



TO: David Danner, Chairman
Philip B. Jones, Commissioner
Ann Rendahl, Commissioner
Steve King, Executive Director

FROM: Rail Safety Rulemaking Team

SUBJECT: Rail safety rulemaking related to ESHB 1449, Docket TR-151079
Oil Train Safety Rulemaking

RE: Adoption Hearing, January 7, 2016

RECOMMENDATION

Staff recommends that the Commission adopt the rules as published in the CR-102 filed with the Code Reviser (attachment A).

BACKGROUND

There have been significant changes in the transportation of crude oil in the state. Historically, 90 percent of crude oil used by Washington refineries was delivered by tank ship. However, in 2014, pipeline and rail delivery accounted for approximately 30 percent of the oil imported. In addition to the increase in oil being imported via rail, there is a concern surrounding the volatility of some of the types of oil, like Bakken crude.

Concerns regarding oil transportation led the Legislature to authorize the Oil Transportation Study in April of 2014. The objective of the study was to analyze the risks to public health and safety associated with the transport of oil in Washington. Final recommendations were delivered to the Legislature and Governor in March of 2015. However, in October of 2014, Governor Inslee requested a preliminary set of recommendations regarding oil transportation. The Commission provided a list of recommendations that were incorporated into Governor-request legislation (ESHB 1449) and ultimately signed into law.

The recommendations made by the Commission and included in the legislation are:

- Modify the regulatory fee paid by the railroad industry, to allow for the hiring of additional rail inspectors;
- Allow inspections on private shippers' property without an Federal Railroad Administration (FRA) escort;
- Set minimum safety requirements and conduct inspections for private crossings; and
- Allow first-class cities to opt in to the UTC crossing safety program.

ESHB 1449 increased the regulatory fee paid by railroads from 1.5 percent up to 2.5 percent for railroads that haul crude oil. The legislation also requires the Commission to include a provision

in its annual report that railroads submit information to show that they can financially provide for a reasonable worst-case spill.

COMMENTS

Commission staff received numerous comment responses to the proposed rule change. Attached you will find the comment matrix (attachment B) for the comments received on the CR-102 rule language. In general, the comments received for the CR-102 can be summarized as follows:

1. Comments from the Railroad Industry
 - a. Possible federal preemption on financial responsibility section
2. Public Comments
 - a. Definition of reasonable worst case is not sufficient
 - i. Definition should include the entire train
 - b. Amount per barrel for cleanup is too low
 - c. Financial responsibility should include costs associated with loss of life, environmental damages in an environmentally sensitive area and an example of a catastrophic accident in a city like Seattle or Spokane

Commission staff responded to the comments received in the attached comment matrix.

CONCLUSION

Staff recommends that the commission adopt the rules as shown in Attachment A.

ATTACHMENTS

- A – Proposed Rule, as published on November 8, 2015.
- B – Comment Summary and Commission’s Response