don't you have an obligation then to petition?

MR: That's a good question. That's kind of the rub that needs to be looked at, I think very carefully, and then determined. Because it opens up potentially a Pandoras box it think of doubling the number of public crossings in the state with a snap of the fingers if that's the decision.

DR: We have the TRO (Temporary Restraining Order) briefing on that one case. I can send that down. I don't know how helpful it will be to you, it doesn't contain much more than we've talked about here.

MR: Who were you restraining?

DR: They were trying to restrain us from preventing the public from using a private crossing. We gated a crossing because they were exceeding the use that was permitted as a private crossing to use it as a development. We ended up gating it and they went into the court to say we need a TRO to prevent the railroad from blocking our access. We prevailed. That was in state court. I will get the briefing and whatever order came out of that for you.

KD: Any more discussion on unique local safety conditions?

CL: Only the fact that you were making reference to the notification, potential notification rules. I would simply urge caution against requiring that notice be given at times where there's not jurisdiction for the WUTC to be doing anything about the item we're giving notice about. I think it creates some false expectations to give a community notice that

were going to add another train going from Seattle to Tacoma. We've got new service between the ports and to notify them of that, and have that be a requirement, would sound as though if we didn't notify that we wouldn't be able to add another train along that section of track which isn't the case.

MR: It would be the like the statement that when Stampede Pass was closed due to a slide that it hit a train, actually and it was blocked for a few days. They rerouted down through the gorge, it wasn't Stampede Pass it was the Stevens Pass, they rerouted over Stampede Pass and the gorge. It would have been nice to know that there was an increase in trains but can we require notice and prevent anything? I don't know if it's even workable. The point is well taken that false expectations need to be avoided.

WAC 480-62-040

KD: We'll move on to our next issue. Exemption WAC 480-62-040.

MR: This statute number 8153420 requires us to recognize that cities with a population above 400,000 are not subject to the flagperson, or they have the right to set their own parameters. That, as a matter of fact, only fits one city, and that's Seattle, and we don't have a choice, I don't think, unless somebody else has a comment, except to maintain that exemption. We intend to put it in rule just because it pulls all the requirements together that no one can be confused as to who is exempt and who it applies to.

DR: My principles didn't have any objection to it as I recall.

KD: So is the statute itself, is that what it says? The cities of the population at or above 400,000?

MR: Yes. 8153420.

KD: At lunch I'll see if I can get a title to bring in here too. Title 81 that we can

CL: I think that Jeff has it.

JG: (Reciting from Title 81. Parts of tape are not clear) "By the rules adopted by the Commission shall recognize.....to the rules.....in excess of 400,000 responsible for specific public thoroughfares and specific responsibility and authority for determining practices.....safeguarding during construction....maintenance activities" So Seattle has got to do it.

MR: When the new rules are adopted we are going to re-do all of this and get them out to everybody that has an interest.

KD: This is a really strange rule because what it does is it exempts the previous two rules right now for the City of Seattle and I think we did a search, Ann did, and the next closest cities are Vancouver and Spokane, who aren't anywhere close to this yet. It exempts

them but says that they're responsible for this and that they have to do this on their own.

Any other ideas about how we might write this? Or does it look OK?

MR: Maybe we can move on.

CL: Sounds like you don't have much choice.

MR: Right. Even if it's wrong we don't have much choice.

KD: We're going to skip over passenger carrying vehicles until after the lunch period so that we can have some staff that's real familiar with these. We're going to move on to Accident Reports that's WAC 480-62-080.

WAC 480-62-080 - Accident Reports

MR: The issue gets a little complicated because there's on-going litigation in the state of Missouri about accident reporting to states. We've had a lot of good cooperation from Union Pacific and Burlington Northern Santa Fe (BNSF) railroads in reporting to us accidents as they occur. As a state we believe it's appropriate, since we are required by law to investigate all fatal accidents, and we have the authority to investigate any other accident that involves the railroad. I don't know how the lawsuit back east is going to shake out. In the meantime we would like to continue the type of accident reporting we are getting, in fact, from both the railroads and shortlines, we need anything that happens on those lines and we are getting mixed reports from varying shortlines. Some are very, very good and others, for a variety of reasons, haven't reported as quickly as we would like. We're real interested in the questions that were raised. Skipping the hazardous materials questions, for just a second. Are there any severe objections to telephonic-reporting of fatalities and major incidents, or just generally reporting of accidents? That would be the first question..

DR: This is my recollection of it. They don't have any problems in complying with the rule and would like to see it, as much as possible, dovetail with the federal reporting requirement so that they don't have to have two distinct sets of different rules to do. As it has been written they didn't have any objections to providing the information that is required by the existing rule. The hazardous material, in terms of any leak and that kind of thing that there are issues with in terms of the accident reporting for injury and death I don't think they had any objection to doing that.

KD: Do you know what the dollar amount is at the federal level?

MR: Are you talking about property damage only?

KD: Right.

MR: I'm not sure what it is.

DR: I'm not sure what it is either.

MR: We had an example on a shortline where we weren't notified of a fairly horrendous incident. A car got loose near Bremerton and was going down right beside the highway there, faster than the cars were going. It derailed into a business, fortunately it was either on a weekend or holiday, and right between a bank of transformers and gas storage and if it had hit the gas we would have had a big problem. It ran into the building. Fortunately it slowed down enough and didn't totally destroy the building because it left the tracks at about 60 mph. We didn't get a report on that. That's something obviously we might be concerned about. I don't think the damage was \$500,000, believe it or not. The incident itself was so dangerous and so potentially horrendous that we felt that an immediate telephonic report should have occurred. This was a shortline. There have been some derailments on BNSF and UP where we get immediate reporting and there might be four cars off the track. We really appreciate that even though there's not \$500,000 worth of damage. We have a track inspector that can go out and assist with the FRA or with the railroad officials in taking a look at the situation and us understanding it. If you can understand that we have an obligation to keep our citizens and Governor informed of situations that occur that are potentially hazardous, that people can understand and be assured, just by information of what's happening, it's really of great value. So, if the dollar amount is \$500,000 we probably are looking at trying to reduce that in the rule or thinking about it. We'll look at the federal rule of course. If some suggestions would come in as far as an appropriate way of describing and incident that really is appropriate for state officials to be at least aware of quickly would be helpful. Maybe there's a better way of reporting. Maybe the emergency management division as a single point of reporting might be even more acceptable because they do report to us. I don't know. That's another aspect to think of too.

CL: This might require some more follow-up on our part as to what we're programed to do. Obviously there are telephone reports made to the emergency response agencies which the WUTC would not be in these instances. I'm not sure how they're programed to be in sending out emergency telephone advice about incidents that occur and which ones follow-up in writing or as immediate. I think that's something we need to check a little further on what we've developed in other states and what seems to be already in place.

MR: That would be great. Our goal is to get the information, and in some cases, like in major accidents, quickly so we can either respond or decide whether to respond or provide information to the proper political and appointed authorities quickly so they can answer citizens questions and BN and UP and the shortlines and aren't inundated with all these calls. Right now I even get calls at home from both BN and I'm not sure about UP, but BN will call me at home or call some of our staff at home. At some point that may be you've got a program and it's fine, it's easy. It may be a burden here and not others and you're just doing it because it's just in the program. But, if there's a better way to do it, through here or through the emergency management or something, we can try to develop those lines from our end too. This is basically throwing it open. Let's work together and figure out how to make this work. This is also something that's going to be addressed at the state managers meeting, governmental managers, in Anapolis in August. If there are

some thoughts about something uniform ,or what would be really good across the nation. One thing we're going to discuss is what's appropriate and maybe come up with some uniform ideas.

CL: What meeting is that you're talking about?

MR: I can't remember the exact title I think it's the state managers who are of railroad operational or railroad regulatory agencies. They meet once a year and this year we're meeting in August in Anapolis. I think there's twenty-six states involved. That's one of the topics we're going to be discussing, to see if we can scope out what's happening across the nation. I know Mike Calhoun of the Federal Railroad Administration has collected or is trying to collect all of the reporting requirement around the nation and put them in a grid so we can look at them and say what fits what doesn't, what can be thrown out, what's successive. Those kinds of issues. Input from the two majors that operate in this area would be really helpful. And of course CSX and some of the others back east will be providing some input, hopefully.

KD: On this rule, of course we're going do clear rule writing. We probably won't require you to make a report by telegraph any longer. We're thinking about eliminating it. On page nine on line item 282. That was another idea we were kicking around a little bit. Is that clear to the railroads who that person is? Could we just say that every railroad needs to report it? So there isn't a question as to who is going to do it. Where it says accidents involving joint operations must be reported by the railroad that controls the track and directs and movement of trains where the accident has occurred?

DR: That's clear.

CL: That's whose dispatcher is controlling that area.

MR: That doesn't need to be changed you don't think? Do you think that's pretty clear to the majors?

KD: What about shortlines?

MR: Shortlines have some joint operating.

CL: They know who controls the operations, I believe, on the interchange track.

DR: If it's in yard limits it would be the shortline and if it's out on the track it would be one of us.

MR: We were thinking about everybody involved in the accident report. But if it's clear, the way things are and there's no problem, and we haven't really encountered any, we'll leave it as it is.

DR: I think it's clear. I don't think you need to alter it. I'm a firm believer in the adage, "If

it's not broke, don't fix it".

CL: I guess the only question would be, I think it's clear, but I was thinking about, for instance, place where Union Pacific operates on BN track. I don't know if BN has the information about the accident that UP is in.

DR: The dispatcher would know.

CL: I suppose they would. We should just confirm just what does happen if there is a UP train that's on BN track.

MR: We do get reports from UP when it a UP train even if it's on BNSF tracks. I think that's just probably built into your system that if an accident occurs you report.

KD: One of our ideas was to put in the rule that all railroads are required to make a report regarding an accident or an incident.

DR: The problem then is if, for example, UP has an accident that we don't know about for some reason but it's a joint facility, are we violating by not reporting? If your getting into reporting I don't think we should mess with it.

MR: This is a question to ask you. If there's any confusion, and I don't know of any on this issues, then we were hoping the clear it up. If there's no confusion, no problems, then we'll continue with it.

TR: Has everything been reported? Have there been any problems of incidents not being reported?

MR: Nothing of any significance.

TR: So I don't think there's a problem then.

KD: Except for that dollar threshold.

MR: That's a different issue.

LM: (Cannot hear him on tape)

MR: The comment Larry was making was what about contracted out services. People who are working on the rail that get injured. Say we've got death of or injury of any person involved in a railway/highway crossing accident, but if there's someone out on the right-of-way doing contract work or whatever there's no.....

LM: What I was wondering if that would come up in this category. I think on Stampede Pass when they contracted out part of that work there was some injuries out there that happened, not to railroad employees, but they had contractors up there working in certain

spots and there were injuries that happened up there. Are they reported to anybody at all? That was our question at the time and we didn't, as a union, know where it was going. If there was a report being made.

MR: That would be a question, I think, that L&I and the WUTC needs to get together on that particular issue. It's clear as far as railroad employees, we're suppose to get a report. Death of any person we're suppose to get a report. But what about major accidents involving the industry as a whole?

KD: Larry so your question is: When there's contracted services injuries, who does that get reported to and when?

LM: Yes.

MR: So that brings us to the final issue and that category and that is leakage or spillage of hazardous material which could endanger railroad or the public at the scene of an accident. That's a question you mentioned Dave that you had some question about?

DR: The comment or the question is, staff is interested in knowing about any leaks or spills involving hazardous materials. Frankly I don't think it's workable to do that..You have on railroad cars, as I understand it for certain materials, relief valves that will release amounts that are not dangerous. It could be something like in hydrous ammonia that itself is a hazardous material, but the amount that it release in these valves to release the pressure in the tank is not a danger to the railroad employees or anyone else. It's just a natural way, it's the way the tanks work as I understand it. To say that that kind of thing would have to be reported because it's any release is really difficult. When we address that with our people their feeling was that are hazardous material reporting requirements that they can live with but the idea of expanding it to be any release really becomes difficult if not impossible..

MR: That's a good point. None of us had thought about the releases that are part of the normal operation of a tank car or other things where there are pressure valves that are specifically designed to vent some things and that certainly wasn't what we were getting at. But we've had reports of two gallons of diesel that are released by an engine for whatever reason. What we find is that usually that Department of Ecology (DOE) is responding to those spills and it is probably a requirement that all those spills be reported. We are mainly concerned about those that would pose some sort of danger but how do you define danger. That I don't know.

DR: If these spills are already reported to DOE then it seems that there must be some rule that we're complying with and I think we need to know what that rule is. If think if we're complying with it then I assume it's something that we're capable of determining and complying with. The real concern that we had was that it was not something that we could follow or we might not even know if a vent releases on a tank while were....

MR: So you suggestion is appropriate, that we look at DOE standards and see what's

happening there and seeing if we need to expand it a little bit to make it clearer or not maybe expand it but we make sure it's a reporting requirement you already having to follow anyway. We're not here to add an additional requirement and there's a lot of agencies involved. That's definitely something we will consider and look at really hard.

CL: If the DOE is already looking the at the environmental aspects of this and you're covered in terms of hazardous materials that could endanger the public or railroad employees, what is your interest in whatever spills are missed by this wording?

MR: I think the concern was what is dangerous. What is that standard. If a release occurs, how do you know, how do you determine whether it's dangerous. Making that consideration in of itself probably delays a report that could be of a dangerous situation and five hours later you say , yes, this is dangerous. Somebody evaluates it and says this is dangerous. Then it's a little late in the game to start notifying people.

CL: I was thinking that if it's already in the DOE requirements and there the agency that knows how to deal with hazardous materials and would be the emergency response agency or if there's other agencies notified for that purpose then I guess I'm just wondering what, in terms of your role and railroad safety is added by including incidents that do not endanger the public or endanger railroad employees?

MR: That's not the question is if it doesn't endanger the public maybe we don't have a role. But question is how do you determine it endangers the public. The dispatcher gets a call and there's been a derailment and one car is derailed and there is a release of chlorine. That's all he knows. Is it a dangerous release? Does he report it? Is it one ounce? Is it twenty ounces? What if he doesn't know for twenty hours later? Which can happen that a large amount has been released. It's a question of timing. Who determines it's dangerous and when. If we get a report in here ten hours after the fact and the governor is calling us five hours after the fact asking us what are the details of this? Are there any citizens in danger? What's going here? We can't respond. We can't tell him what's going on on behalf of the railroads or any other agency. There's a potential delay is one of the areas that we are concerned about.

DR: Certainly from what I'm hearing you saying you're not concerned with something that spills that might affect say the reproduction cycle of the fish in the local pond. That's not what you're looking for You're looking for something that will assure you that what we are reporting really does have some affect on the health and safety of the public and that if there's a group that may have an effect that you want to make sure that you're brought into the loop.

MR: Correct

KD: So, if the fire department calls us from somewhere and says there's a train accident, do we need to know anything to go and respond? Cities have expressed a concern there are these accidents we don't even know what we're dealing with. Right now they call us. Right or wrong that's who they call.

DR: Has that been the major problem, fielding phone calls from people about things. Has there been an example where we've had a spill that's really been a problem that you didn't get a report on?

MR: There's been several where I know I've had a question as to why weren't we notified. It was a question. A problem hasn't occurred. We want to prevent it because these are potentially very serious. Some of the chemicals we're all carrying around the state.

The other thing we get involved in is, and we'll probably get involved in it more, is there are funds that shippers have to pay. Licensing fee is suppose to go into training for around the state for local fire departments, etc., to respond to chemical spills. I think that there's not as much education out there as there could be and I think we need to, as an agency, work on getting locals involved. We've had some questions at train speed hearings about chemical spills and derailments and that kind thing. There seems to be a lack of information. We want to assist in providing that information. If we know about what's happening out there then we can provide more valid information. Secondly there needs to be some training as to do when a suspected chemical spill occurs. I think the incident in Yakima is a classic example of where we can be involved and maybe assist the railroads in making things safer for you guys. In that incident DOE was contacted, not us. The locals were told to stop and train. You know you stop a train by waving a bright shiny object in front of it, red. They used a fire engine and they parked it on a crossing so the train would see it and stop. Fortunately the fire person driving it saw that the train wasn't going to stop in time and pulled it off the crossing. Those are some of things that have happened and are starting to happen. There seems to be kind of a gut feeling on our part that we need to kind of step into this area just a little bit to assist in some education. People out there aren't familiar with railroad operations and how to inter-react with them, obviously when we get situation like that. If we know about spills that are occurring we can work those local agencies. If gives us another tool to help railroads and the public. It's a two way street here.

DR: In the example you gave with the DOE being notified, were they notified by the railroad or by someone else.

MR: They were notified by the city of Yakima. They tried to contact the Burlington Northern and all their phone numbers were out of date and they couldn't contact anybody. That's another thing we will be working on is helping to keep locals informed of who to contact under what situations.

DR: I think we got into that when we talked about the 1-800 number that we have.

MR: Right

DR: Tom, what is the procedure on a train when something happens that might involve a hazardous material? Do you know?

TR: I don't know all the details but I know you notify the person like the dispatcher or the

yardmaster immediately.

DR: Then they take it from there?

TR: As far as notifying people.

DR: In terms of the hazmat training, is that required of people or is that just some people have it some people don't?

TR: Basically some people have it some people don't. You're provided with all the written materials but as far as training...

DR: I see it mostly in the depots that people in the depots have the hazmat training. Like people in Spokane, Seattle, Pasco have hazmat training but not necessarily the train crews.

TR: Not necessarily.

DR: The material you're talking about is the invoice for the tank cars of anything that is hazardous material we would have a invoice talking about what the material is. A Material Safety Data Sheet (MSDS).

TR: Right

DR: What would you like us to do then? What would you like us to look at?

MR: Can we discuss that after lunch then?

KD: We'll come back at 1:15.

MR: One more comment before adjourning for lunch. Scott Barrett, at my request, went down to Winlock to photograph a problem at a crossing that just highlights our discussion of standards at crossings for surfaces. This is a problem. It's adjacent to the roadway. It is a pedestrian crossing part of the roadway. We've had at least three reports of a hole right next to the rail and we've had a lot of problems getting it repaired or repaired properly and getting responses from the railroad. That's one reason we think we need a rule that we can enforce. I'm just going to leave these here for people to look at and maybe comment on later.

KD: Mike and I talked at the break and at the end of this meeting today when we get through these issues, we will talk about the other rulemaking and the CR-102 process and what kind of schedule we're looking at so it won't be a surprise to you.

*****LUNCH*****

WAC 480-62-080 - Accident Reports

KD: We are on item II. 6. - WAC 480-62-080 - Accident Reports.

MR: A BNSF representative asked me what could be done by them as far as research or information to be provided on this. I think that what would probably be real helpful is simply, number one, checking with the people who are reporting to see if there are problems from that end that could be addressed by us as far as changes in the rule, changes to people who would be notified. Two, whether a centralized place such as emergency management would be a better system or directly to the Commission is fine. Three, what you are doing in other states as far as reporting. Whether it's centralized or to a specific person or specific phone number. Any experience on those things or any suggestions that would make it simpler from your end as well as still providing information? I think that would be helpful to us.

WAC 480-62-085 - Annual Reports

KD: Any more comments on accident reports? OK we'll move on to annual reports which is WAC 480-62-085. Page 9 of the issues briefing.

MR: This is a very simple section. It is just the annual report that is required by for all railroads to submit and it supports the regulatory fees are assessed by the Commission. We do get other information form that can be useful at some times. Obviously we have to change Interstate Commerce Commission to Surface Transportation Board. We also are wanting to better define the different classes of railroads so that people that pick up the rules that are very clear as to what we are talking about and who is required to do what. And the excursion railroads are exempt and we just want to specify those. Are there any other issues we should address in this? Are there any comments about the reporting that is already being done. The R1. We don't have a class 2 or 3 railroad here. Any problems that UP or BNSF see in the current system? Any comment at all?

DR: No

KD: We also consider that this might be a place where in some of other issues we've brought up, this may be a place where we require the reporting to happen. It would be expanding some of the company information, like if you have a railroad police report, the telephone number in this report. I know we have that for you now. Who is the manager of yard operations in Tacoma? Something like that.

CL: Actually that could make it more of a problem because what is done now is that the people for UP in Omaha who prepare the R1 to the service transportation board will send copies plus the statistics that are applicable for each state to each of those states. So they have a quite a uniform procedure to follow. Now in Washington were they in that same report to require different information that could add some problems that don't exist right now. So I don't know if including it in the annual report could create problems that don't currently exist.

MR: If we needed separate information it would be better to direct it to a different place and

leave that format as it is because it is working fine and it's a centralized to tax really type people and accounting type people rather than operations people. So if we have needs for operational reports we should address it somewhere else and use a different section to do that.

DR: Probably the people that would respond to that are more local people and not the accounting people.

KD: That's good to know because our original idea was just to put it all in here.

MR: Somebody has made that suggestion. I had forgotten that.

WAC 480-62-090 - Hazardous Materials Regulations

KD: OK that's going to move us on to our next issue which is Hazardous Materials Regulations WAC 480-62-090. That begins on page nine.

MR: Basically one of the things we did is propose to move sub-section two on accident reporting over to the accident reporting section, which seemed to make sense. The hazardous materials regulations would simply be an adoption by reference of the Title 49 CFR just as it is and a re-adoption of that. It allows our hazardous materials inspectors, who is certified by the Federal Railroad Administration to actually go out and do those inspections. That's the purpose of the adoption by reference. It would not be an additional regulation that I don't believe the state could actually impose penalties itself, it would all go through the federal government.

CL: If it's being adopted by reference not for enforcement purposes, but for reference purposes I don't think that's a problem but there are federal cases that say that states cannot incorporate the federal hazmat regulations by reference and then enforce them as state regulations. It's important to keep that distinction.

MR: Absolutely and that becomes a double penalty and when you're preempted you can't add the penalty. I doesn't make any sense. Also, as far as enforcement, it needs to be uniform at least within a region. Maybe we can make it a little more clear that this is being adopted to provide authority for our hazmat specialist who is certified by the federal government for enforce FRA regulations only through the federal system. That might be a good clarification so people understand that we are not out there on a state level trying to enforce hazmat regulations. We're doing it as part of a federal program.

KD: That also might be a statement that we might want to include in our compliance policy where there are two rules, or there's an adoption by reference, any penalty... This is just off the top of my head because I'm sure that applies in the passenger carrying vehicles, but if there is federal regulation on specific issues that the federal penalties would apply rather than any state penalties.

MR: We can look at that.

KD: Can you make a note of that Karen? Make sure that we follow-up.

DR: I'm sure why you have to adopt by reference these rules in order to have authority to enforce them.

MR: This is a legal question and I don't know the answer other than what I've been told and that is that the way the federal program is set up is that the states can participate to the extent that their state laws allow them to. So we need something to allow us to. There isn't a specific state law that says we can do that. There's a general authority to regulate railroads. So we feel that we need to reference this to give our hazmat person authority. That's what I've been told. Whether that's true or not I don't know.

DR: The idea is that we need something more specific to authorize that to be done rather than some general comment that person should be allowed to participate in the program.

MR: Right

KD: Also, in clear rule writing, the idea is that you can pick up one document and recognize, not only are railroads reading these rules, new staff is reading them and the public is reading them. You can pick this rule and it tells you what you need to know, not in great detail, because the way this is written, CFR's parts 171 through 174, you can look at them and know what to go to in the CFR instead of starting in the very beginning and trying to figure out what that is. This also, the adoption by reference dates, become quite an issue around the Commission too. That we are adopting by a specific date and that we will update them annually to incorporate any rulemakings that have occurred at the federal level. So this particular rule we have opened an adoption by reference expedited rulemaking, that would change this date to January 1, 1998. Then approximately whenever the training occurs at the federal level for this, we're suspecting that would be the first part of April, because these new rules get mailed to us in March, so next April we would go in and adopt for 1999. That apparently is the big legal question that our LAPD staff has come up with. We have to have a date.

MR: The reason we cannot adopt rules in existence now and as hereinafter adopted is that we then are delegating our rulemaking authority to another agency. In fact we are in a sense. State law and the Constitution apparently preclude us from doing that. Is that a fair statement?

KC: Yes, I believe that's correct.

KD: Are there any other comments on the hazardous material regulations? Then our next issue is WAC 480 Bridge safety rules.

WAC 480-62-100 - Bridge Safety Rules

MR: Are there any comments about preemption in this field or the need or lack of need of the rules that we have in place?

DR: We believe that the area has been preempted. There is a CFR on fall protection, etc., from bridges. I don't see my reference to it and I don't have my CFR's with me today. I can look that up if you want it.

KD: I just happened to bring those.

MR: One thing that we have not reviewed in this particular area are the CFR's and this is something we haven't had time to do.

DR: I know there is requirements for fall protection. There's requirements for other stuff, I can't remember exactly what it says. Do you happen to remember?

LM: That's actually what they operate on, those definitions.

DR: That's our rule though. 49 CFR Part 214 subpart B Bridge Workers Safety Standards. 214.101 that section.

MR: Tom does your craft work on bridges in areas where these rules might apply?

TR: I don't think it would apply because it says "whenever any railroad is involved in bridge construction, bridge structures repairs, track structure replacement or replacement bridges the railroads should comply with the provisions of this rule". So it wouldn't cover us working on the bridges, I don't think.

MR: When you guys work on the bridges you're walking trains or your getting to a switch or doing something like that.

TR: The problem we've had over the past is in some places the railroad has removed the walkways from the bridges and that's created problems. For example if there hose link comes apart in the middle of the bridge, what are you going to do?. On occasion we've had people trying to crawl underneath the cars or get to the problem.

MR: Are there rules in place within the railroad about what to do in those circumstances?

TR: They have rules for everything. Basically what I did when I was working on the trains I'd just say: "We've got a problem here, what are we going to do?" and get directions. Train crews have a problem because on the lot of the bridges now there is no walkways.

MR: Does it come up fairly frequently?

LM: Occasionally

KD: Have you guys looked into the OSHA or WISHA what they apply to you. This appears to be employee safety, this particular rule and the initial question is wouldn't WISHA have these questions, but our own analysis appears to be that OSHA and WISHA my be preempted also. Do you know.

MR: Actually what was concluded was that all WISHA requirement were shifted to the Commission in 1955 by statute and this is a state apparently where, the details escape me but, state regulation are adopted as opposed to the federal regulations and I don't know quite how all that works. It's very strange concept to me but it's one of those states where the state regulations apply. But the state regulations do not apply to railroads. That is my understanding under an L&I. Because all functions previously done by L&I, WISHA, were shifted to the Commission in 1955. That's a real confusing area and we are still sorting that out. If anybody has any words of wisdom on that it would be helpful because it is very confusing.

DR: Then as to the relationship between OSHA and the FRA there was a big discussion as to how those responsibilities would be divided up. As I remember there was a policy paper that came out of some sort that divided this up and I can't remember the date or much more about it other than that, but I'll take a look for it.

MR: That would be helpful.

CL: On the federal level I know I can put my hands on it.

DR: Do you know what I'm talking about?

CL: Yes. I happened to run across it not to long ago.

TR: One item I can remember, and it doesn't pertain to the bridges is, I know that there was an interagency agreement between L&I and UTC on inspection of like static facilities, like yard offices, and if there's a complaint for example maybe restrooms or bad stairs or something like that, that I can remember seeing a letter that said we are to report it to you, but L&I would probably inspect it.

MR: That's probably true. It's a 1991 interagency agreement and Tom is correct the procedures for following through with all of those things, to be honest, have broken down over time for whatever reason. We are going to try and reestablish those procedures so that there is some on-going cooperation and complaints are investigated timely. L&I & UTC need to talk about who's going to do what. But, the agreement says that, basically that if it's a yard office or static facility that basically it's going to be L&I but if you get out on the tracks it's UTC. I wasn't aware that the UTC was designated as the point of contact for both. That's fine but it's just something I wasn't aware of and we really need to straighten out and get those procedures to everybody involved so that when questions come up they can be looked at by the right people.

DR: I found the sections in the RFA do you want any more on that? 49 CFR 214010 is the Purposes and Scope Section. They announce the purpose of the subpart is to prevent accidents and casualties arising from the performance of work on railroad bridges. 214.103 is fall protection generally. 214-105 if fall protection system standards practices. 214.107 is working over and adjacent to water. 214.109 is scaffolding. Then there are section relating to personal protective equipment, foot protection and eye protection.

TR: Do you know when those were adopted.

DR: 1992. And it was amended in 1994.

KD: Larry does this section affect your group at all.

LM: Yes it does. Part of who we represent are the bridge and building people and they work under this constantly.

KD: I say we either repeal this rule or adopt it, those CFR's by reference he referred to, would your group be agreeable to that?

LM: Yes

CL: You have the same comment about adopting them by reference though. It's preempted which means you can't just adopt as a state regulation.

MR: I thought the statute, and I don't know if Karen's looked at this, said that states are free to adopt the exact same rules, it's just additional rules or changes that they can't do, but they can adopt the exact same rules. Maybe I'm thinking of something strange. I don't know.

DR: I don't think that's correct. You can have a different, more stringent rule if there's local safety hazard is the federal railroad safety act provision.

MR: Right. You have to have that essentially local safety condition, and essentially, meaning unique language and not a substantial impact on interstate commerce and those kinds of things. That's when you try to do something additional. But I thought if you adopted the same rule that you weren't in trouble. There was no conflict. That raises the question then can you do an additional penalty and I think that's where you definitely cannot do an additionally. The question it sounds like we need a little clarification on.

KD: Carolyn's position is, I'm restating it for clarity, this should be repealed because we are preempted?

CL: That's right.

KD: Preemption would work for you also, or if we repealed this rule that would work?

LM: In safety rules we don't always agree with that. The more agencies and the more people we have to talk to, once we run into problems with safety the better we feel with our people out there and their safety also.

KD: So your preference would be that we adopt by reference the federal rules?

LM: Not necessarily. If you can't do it that way then what I would do is take the rules you have which are fairly close anyway and just update them as similar to what the current

conditions. For an example, if you look on page 11 and starting at 330 right at the top down to 331 ...Structural repairs which are minor in nature and short duration can be completed working between the rails such as spot welding, spot welding you can't do, spiking is actually unsafe because it causes you to lean over the rail. Anytime there is a parallel line coming up from the rails and you cannot lean over that or touch that parallel line or you're in violation of the current rules under the FRA. So, if it was updated you would still be doing the same thing then there argument, that's for you guys to decide, I don't that much about that part of it.

KD: OK. I'm sure Karen will sort it out.

MR: I think that where we want to go, possibly, is to have as many eyes and ears out there that are looking at these things. I don't know if it matters to us who they're enforced by as far as penalties and those kinds of things, that's not the point. But if we have eyes and ears out there that can spot some of these problems as they occur then I know the railroads are often and the unions are often very anxious to hear that there's been a problem and they want to correct it. It's when we start getting into publicity or penalties or those kinds of things, that type of regulation where people really get upset about who's doing what. But, eyes and ears I hope are not objected to in the sense of just spotting problems and bringing them to the attention of the proper people. That's the philosophy anyway.

KD: Any other comments on bridge safety rules? Did you have anything Scott?

TR: It wouldn't bother me at all to see these expanded a little bit to include train crew members and have walkways on bridges

MR: That's being addressed to some extent in the sanitation and clearance rules. Right now it's being reviewed one of the managers in the Commission before it goes out for public comment. So I'm not sure exactly what form it's going to take when it comes out..

LM: At least take the position that the walkways not be taken off a bridge unless there was some approval because, from what I understand, there is no requirement that walkways be on bridges.

MR: That's correct, there is no requirement that they be on bridges. But I think state statute says that they can't be changed, it's statute, not a rule, something that can't be changed without authority from the Commission, that kind of thing. Anyway we're looking at the rule in that light too.

TR: And I understand why a lot of the walkways have been removed. It's because of the trespass problem. I bet it puts a hardship on train crew members when there is a problem on the bridge. And it forces the trespasser to walk on the rail instead on a walkway.

KD: Any more comments on bridge safety rules? We're going to move on to train operations. And before we begin, we did get one comment from Ken Cubick, he's the manager of yard operations for Union Pacific. He contacted you didn't he Carolyn?

CL: Yes.

KD: His position is that the Commission should repeal this rule because that GCOR's 6.16 which he did send to us, approaching rail crossings, draw bridges and end of multiple train tracks, already requires trains to stop at that crossing and not to proceed until safe to do so. I asked him, I'm just going to read these comments that we put in here. He gave us verbal comments, that's why we didn't have it in writing. We asked him if the existing rule would have prevented the accident that occurred several years ago at that crossing, since we believe that accident precipitated writing that rule. He said he's of the opinion that the accident occurred due to human error due to not having enough air in the train brakes and rules were already in place that should have prevented the accident. The rule restates the obvious, the rule, as written, does not address the cause of that particular accident. I asked him if he thought if the Commission repealed the rule would it send a message to the industry that the Commission is not concerned about safety? He indicated that, whether or not any rules are in place, safety is his number one concern, further since the accident, that we had discussed was caused by not having enough air in the train brakes to allow the train to stop in time. The air brake problem had been corrected through their own internal procedures.

The reason I'm reading this one to you is that in written comment summary, this particular comment is not incorporated in there. That's one more vote in favor of repealing this rule.

DR: I also talked to some people down in Tacoma and they told me that the accident occurred before there was an east end yard master. That there is now a camera system in place and there's a tower over there that they think all would have some beneficial impact in terms of operations in that area. They pretty uniformly have said they don't see any reason for the rule. That's in addition to the comments regarding the General Code of Operating rules.

MR: Scott you've been out at the scene lately and I think you're aware of incident that precipitated this rule a number of years ago. Do you have any comments you'd like to make?

SB: I was out there a few weeks ago and the stop signs were still there so nothing has changed much since the accident as far as the physical layout. As long as everybody follows the GCOR I don't see in any problem in repealing our rule.

KD: As Carolyn pointed out, all the shortlines don't use the GCOR's. So, we're writing those to everyone, not just Class 1's. Would anyone who is in shortline, who wouldn't follow GCOR's, necessarily, because they don't subscribe to them. Would they be using this track or this facility? Would that happen?

DR: I'm not sure. I don't think so. But, Tacoma Belt line would be the only one that would come to mind.

MR: Scott do you know if they operate up in that area? What used to be Tacoma Eastern.

SB: I think they do. There are more stop signs, if you cross the river there are another set of stop signs.

KD: What if we had a rule that said: "Trains and engines must be prepared to stop when they approach railroad crossings at grade, drawbridges, and the end of multiple train track, unless these areas protected by block and interlocking signals protected by stop signs. If stop signs protect these areas the train must stop before any part of the train or engine passes the stop sign. The train cannot proceed until the route is clear of the drawbridge position permits movement".

This is the GCOR 6.16. And just want to digress just a little bit. Carolyn had also called and in our original rulemaking analysis that Carolyn had suggested. We said we were considering adoption by reference GCOR's and she wanted us to address that. What I told her was that we didn't believe that we would adopt, by reference, GCOR's, but that we might take something that is in a GCOR and make a rule out of it. That's where that whole idea comes from. So if a Class 1 that doesn't subscribe to GCOR's would be using that area, would writing a rule like this be helpful? Or would it not be helpful? And would we be preempted even if we tried to do that?

CL: I don't think it's a preemption issue. I believe in our conversation we had discussed whether it was a good idea to adopt the GCOR's as a whole considering the fact that each railroad doesn't necessarily have that as it's own rules or they might have different versions. After, I think the last publication of the GCOR was in 1994 and since that time any railroad could issue any system wide orders that would change aspects of that as it would apply, for instance, to Union Pacific. So, it would be hard for you to know who's version of it you should adopt.

KD: That's why I thought this one, because we have this one.

CL: Yes, you have that one.

DR: The other problem you run into is, one, when you start adopting specific rules out of the GCOR you freeze it. What if there's some kind of change in the rule later that makes sense but now it's frozen in time here. The second problem is when you start picking out a specific rule, does that mean that the rule that says, safety is of the utmost importance, that is one of the first rules in the book is the only reason I bring it out. Is that less important than this rule? If it's not less important then why isn't that one in and why is this one in and you start getting into this gradation of rules. I think it's much better handled by the general corps of operating rules, which is in place and is being followed by these people. I think, I would be surprised if the Tacoma Belt Line didn't have to follow the same rules at this crossing as everybody does.

KD: Maybe the answer would be if Tacoma Beltway subscribes to these GCOR's it would be a non-issue because everyone using that place is...

DR: I wonder if they're ever there. I really don't think they use it. But that's the only one around there that I can think of that might. But I don't think they do anyway.

TR: I think they do because it says at the muni-line and the Union Pacific muni-line is Tacoma municipal belt.

DR: I don't know but I'm trying to recall a conversation I had with the people down in Tacoma and that was my recollection of what they said. But certainly we can check it out and find out.

TR: My idea on the whole thing is I don't think that the rule is needed. I think the railroad operating rules would take care of any problems on this crossing. I don't think you need to have another rule. I think it's redundant.

DR: The other thing to reiterate is that the situation down there is better now because of the other things. The yard master, the camera system and the tower, as I understand it. It not the same as it was when the accident occurred.

MR: Just as a comment I think we will check with Tacoma Beltline, the Tacoma Rail now they call it, to see what they are doing and to see what their operations are. I think everybody is right that I think this is something that can be repealed. I don't think it sends a message to anyone. It is a specific rule for a specific and it may not have ever been needed but may have been an emphasis point because of an accident. Anyway whatever has happened it sound like everybody is in agreement. It doesn't serve a useful purpose. But we will check with Tacoma Beltline or Tacoma Rail.

KD: Is Tacoma Beltline the same as the City of Tacoma?

MR: Yes.

Bob Johnston is here and maybe we could...

KD: Having no more comments on train operations.

Bob Johnston is a transportation compliance investigator. He works mainly in the other transportation industries. So, some of these rules cross over a bit.

WAC 480-62-050 - Passenger Carrying Vehicles

We are going to go into the passenger carrying vehicles. I have a handout. These are rules that we have in a different chapter of rules. These are not railroad rules. But as a focus for this discussion I wanted to hand these out.

The last meeting we had this discussion we didn't have staff here that was very fluent and knowledgeable on these CFR's that we were talking about. The labor organizations had some questions that we did not have answer's to. That's why we invited Bob come in

today who works with these rules quite often.

For passenger carrying vehicles, initially, we have a couple of ideas. We thought we could have just one rule and combine them all..(interruption to turn tape over)...carrying vehicles and she looked over our CFR's that we had adopted in other chapters. She suggested that might have some kind of a tiered approach that a passenger carrying vehicle of a specific size would have a general statement to be in a sanitary and safe manner and that as the vehicle got bigger these CFR's might kick into that in some way. Because the CFR's apply by the weight and size of a vehicle.

I brought the CFR's so everyone could look at them and see what those are. The Commission does have some exceptions in the other industries to these CFR's and one of them is the driver's age. If you're operating just within the state you can be 18 instead of 21. Let's start with these and see where this goes.

TR: Are we talking about only railroad owned vehicles?

KD: Actually, Bonnie had an idea we could put a statement in that said, any railroad owned vehicle or vehicle chartered by the railroad companies. That the railroad companies would be required to insure that these vehicles meet these standards.

TR: The way this is written now, it just talks about, vehicles, owned, operated and maintained by the railroad. I it wouldn't cover the crew shuttle services or the other vehicles, they would be covered by other statutes or rules.

KD: That was one of the questions that came up last time we didn't have an answer to. Maybe Bob can answer that. One of the other questions we had was, what other chapters of rules covers a transportation company that's hiring out to transport passengers that would be more of a charter service rather than a regular route service? What chapter of rules covers them? What covers them if they operate across the state lines? What are the size restrictions?

BJ For charter bus or excursion bus under the situations such as a crew shuttle type, we already regulate them and all these requirements that we're looking at here they already have to meet those. Whether it's interstate or across the state lines.

KD: How does that work if their instate, because they're CFR's, right?

BJ: That's right. Interstate, the federal DOT has the initial jurisdiction I believe and within the state it's the Commission. We have, in effect, adopted the federal regulations so whether it's intrastate or interstate really it doesn't matter. Except for possibly just a few exceptions like Kim had mentioned, if it's operating within the state then there's a possibility it's an 18 year old driver rather than 21...I don't; have it right in front of me so hate to quote it completely, absolutely as being that, but I believe that's probably what it is.

KD: We have an anti-spray device rule that is not a federal rule so if they're operating just within the state they have to have mud flaps. Although there was some case I read on legal line that said there was an anti-spray device preemption in some other state and that they were going to court over that. They wanted to require train equipment to have this and the railroad were opposed to that.

DR: In law school they had the case with the mud flaps, which was a commerce clause case. Beyond that I don't remember any other cases.

KD: So the answer to your question is we already regulate them, however, you had another one that if they were just operating on private property?

TR: No, the rule that we're talking about here 480-62-050 that pertains only to railroad owned vehicles, right? The crucial service vehicles and other independent carriers are regulated under other regulations than this?

KD: Yes. They're the regulations that I have handed out to you. Bonnie's other idea was that we would add the term, maintained or leased.

TR: To add to that, are you going to look at expanding or are you looking at these regulations. The reason I brought up the question is because I've got some concerns about the independent operated vehicles like the crucial services. For example insurances. We have a problem where train crew members are transported by a crucial service and they are hit by un-insured motorist or the driver is not at fault. Our people are then in a situation where they are injured and there's no compensation for injuries whatsoever. I know that under the insurance regulations that a person can decline uninsured motorist coverage. I understand that the shuttle service operators have declined that coverage. So that when one of our members happens to be riding in one of these vans and they get hit by somebody that doesn't have insurance and it wasn't the companies fault and it wasn't the railroads fault they are not compensated.. It's a choice that the service provider made by not having the coverage because they are not required to. They can decline it if they want. I think that they should be required to carry at least uninsured motorist coverage.

MR: Bob do you know anything about this? About the under-insured or uninsured motorist coverage by crew shuttle services?

BJ: No, I'm not aware of it.

KD: Right now in any of our other chapters we don't have anything that talks to that. I think that's accurate.

MR: I have the question for the railroads Can you talk about the situation where an employee is being transported is basically "on the job" in the sense that he is being transported as part of his duties and he's injured and he's not covered by (Federal Employer's Liability Act (FELA) or anything else?

DR: He'd be covered by the FELA act and we can talk about the criticisms of the FELA of not holding a company responsible if they're not at fault. If the company does nothing wrong, if it's not negligent, unlike the state workers compensation system, an employee can't recover. In any circumstances throughout the railroad route, the railroad industry, if an employee is injured and the company was not negligent there's no recovery. If a trainman fell under a caboose because he was trying to get on the front end of the caboose and loses both his legs he has no recovery if he was solely negligent and the company was not. Where under the state L&I system he would be entitled to a certain amount of recovery regardless of the fault of either party.

KD: Does L&I in this state cover railroad employees who work in this state?

DR: No

KD: It does not? So there isn't anything covering these employees?

DR: No. They're covered by the FELA. That statute has said that the railroad is only liable if they are negligent...The other thing that it does, unlike the workers compensation system is there is no cap on the amount of damages. There's no system that says we have a schedule of what a person with this type of injury should receive and that's the trade off for the fact that they will receive it, regardless of anybody's fault. In the FELA someone could, theoretically, lose a fingernail and collect a \$100,000 for losing a fingernail or a million dollars for losing a fingernail or more and there's no limit to the damages as long as it's supported by the evidence.

KD: Do you believe that if the Commission attempted to write rules that would say that in this case, and there must be a minimum of X amount of policy for an uninsured motorist would we be preempted or would anyone be opposed?

DR: It certainly would be an interesting question because what you're doing is you're trying to provide some remedy for some worker that's not provided under the FELA and when they're not covered by the workers compensation system what's the authority for providing this remedy. Basically that's what you're doing you're saying I'm creating a fund even though it's an employee funded insurance policy. I'm going to create a fund for recovery by an injured worker.

MR: Tom has some letters from the insurance commissioner that concern these issues that can be put in the record that we can consider later.

KD: In the contract with the crew shuttle carrier can the contract be written by the railroads to require that they provide uninsured motorist coverage?

DR: I don't see any reason why in a contract between individual parties that you can't put anything in it that you want to put in it.

KD: So that would be a labor negotiation item. Labor or contract.

DR: Traditionally in terms of things like that, like compensation for off-road vehicles, it has been an issue of labor negotiations. The unions and the railroads have gotten together and they've agreed in certain circumstances they'll be monies available for injuries occurring in off-track vehicles. That was negotiated and became part of the collective bargaining agreements as I understand it.

LM: I believe we're one of the few crafts, if not the only one that has an off track vehicle agreement that would provide that. We do have something that's compensates us if it's not the railroads fault.

The question remains though, is on insurance, like an individual motorist has to buy, you have to be covered or you buy different phases to cover stuff like that. Under state law the railroads are not required to. So the questions remains, why are they not required to have that insurance?

DR: That's not quite correct. Anybody in the state, including the railroad and crew shuttle service, when they receive their policy of insurance, they have to be asked by the person who is selling the insurance, do you want under-insured motorist coverage? If you respond, yes I do, you get it. If they don't ask it, you get it. The only way that you don't get it is if you decline the coverage. As far as crew shuttle service, I don't know. I know that the railroad has specifically declined under-insured motorist coverage and it's not required by state law. It's not required by the insurance requirements under Washington law.

LM: I didn't mean just the railroads. But it's a state law that gives them a way to get out and not get that to protect the people that work for them. It has been one of our big questions is if those laws are changed it would cover one of the loopholes that would cover the people in case they're injured. Our crews as well as Toms are transported all the time to different places and are not properly covered.

TR: One of the problems we have is sometimes your own private policy might cover and sometimes it might not. Each individual person has to look into it and it seems like it would be a lot easier if there could be a requirement that the provider would cover enough insurance to pay for somebody if they got hurt whether if it was their fault or not. I don't think uninsured motorist coverage is that much money.

KD: Do railroads own their own vehicles and operate them or is it mostly charter operations?

LM: It depends on what craft you're talking of. For the crew shuttles that's contracted out service. The majority of the other ones are either owned or leased, where employees from the railroad do drive them.

DR: I think that's correct in terms of transporting crews that's almost exclusively crew shuttle service at this point. That doesn't mean that a clerk in an office wouldn't be asked to take a van out pick up a crew and drive them back to the depot or something along those lines. Also individuals drive company trucks, company vans, company cars. The roadmasters

will have they're own truck, for example. Somebody working as a truck driver working for the BNSF will be assigned a truck that they would use.

- LM: A lot of our crews have pickups that generally the foreman drives and our track inspectors. It's a company owned or leased vehicle that they operate out of daily.
- DR: Those would be owned, leased but certainly the responsibility of the railroad to insure according to the requirements of state law.
- KD: We had a discussion about, do these rules apply to just vehicles that their purpose is to transport employees or does it apply to the foreman who has his or her own vehicle that drives from point A to point B?
- DR: It talks about nine or more people being transported, as I recall the rules that are already in existence. I believe it talks about nine or more.
- KD: I think what we were considering was that, we would just have one general rule that talked about transportation that's below nine or more people. So this would be expanding the scope but it would just be a general rule that says that it would have to be maintained in a sanitary and safe condition.
- DR: So that if we have a sloppy roadmaster it would violate the rule?
- KD: Is that something that really is necessary. Is that something that is required for the health and safety of the employees to have a rule that says the roadmaster has to have a clean vehicle?
- LM: No, but I think one of the things you would look at on these crew trucks like we have, making sure that the people are given the time to keep that inside of the trucks clean and sanitary. A lot of our crews, you are talking anywhere from putting two to five people in, and they, being understaffed, like we quite often are to get the work done, they aren't given the time to go in and clean up and get their trucks maintained properly.
- KD: Where does it say that we're talking about nine or more people?
- KC: It's under.....(not clear on tape)
- KD: The way I read this is that you just have to have emergency exits for nine or more. I guess that was the question is which ones do these currently apply to and how would we want to write rules to address the other ones?

Some of these probably seem rather orneriest if all you have is a pickup that can carry a person and another person, you didn't need to have all of these rules in there for that person either. A general statement that maintained in a safe and sanitary and operated in a safe and sanitary manner. Do we have rules like this that talk about something that is smaller than eight or nine passengers?

- BJ: Right now in the charter bus I believe that it's not below that. We have the sixteen and above and then we have the below sixteen. I understand that the federal government is doing some work right now on specifying a passenger level which the regulations would apply to. From the talking I've done with this I don't know what was the intent, was the intent to required these rules to be on all the vehicles? The ones that maybe a supervisor has a pickup truck or is it ones where were talking about transporting a crew of people to certain location where there's one person who's driving who's responsible for the safety of a number of people?
- MR: Chapter 81-61 RCW requires the Commission to set minimum standards for the operation of safe maintenance and operation of crew shuttles. Actually passenger carrying vehicles for employees is what it says. What it says is "A passenger carrying vehicles those buses and trucks owned, operated, and maintained by a railroad company which transports railroad employees, in other than the cab of such vehicle," So, pickup trucks would not in the cab. "And designed primarily for operation on roads", then it's confusing it says, "which may or may not be equipped with retractable flanged wheels for operations of railroad tracks". So, basically we're talking non-pickup trucks where there's a separate section for passengers.
- DR: Does that then include a van?
- MR: I would assume it includes a van. Because the cab is generally the front seat I think. That would be an interesting argument.
- LM: That would be my question. The crew cabs and even to the bigger trucks, like our big boom trucks, it's all one single cab now because of the health problems, like due to ones back and riding in those dog houses, as we call them, that were bolted just about directly to the frame, they've gone to one single cab where they're carrying up to six people in the cab right now.
- PH: It just doesn't pass the common sense problem that I have. A cab to me is a bench that you could hold maybe three people or so. But an extended cab, the new kind that we have out there all over the place can hold adults in the back also. I would think that would be covered. It just doesn't make sense that the word cab apparently is taken that away.
- KD: Is cab defined in that statute.
- MR: I don't think so. WAC 480-62-060 give some interpretation of that. It says "Any passenger compartment separate from the cab" which implies it doesn't have to be separate. I don't know if that covers it or whether there's a problem with that interpretation or an interpretation that allows a regulation under the statute of a van for example. I think all crew shuttles are vans, aren't they? They're not separate sections, like a limousine.
- BJ: Is the reason because the is just old language, the type of configuration of vehicles that

are used when this was written, might have been common and we've evolved quite a bit and they don't match anymore.

TR: I have a comment. I think these were written quite a while ago. I don't even see anything about seatbelts and I think seatbelts and shoulder harnesses should be an item in here also.

MR: Is that a requirement of the shuttle services, to have seatbelts?

BJ: Large busses don't but most of the small ones do. We do check to make sure that they do have seatbelts. I'd hate to say for sure that they have to wear them.

KD: Does the CFR address that?

BJ: In larger buses there's no requirement for seatbelts, I know that. The small ones, I guess we could make it a requirement. Just one more layer of stuff.

KD: I think when you buy the vehicles they pretty much come with them. Unless it's a large bus. It's not an option is it?

MR: I don't know.

DR: I don't know either.

TR: For your information, there's also been recently some documents signed which is an agreement between the BN and the employees regarding additional things that have to do with riding in vans. For example, I know that riders in the van have the right to have the driver to show them their log. They have to show them their log to make sure that they're rested. We've had a lot of problems in the past where we've had complaints about the drivers not being rested. Up until four years ago or so the requirements that the drivers of the vans keep logs weren't enforced. In fact the crew shuttle services, they weren't even aware that the drivers needed to keep a log. Until after the one accident over in Oregon where the driver was killed and railroaders were injured that they were made aware of it.

MR: Is that what they call the bill of rights or something like that? I remember seeing a document, but I don't have a copy of it myself.

KD: We have a rule that drivers have to show Commission compliance staff the log and their hours of service. Don't we have one of those?

BJ: That's right.

KD: Is that a CFR or is that Commission?

BJ: I believe it's in the federal code.

- KD: So the question would be can you require them to show that log to their passengers if their passengers request it.
- BJ: I don't think it needs to be in here. It was a separate agreement that gives certain rights on various things.
- DR: Why can't the state rule track what is done in the federal rule with it defining these vehicles by size in terms of what you require of them in terms of the number of passengers and all the requirements flow out of the commercial driver's license?
- MR: What is the size for regulating these things? Are you talking about the number of passengers?
- DR: You probably know better than I do. I think it's like 10,000 or 20,000 pounds and 15 passengers. There's all kinds of requirements. 21 years of age to be a driver.
- BJ: They have a whole bunch of definitions. The definition for like a commercial motor vehicle, because a lot of the rules apply to commercial motor vehicles right now. A piece of equipment which has 16 or more which including the driver becomes a commercial motor vehicle. There's been some debate on how far it does go down. The federal government is looking at putting a limit and possibly making it nine, if a vehicle is carrying nine they would have to comply with all the rules. Whether that it is effect now, I don't believe it is.
- TR: It is my understanding that the vans that are in use now, the drivers are not required to have a CDL. A regular drivers license is all they need. For the crew shuttle services and the "retzenberger", that's all they need is a drivers license. I know the state did a spot check over in Pasco several years back and the first person he checked didn't even have a driver's license.
- MR: Was the questions asked or was it answered, how many passenger carrying vehicles under the definition that we've been working off of, are actually used by railroads right now and what percentage is crew shuttle services?
- DR: In terms of transporting people, if somebody was going out to a job site to work and they meet at the depot , a maintenance way crew, and they're going out to work you could have three people get into a truck and go do a job somewhere. You could have, I assume up to five or six people go out to do a certain job.
- LM: Yes. Up to nine but usually it's between somewhere, two and six.
- DR: So you have that going on. That type of activity. In terms of how many people are in each vehicle, I really don't know. I assume there would be multiple vehicles going out there. I don't know if private vehicles would be used to drive out there from the depot. I don't know what the practice really is in that stuff. You have a second group of people which are people who are operating trains or, for whatever reason, can't come in on the

train and they go over the hours of service or whatever and they have to be picked up and brought back. There could be somebody taking that crew back so it would be three or four people depending on what's going on with it. You might have the manager of operating practices on board watching them as they're doing it and have up to four people I think. You have crews that going, larger production crews, from state to state They could be coming from Montana out here and they would, in addition to the equipment they are working on, they would have vehicles that would take them to and from their sites as they go. I don't know if that answered your question or not. There's a variety of things but in terms of transporting crews, for the large part, in Washington what I've seen, is that crew shuttle services have pretty much taken over that responsibility of picking up a crew here and bringing them to point B. But, you still see a clerk being sent out to get a crew and bring them back. You still see maintenance way workers meeting and getting into a company vehicle and going to a place to work.

MR: The rules, as they exist, and state statute, would apply to all those things that you mentioned. Other than possibly a strict pickup where they don't have anybody riding behind the seat. I think given the little I've seen it appears that the pickups would be about the only thing exempted from or not included in the rules. Given the rules that are in existence now and the attempt was to cross reference any CFR to those rules and to dovetail those together so that generally passenger carrying vehicles are under one set of rules. Would there be a problem from the railroad perspective of complying with the rules that are in existence now? We haven't been checking for some time. Are you complying? That's a loaded question, but are there problems out there?

DR: In terms of our people taking our people to another place I don't know of any problem.

MR: So, adopting these rules that apply to those people really wouldn't be a burden it would just be a continuation of what's already occurring?

DR: What I've heard today is if there's a criticism of the crew shuttle service and these people that are being hired to do the job. But in terms of the crew meeting and going out I've never heard anybody complaining that that's not a good way to do it or that there's problems with the way it's being done.

MR: The crew shuttle part is actually not in this regulation. It's already covered by the crew shuttle service regulations or the shuttle regulations.

KD: If it's chartered.

MR: They're all chartered aren't they?

KD: They're saying yes, but we need to write our rules as if, for some reason they decide to it themselves.

MR: Right, and they are doing it a lot themselves. That was what Mr. Reeve was just mentioning. All the different ways they actually shuttle people around or carry

passengers that might apply to the intent of the legislature.

KD: How about the CFR 49 part 2 Controlled Substance and Alcohol Use in Testing? I think the exemption is for train crew personnel and this particular one would not be a train crew personnel or would it?

DR: I thought it was. I certainly would have to go back and look at it if there's an indication that it's not.

KD: To clarify, this is testing on the driver. So whoever is driving the crew shuttle is the one that would be subject to this one. We want to know ahead of time if it's one we need to eliminate. This is on the handout that I gave you. It's part B it's line 122. This is a different chapter of rules, not railroad. We were trying to decide if we could use something like this for passenger carrying vehicles on the railroad passenger carrying vehicles. It brings up the issue of control substance and alcohol use testing. If you want to know the detail, Bob can tell us what that is.

BJ: Right now that provision is only for charter busses and other type of transportation. For the busses itself, right now it only covers drivers that have a CDL and operate vehicles with a capacity of 16 or more with passengers including the driver. For the small ones, like the crew shuttles with the 15 or fewer this section does not apply to them and logically, possibly wouldn't want it to apply to anybody under 16 passengers for consistency sake.

LM: Maybe Tom could speak more on that. But, I would think for safety sake, if it's leased and it's a crew shuttle there should be some kind of testing, whether the company does it on their own or not. Our people that are CDL qualified, as long as they have license, regardless of whether they're doing that job or not, are subject to random drug testing as long as they have a CDL license. The guy could actually be a machine operator or foreman or laborer somewhere and if his CDL license is active then his name goes in the pool and he is subject to random drug testing.

DR: Going back and looking at the federal railroad administration portion of it, which is at 49 CFR 219 under purpose and scope it says "The part is to prevent accidents and casualties in railroad operations that result from impairment of employees". It doesn't seem to limit it to train crews. I think it probably has preempted the field in terms of drug testing.

KD: Bonnie's suggestion was that we take these CFR's, and in passenger carrying vehicles, we tier them. We say, these specific CFR's apply to vehicles of this size, for example, less than four passengers, or between 4 & 8 passengers. I think hours of service of drivers, that's a driver's qualification as opposed to a size of vehicle. These apply to all vehicles. These apply to only those that carry and excess of 15 passengers. Apparently this is common references in the other chapters where they live and breath this stuff. In railroads it's less so because it's chartered out, etc.. Would that be helpful in making a decision in whether the rules are appropriate or not?

DR: My approach would be kind of different. I really have a difficult time seeing what is the purpose behind this. We don't go out and say, Boeing transports people from one end of the field to another, therefore we have to regulate them. What is it that was particular about the railroad that caused the legislature say we want these people to regulate this portion of their activity. I doubt that it had to do with crews going out to the work site. It probably had to do more with people being picked up and transported from place to place because it's such a large physical plant. It covers a lot of area over a lot of space. I think that it probably was intended to cover transport by bus, in essence. I think that the expanding of the provisions, at this point, to say we want to cover all these things because we can, is probably not the appropriate approach. I think we should probably cover what they were intending it to be covered in the first place.

MR: I think the rules as written, since 1950, or whatever, cover all those things. Cover everything in the field. If we want to retract or draw back that's another questions and a question that we should to address. The proposal that we have isn't to expand what's already there. It's basically to kind of consolidate and make it consistent with other things. If there is a reason to reduce the regulation that's there, then certainly we want to look at that. That's a different questions than expanding. We aren't trying to expand. If we do, then we're doing it unintentionally, it's not because it's there and we can.

DR: Then the question becomes what is it we're trying to regulate? What evil are we trying to prevent? I don't understand what we're trying to accomplish by these rules.

TR: I think they were originally for employee safety.

KD: For example, exhaust systems shall be designed and maintained so as to eliminate exposure to passengers to toxic agents. That could mean that you're riding in the back of the truck and there's no ventilation or there's no top. By statute we're required to write them. We went through each and every item in these rules and cross referenced them with CFR's that we have in other industries and found where that applied. There were a couple of things are in here that are not in the CFR's. Our idea was to write it in clear language that everyone can understand so that it's not ambivalent. It would be something that common in the transportation industries and we felt that it was because we regulate other transportation industries and that's how we're doing it. So that's our proposal, is to do it on these issues the same way we do in the other and identify the differences and put additional rules in that would bring up those differences. For example, first aid kits are not in the other rules so we're assuming there is some reason that they are in this one. These are the L&I rules, the new and adopted ones. The one in the issues papers. In the existing rule on page 6 line 177, this is what we have for first aid kits right now. We looked at L&I rule and thought why don't we just adopt what L&I does, which is a little more than this. When we looked at there old rule it didn't have any blood pathogen protection gear so we thought we needs to add that. Then we looked a little further and saw that L&I had already thought of that and they have new rules and these are what they are. In appendix 2, the last page of the handout, they now have a first aid kit guidance, which doesn't say at a minimum you must have these things but it gives guidance to it. We considered that they had gone through the research to determine what should be in a

first aid kit. Or maybe could say you have to have an first aid kit that complies with these standards, ASTM or ANSI. Or maybe we want to adopt by reference, all of these. So that's our question.

DR: That creates then another slightly different which is the tie-gang that working from Montana to the coast. As soon as they get into Spokane do they then have to run out and buy this extra equipment and make sure they have all the things that you're requiring that aren't required in the other states? Do we have to have our whole fleet ending up complying with these things so that when they come into Washington, that when they come into Washington they're complying with your requirements?

KD: Are they complying these first aid kit requirements right now?

DR: I don't know.

KD: Do you know. Do they have first aid kits on their crew busses?

LM: Yes. Basically they are. The two pair of medical examine gloves, that's one I'm not familiar, whether they're on there to that extent. Basically what's in here is what the guys have asked for before. Some kind of lists to go by to make sure that they've had that stuff available.

KD: I think that the crew, not matter where they're coming from, most of these crew busses are leased. As part of the contract you say something that says you have to have a first aid kit that complies with L&I WAC number such and such.

DR: So the WUTC is going to say what we have to have in our contracts with the crew shuttle people?

MR: The leased or chartered crew shuttle are under separate regulation and that of course is up to the charter people to follow. What we're saying it that we've got these regulations that the legislature says we have to have, not the extent, not the detail, but we have to have a variety of regulations. I don't what the basis for that was. I don't know why they decided that and maybe we can get some concept of that so it would help guide us a little bit. The issue that you raised, tie-gangs working from Montana to the coast, is a valid issue that needs to be looked at to see if there is a problem. I don't think that it's up to us unless it's absolutely crystal clear to go against or to minimize what the legislature has required us to do. If there is something clear that we can point to then we can use that.

CL: I just wanted to point out that when the legislature mandates that you adopt rules that it says, such rules as are necessary to, etc. Although we didn't do an exhaustive research on this, we were looking through a lot of the federal regulations, the ones that govern a lot of these passenger carrying vehicles and noticed that they were adopted after this statute was adopted. It could be that regulations were needed at a state level in 1977 when this statute was adopted, where this statute is no longer the same need because of the federal regulations. I am really interested in what areas and which there currently are state rules

or are proposed state rules that differ from the federal rules. Then we'll maybe know exactly what we are talking about. If we're talking about mud flaps then we can focus on whether it does create a problem for the gangs coming in from Montana or other areas out of Washington to be complying with that and determine whether that is in fact a safety issue that needs to be regulated locally. Right now I'm not so sure that if we're only talking about first aid kits and mud flaps or what all we're talking about that would be different from what federal regulations would require railroads to do everywhere.

KD: The other ones that we found when we cross-referenced them were up there in the little box that says anti-spray devices (which is mud flaps, and in this state we have a requirement for mud flaps at a certain level) What is already in these WACS that is not in the federal rules, communication between the cabin is a separated passenger compartment. A heating system requirement and first aid kit. Those are the only differences that we found between what's in here that's not in the federal rules or what we have in other industries that aren't in here or the federal rules. And the driver age of 18.

MR: In the near future we'll be coming out with some specifics. We're caught between, there's competing considerations as far as the process we're going through. If we could sit down and write the rules before we come into this meeting, where we're boxed into looking like we've already made up our minds. We come in without doing that then it's hard to talk specifics, like you we're just commenting. There's a tension in the process and what we have opted for, the Commission, is, provide as much generality at the beginning so that we get... Kind of the comments I've been hearing today that are really extremely helpful about different approaches, different attitudes, different ways of looking at things that we can feed into developing some specifics, then we could focus on those and see how they mesh with everything. Going through the process is awkward and it's interesting, but we will get to the specifics then it will be easier to take shots at it or say well it's no problem it's not that big of deal. We haven't looked at these for a long time and we do have limited time, to some extent, and we want to do as good a job as we, but we will not be adverse to revisiting in another year or two, saying OK we had a first cut and really did a good job but now we need to refine them further. So this will not be the end of looking at these things in the future.

KD: Are there any more comments on passenger carrying vehicles?

LM: I have one on first aid kits. In the handout on the back page where it says ASTM or ANSI or other consensus national standard kits will meet these requirements, that would be the same for all over. And on first aid kits on page six, because probably creosote and some other things, they have some form of antiseptic for the type of which we left to the judgement of the railroad company because of some of the types of materials they have. That should just be the standard stuff that it wouldn't matter where that vehicle went that they then have a list to go to and make sure that they go through that list and make sure they have the proper stuff in those first aid kits. And I think that would work out fine.

KD: Are you saying keep this same sentence in number nine here? Some form of antiseptic?

Or be even more general than that?

LM: I'm saying keep that. That gives them the leeway for the type of material that they're dealing with and the weather conditions and get the proper thing out there. Because if you're trying to regulate that then it might not be conducive for certain applications, like especially dealing with creosote burns and stuff.

KD: Any other comments on these issues. Anybody opposed making it into one rule rather than three rules?

To discuss after the break: Signal Maintenance, miscellaneous reporting requirements, outside workgroup process, and the rest of the process for the other railroad rulemaking, which is 2981101.

BREAK*****BREAK

KD: Our next issue that we didn't get to last time was a new issue that was brought up and it's signal maintenance. That's item 505 on page 16.

MR: Signal maintenance is again a federally certifiable participation program that we are involved with. We do have Ed Harper who is a crossing signal inspector, certified by the FRA. Part of the reason for adopting the FRA's is again like the hazardous materials. There's another requirement here and that is that we do have limited jurisdiction over industrial railroads such as Simpson Logging Company and there are a few others. Also on a lot of these spurs that have been sold to private entities are probably what we call industrial spurs. The only real regulation we have over them is crossings. There are no rules, since they are not subject to federal crossing signal rules, to have them keep their signals up to snuff. We ran into a problem with a company that at one point refused to do anything because we didn't have a rule and weren't going to inspect their crossing signal, they weren't going to maintain them and so we feel need to have these adopted and mainly, not for the Class or shortlines other than to make sure there is no question as to the authority of our inspector, but for the industrial and the excursion railroads and some of these entities that the signal maintenance isn't covered by anybody. Obviously this is crucial as anywhere. So that's the purpose of the rule. If there are any problems with that or any discussion on that we would certainly like to hear it.

CL: I don't see any objection in concept. We'll just look at how it is worded.

MR: I know there's the same concept of adopting federal rules that might preempt the state and anything that would be done would again be clarified to either cover local situations and/or to make sure that it is connected directly to the activities of a federal that feeds into the federal system. I understand that objection.

KD: Any other comments on signal maintenance? Next issue miscellaneous reporting requirements.

The BN publishes all of their activities on the Internet as far as, here's our timetables, this is what staff has told, here's our general orders, here's what's changed. We could go in and look at that for whatever reason we may want to do that. I don't know exactly what that would be. I guess if we're going to go out and do an inspection we'd know what the timetable is for trains to be coming, etc. Or if the public has questions we can go in and look on the Internet and pull that information down and then pass it along to them. UP does not do that, I understand and we have out of date information about that. So, we're considering should we have a rule that requires that we get this information from all of the railroads and if so what would be the best way to do that .without increasing costs significantly.

- CL: I would suggest that at least initially you try just writing to the local superintendent or calling them and asking for a copy of the timetable and other information that is needed. I don't think that you actually want copies of all general orders or special instruction. That's going to be so voluminous. I don't even know what's intended by those word. I'm sure that BN doesn't post all of those on the Internet every day. They could include like there's a crew working out at such and such a place and there's slow order between mile post such and such and mile post such and such between certain hours today. I don't that there's a need for you to get this continually. In terms of the timetable, that's going to be published periodically. I'm not sure that Union Pacific wouldn't have any problem with giving one if your asking for one. I guess I'm just not sure if there's a rule necessary in this area if all you need to do is ask. The problem I see with having a rule is then trying to make sure that it gets followed. If there's a rule then we'd have to figure out some place to notify people when a new timetable is published to send a copy to Mike Rowswell. I don't know that there is a good location for telling one person to always make sure to do that. I'm sure there's no problem with Mike calling a railroad operating person periodically and asking for it.
- MR: That's probably something we'll strongly look at is, we already have the authority to require the provision of information by asking for it. Putting it in rule format can raise some interesting problems that aren't necessary when cooperation is the order of the day and we're getting it. We haven't made the attempt to sit down really centralize what we would like railroads to provide on an ongoing basis or even on a one time basis. Before we put something into a rule we should at least do that and make the request. If we run into a problem then we can discuss or I doubt if we need to get to the rule basis for some of these things. That is a good point.
- KD: One other item on here on line 526 we wrote "it would also helpful to get accurate, up-to-date information on railroad ownership and contact persons for specific types of questions including spurs and branch lines". This came about in all the other industries that we regulate. There is a requirement that they register with us. There is no such requirement with railroad companies. Through the registration process we do an approval. It gives them an authority to operate. We know that we would not be able to do that or should do that with railroad companies. But we still have a need to know if a shortline or a spur has been sold, to who it's been sold to and at what time. This is for a couple of reasons, community notification and addressing safety concerns, who do we do that with. Number

two, we mail annual reports out and Class 1's, you all know what the schedule is and have accounting departments that prepare those. But for the smaller companies we mail the report that they are suppose to fill out and we do that annually and if we don't know who they are then we don't get it to the right people. There was actually two pieces in here and this might be one that we would add to an annual report but then if it's sold then were not sending it to the right person, the annual report that we're asking for the information for the report, isn't there.

MR: The annual report goes to the accounting staff not to an operations staff. You would create some problems putting it in the same requirement. That's why the idea of miscellaneous section. One problem we've encountered with a couple of areas is we'll send of defect on a crossing to the Burlington Northern Santa Fe, or the Union Pacific, or shoreline and we get back well we own it's not our crossing. And we had not clue that it belonged to someone else. So we're running into that kind of problem. We've also run into a problem in where we don't know who to send the defects to on a specific railroad. Shortline is easy, you send it to the general manager and he goes out and fixes it anyway. But, we'll send it to one roadmaster and it's really another roadmaster. We haven't been able to put together a real coherent pattern on some of these things and that's probably our fault. But we shouldn't put it off on to you by rule until we make that effort, I don't think. One thing that might be of assistance to us is we make contact with an assistance vice president for Burlington Northern Santa Fe, the service area, Ray Stevens, had a chance to meet him and maybe some communication with him for a statewide level for problems might be of assistance to us. Union Pacific, again I haven't developed the lines to Portland as well as I should and that's something we need to work on.

CL: I'm sure if you had any questions to Union Pacific as to which manager of track maintenance had jurisdiction over a certain station, I'm sure you could call people you do know like John Trimble or me and either we'd tell you or we'd find out.

MR: The one thing we'd like to do with some of this information eventually is to spread it to the communities because they can spot problems. For example, Chehalis has a program where once a month they go out and check their crossing for a variety of problems. They don't check signals or anything like that unless it's obvious that a signal is falling off. But they send a report to the roadmaster in Longview, I believe for the BNSF. At first it wasn't very well received but then when they found out that they were being provided another set of eyes and ears to identify problems before they became serious safety problems, they began to accept it. We would like to get that type of concept going throughout the state so that problems are addressed early on or at least mentioned early on. We do intend to spread this information.

PH: In the last workshop we had a community representative from Kennewick who expressed the same problems of not knowing who to contact when there was problems with the railroads so leads right into that same issue.

CL: We're taking care of that now.

- PH: There is obviously lack of communication going on on that kind of stuff on the community level and the Commission level it sounds like.
- KD: How about a rule that requires that if a railroad sells any part of their track to someone that they just provide us with the information on the area or spur or line that was sold and the date and who it was sold to?
- DR: Does the R-1 cover sales? I don't know if it does or not.
- MR: I'd have to look carefully at it. I'm not sure it does in detail.
- DR: I see problems in announcing it ahead of time. I see problems with pricing and things like that. But just something along, we sold property to someone and this is who it is.
- PH: ...all we want is the final word of who has it now in case we have to contact you. I don't think we care about the pricing.
- KD: We would not say, no you cannot do that. That's not the focus at all.
- DR: I certainly don't see a problem but again it's the same thing, it's only as good as the collective memory of the people who are doing it most of the time.
- MR: A question about the R-1 that has come up is a report that is provided to the surface transportation board annually that provides a lot of statistics and economic background and operations information that we get a copy of localized to this state that provides us a lot of information and we should look at that to see if that kind of thing is identified. If it is then what, even in generality, we probably would need to know who do we go to, locally, do we go to Fort Worth, to find out, if we want to ask. And on UP, Omaha or Portland, or wherever, did you sell a spur? Did you sell a spur or whatever. Where would those contacts be?
- CL: Well, it doesn't stay the same all the time.
- DR: Call me or call Ray Stevens and we can try to get that to you. We were happy to try and get information to you and it's not that we have an objection to providing that information it's just that sometimes it doesn't get done because the right people don't know to do it.
- The other thing is that I'd love to see the people who take over the shortline have the reporting requirement rather than us. It would be a lot easier for us. I don't know if that's possible or not.
- MR: But AT&T who's bought some of the spurs and other telephone companies, they don't have a clue and I don't know how we'd get that information to them. We have you guys in hand.

KD: If we don't know who bought it then we don't know who to say to, hey you've got to tell us you bought it.

CL: At least if it's a class one that has sold a branch line you at least can find somebody who you still know with BN or UP. We can track down the information. Just from a practical standpoint, I don't know if you can go through corporation commission and find out the information on the shortline and then just track it down that way. I don't know if a rule is going to help you, because I don't know if the new shortline or to old one are going to remember to report.

TR: I do know that the new railroad has to file with the Secretary of State. It's very basic, just usually the president's name and the secretary's name and that's about it.

MR: That gives us a start and that's fine. The branch lines aren't really the problem. We usually can tell when someone like Puget Sound or Pacific buys a whole line. It's the small spurs.

DR: It's like somebody that picks it up and they say all I have is a little industrial spur to service my grain elevator and I'm not really a railroad I don't even think about being involved with this.

MR: Right. That's where we run into problems. A lot of those have been sold off and we run into that and, I don't know how important that is, but it's an issue that may crop up as we go along in the future. It has already to some extent.

DR: One more little bit of information in terms of things changing, the sales things like that are not done by the railroad directly they are done by a separate organization called Catellus. Actually our property can get sold and the railroad operating and a lot of people in the railroad would never even know about it. I'm sure they would know about it on the ground but the other people may not know that that had sold.

KD: Catellus, is that a real estate company?

DR: I don't know exactly what it is other than when I asked them to do work for me they say that I have to hire them. So I know that they are not part of the railroad.

MR: Just information. The legislature passed a bill requiring WUTC to do a study of rates charged to utility companies to put lines, along, across, or through, underneath the railroad beds. A lot of that, we think, was spurred by a lot of changes in permits and fees and licenses that Catellus issued. We're not sure, but we heard a lot of complaints from that section. We did not sponsor the bill but we are required to do the study.

DR: Again I'd offer my help if you need to figure out who you need to contact and stuff. Give me a call and I'll try to hook you up with the right people.

MR: Great. It might apply to UP also.

- CL: RCW 81.36.070 it deals with purchase, sale, lease or merger of railroad and it talks about railroads or portions thereof. I was trying to skim this to see if it already requires notice to you. I could see where the new railroad had to file with the Secretary of State a copy of it's articles of incorporation or otherwise comply with laws having to do with foreign businesses. That it had to establish office in the state where legal process could be served upon them. It looked as though it wasn't specifically about UTC. But somebody might just want to read that too to see if they can see whether there is anything in the statute that already is requiring notice. Then the issue is just how to get the word out.
- MR: Appreciate that. I've seen the statute but I've never read it. I could see where it's very convoluted and very difficult to read.
- KD: I've gotten information from the Secretary of State before. The problem encountered is that you have to know the name of what it is you are asking for before you get any information. If you don't know the name then you can't search.
- CL: I think you would know the name of the seller. Isn't that right? You know who the shortline is so I think you would be contacting that entity first and if they have relocated their office you should be able to track where the seller is through the Secretary of State, but you'd just have to ask them who they sold it to.
- MR: I think we have some avenues to explore.
- DR: If they do register with the Secretary of State they might actually have one of those checkoff things on your railroad and if they do they may be able to just streamline their process over there to inform you when that's done.
- MR: That's a good idea. We'll do some interagency work.
- KD: Any more comments on miscellaneous reporting requirements?

Which brings us to our wrap up issues.

Let me tell you what's going to happen next in this particular rulemaking. Staff is going to go away and we're going to review all of the comments, the verbal and written comments that we've received. We going to give a shot at our first draft of actual rules and send them out to stakeholders and our target time line for this is July. Then we'll have another stakeholder meeting here on July 27th. It's not going to be in this room, because we found out we have a small group, it's going to be downstairs in our smaller hearing room which is Room #108. When you come to this building at 9:30 there will be directions on how to get down there. What we hope is that in the next meeting you are going to have actual rules to look at and pick apart and also perhaps offer alternate language, specific language that you think we should have. We're going to mail that out to you. Be prepared t speak to it when we have our stakeholder meeting then you'll have another opportunity to provide written comments. Then we'll revise that draft and that's the beginning of moving into the CR-102 process. Tentatively our date for our CR-102

in this rulemaking is September 8th. Realistically because we have so many issues and so much research, I doubt we are going to make that date. It will probably be pushed into the future, maybe a month. We would shoot for it but realistically but all that we have left to do I'm not sure we're going to get there. But, we will send further information that notices you where we're at. Then what happens is we go into the CR-102 process and since we're going to discuss that in the other one I'm going to skip over that part right now.

The other item you'd asked us to bring up was about workgroups. On the break Mike asked, how are those going to work and how are we going to do them? We have two topics for workgroups .

MR: Crossing Surface Standards and Railroad Police Issue. On the crossing surface standard, my intent is to get together from the state's standpoint or from the road standpoint, a representative from WSDOT, someone from the Association of Counties and Cities or somebody that they can designate that would be able to speak to the issue directly and then whoever from the railroad and labor who would want to attend. I don't know, maybe the Brotherhood of Maintenance and Way folks would be the best people for crossing standards since there's a direct working relationship with those difficulties. We want to have some standards but we also don't want to make it so that it's not practical. Then have at least one or two working sessions to sit down and discuss surface standards. That was my intent on that part of it.

DR: Any kind of time line. I called Mike Cowels and told him I had more work for him to do. He hasn't called me back yet.

MR: He told me that he'd been contacted by you when I met him up in Renton one day. So he's aware. So he would be the person.

DR: I think he would be. I haven't talked with him.

MR: He indicated he would be the one and would John Trimble be the one hook into crossing standards?

CL: You certainly could talk to him first. I'm not sure whether he would prefer to do it himself or whether it would be more appropriate for one of the managers of track maintenance to be involved in it.

MR: OK

KD: Those workgroups will be a driver behind us being able to get out the draft also. So, we'll have that done before we try to write the rule that you are going to be asked to respond too.

MR: The other issues is the Railroad Police. First of all I intend to contact the Governor's office and provide them with the information that you provided Dave, about the WAC

that the Law and Justice Commission, I believe it was, has on training. That may solve a lot of the problem that is specifically before us. The other thing I will ask the Governor's office is whether they will or can provide an ongoing list of the names and addresses of railroad police. That may totally solve any questions we have of just knowing who's around there and what we need to do. If it's going to become more involved than that then we will put together a working group. But I think that we can address a lot of those issues directly with the Governor's office because they are primarily responsible and get anything we need from them rather than imposing another requirement upon the railroad.

KC:(tape is unclear) Just to clarify will you be asking for written comments before the next meeting

KD: No. We want to be able to have a conversation about those comments directly. Written are always welcome anytime. But, there is no written comment deadline for the next draft. You can bring written comments, you can bring drafted language, you can provide verbal comments at the next workshop. Then what will happen is we will take that and then we will give you a written comment due date if you want to respond after that. We might even be able to change some language that everyone agrees to at that.

That brings us to our next one. The other railroad rulemaking which is TR-981101 that's clearance and sanitation rulemaking... (changing tape)... 623 is the CR-102 stage and the CR-102 stage is when a rulemaking becomes formal. The proposed rules that will go in before the Commission and that due date is very important as far as comments. What happens is at that meeting, based on if there are any stakeholder comments, you're welcomed to come to that meeting. It's before the Commissioners. I apologize that you haven't given any notice on this. It's an internal process thing that we need to fix.

MR: That's why Kim has been brought on board. I've been trying to do that and I just didn't have time. It just didn't happen. I think informally we've talked to people and informed them that that's when it's going to happen but a formal notice has not been provided. It's not necessary, but it hasn't been provided.

KD: Have you been to formal Commission meetings? What happens is that at 9:30 the Commissioners will be sitting up at this bench. When you come in the door you sign if you want to comment or if you want to get up and speak to them. They have a docket and you can pick that up when you come in also. We have a docket item and this item will come up near the end of the meeting, because it's a transportation issue. They go general, then utilities issues, then transportation issues. When they call it up, staff gets up and makes a presentation and provides a recommendation. Then the Commissioners ask if anyone else is here to speak on that issue. Mike will be doing the presentation I assume. Let him know if you're here and you want to speak and he will tell the Commissioners also. I think we have some stakeholders here that want to speak to that issue. Then they will call you up to speak, based upon the order you signed in on the sheet. Although it is a formal proceeding they are very interested in what stakeholders have to say. If they support issues or if they are opposed to issues and why. And they want to hear also if they support them. Don't be concerned about not having any legal

training in any way. You can come up and speak and it's not problem.

TR: The question I had is, there's going to be the hearing before the Commissioners next Wednesday the 23rd. Then adoption hearing is going to be....

KD: What happens with the CR-102 is they have the hearing. Then staffs' recommendation will be "staff recommends that the Commissioners direct the Secretary of the Commission to file a proposed rulemaking with the Code Revisors office". Commissioners, based on what you say, and they'll probably say, yes go ahead and file it. But if there is something that is really contentious that they don't feel that staff has made any effort to consider, they will direct staff to go back and meet with stakeholders again. That has happened also. Probably what will happen is they will direct the Secretary to file it. Then it gets filed with the Code Revisors office and goes in the state register. The state register is the notice to the world that we are in a formal proceeding and were considering rules. Then there is a written comment due date and that due date, the whole state can send in written comments and the Commissioners consider them in their decisions. Then the Commissioners may or may not direct staff to re-write rules based on those comments. Then it goes to an adoption hearing. Right now the filing date for the CR-102, we're assuming the Commissioners will say file it, is July 7th, with the written comments due on July 28th. If all those dates are met the adoption hearing will go into effect on September 8th. There's another driver behind this and that is the Code Revisors office. Since the Governor's office has directed all agencies to do what we're doing with all of their rules, the Code Revisors office doesn't have a very quick turnaround as far as getting the rules published. They have to type them in and get them published. So that's been delaying some of our rulemaking. So what that means is if that's delayed the adoption hearing gets delayed. So, that's basically it.

TR: If I was to hire an attorney to come, this is just something to help me. Would it be best to have them come at the adoption hearing or the hearing next week?

KC: ...(unable to hear tape)

TR: I've got somebody who wants to help and he's in Washington D.C.

DR: I would suggest you send them the rules as they're written. He can send in written comments. Then the only time he would need to appear would be the adoption hearing.

TR: That's what he thought also. I gave him copies at Los Angeles, the draft copies, so he knows basically what is going on.

MR: As far as when to appear best is a hard thing for anybody to say and obviously we can't give legal advice. But from a practical standpoint I don't know when best to appear but as early in the process as possible that we get comments based upon an analysis of the rules, we can respond better. I do have a question that kind of dovetails into this. Say we get some comments that come in, written comments that come in and on July 28th we start looking at them and we say holy cow we really did need to change this rule. What do we

do if we feel we have made an error or just missed something and need to change a rule after July 28th , what's the process then?

KD: We cannot substantially change the CR-102 once it's been filed without going through this process again. There cannot be substantive changes to it.

MR: So what you're saying is that if we decide that we need to make substantive changes, we have to re-file a CR-101?

KD: No. We'd have to re-file the CR-102.

MR: I would say that from my viewpoint, as the team lead on that particular rulemaking if, in fact, we get comments that are very substantive and very thoughtful and we feel that we need to change, I will not hesitate to re-file a CR-102..

KD: That's not unheard of, that's happened quite a bit in rulemakings.

MR: I just want to make it really clear that we will pay very close attention to anything that comes in and debate it very thoroughly within our group and within the Commission, so that if it's appropriate at all we won't be afraid to tell the Commissioners we need to go a little longer. I just want to make that clear that we are not locked into this date. If I get graded down by my supervisor because we don't make September 8th, then I'll get graded down. That's not a problem. We appreciate all the comments and efforts that everyone has made to provide some input and thoughtful input to this process.

TR: Since the hearing date is next Wednesday, could we get a faxed copy it as soon as you get it?

MR: No you can get an actual a copy. This is CR-102 proposed rules for walkways and clearances and for sanitation. There's two different forms. One is all the strikeouts in the world, that makes it really hard to read, but at least you can see what has been changed. Then a copy that shows just the additions.

KC: Anything that says new section isn't underlined, even though it is a new section because it doesn't go to the Code Revisors office underlined. So, read the new sections as well.

MR: Be aware that today and tomorrow we will be reading through these so there may be, I doubt if any substantive changes occur, but there may be some typos and clean-ups and those kinds of things. This is a rough draft of a rough draft.

KD: Feel free to point those out to us also, so we can correct them before the fact.

Does that answer your questions? Is that process clear to you?

MR: On Wednesday there will be a memorandum that I'm preparing and a Small Business Economic Impact Statement that is part of the process of presenting things to the

Commissioners that will be available for review and also comment at the meeting. So, the reasons why we did what we did will be set forth, pretty much in that backup memorandum which is being reviewed and being presented to the Commissioners early next week. The Small Business Economic Impact Statement is a requirement of state law and tries to make a stab at whether we've done something that is going to cost somebody a lot of money.

KD: In the APA rules, which is what this process is that we're following, when he says memorandum that's the concise explanatory statement. When it's filed at the CR-102, presented at the open meeting and also at the adoption hearing. Those are also the ones, in the APA it says staff has to respond to their rationale, why they accepted or rejected written comment ideas. That goes into effect at the CR-102 stage. There may be some comments that we don't respond to, but we will try to. If we don't and it just got dropped off at the beginning in the informal process, the CR-102 is when everything becomes formal.

MR: I think in the past a lot of times regulated industries have gotten involved or have brought in to the process kind of like what we're doing next week. When things have been a little harder to change than early on. So, this process, before this point has allowed us to be much, much more flexible and to take into account more viewpoints than I think that has occurred generally in state government in the past.

KD: And have our opinions change before we get there.

MR: Right. And we've really tried very hard to do that. I think it's going to be an on-going and several stage process. I think we'll make some really good progress on this stage then a year or so from now when we will revisit this and sit down and look at it and hopefully we can really get fine tuned with at that point.

KD: Do you have any further questions?