

AMENDATORY SECTION (Amending WSR 01-04-026, filed 1/30/01, effective 3/2/01)

**WAC 480-62-130 Application of this chapter.** The rules in this chapter apply within certain cities and to any railroad company subject to the jurisdiction of the commission under RCW 81.04.010 and chapters 81.04, 81.24, 81.28, 81.36, 81.40, 81.44, 81.48, 81.52, 81.53, 81.54, 81.60, and 81.61 RCW, as set forth below:

(1) To all Class I, II, and III railroad companies operating within the state of Washington, with the exceptions noted in subsections (2), (3), and (4) of this section.

(2) To and within first-class cities except for WAC 480-62-145, 480-62-150, (~~480-62-155,~~) and 480-62-225.

(3) To and within cities with a population of more than 400,000 except for WAC 480-62-145, 480-62-150, (~~480-62-155,~~) 480-62-225, 480-62-230, and 480-62-235.

(4) To logging and industrial railroads except for WAC 480-62-200, 480-62-205, 480-62-215, 480-62-240, 480-62-245, 480-62-250, 480-62-300, the portions of WAC 480-62-310 that do not involve grade crossing accidents, WAC 480-62-315 (2), (4) and (5), and WAC 480-62-325.

NEW SECTION

**WAC 480-62-260 First-class cities opt-in.** (1) Participation in the commission's rail safety program. RCW 81.53.240 allows a first-class city to request participation in the commission's crossing safety inspection program. For the purposes of this section, the commission's crossing safety inspection program shall mean the inspection of grade crossings to ensure proper design and maintenance, as set forth in WAC 480-62-225. For the purposes of this section participation in the crossing safety inspection program shall not include the crossing petition process outlined in RCW 81.53.030 and 81.53.060.

(2) Process for opt-in. A first-class city must notify the commission of its intent to opt-in to the commission's rail safety program at least sixty days prior to the effective date requested by the city. A first-class city's request to opt-in must be accompanied by documentation demonstrating that the city's governing body has approved the terms and conditions set forth in a memorandum of understanding between the city and the commission governing the commission's assumption of rail crossing safety inspection authority within the city limits. A first-class city's request to opt-in will become effective on the date requested by the city or the first day of the month following commission approval of the memorandum of understanding referenced in this section, whichever occurs later.

(3) Technical assistance to first-class cities. For first-class cities that opt-in to the commission's crossing safety inspection program, the commission will provide technical assistance on grade crossing safety, maintenance, and modifications as agreed between the city and the commission.

(4) Process to opt-out. First-class cities that opt-in to the commission's crossing safety inspection program may opt-out of the program by submitting to the commission documentation that the city's

governing body has approved the withdrawal of the city from the commission's crossing safety inspection program. A city's notice of withdrawal must be submitted to the commission at least ninety days prior to the date upon which the city intends to assume all rail crossing safety inspections within its jurisdiction.

NEW SECTION

**WAC 480-62-270 Safety standards at private crossings.** (1) For the purposes of this section, the term "private crossings" has the same meaning as in RCW 81.53.010(8).

(2) At every private crossing through which any amount of crude oil is transported, the railroad must ensure that the following are installed on each side of the crossing within one hundred twenty days after this rule becomes effective:

(a) A thirty-inch or larger R1-1 stop sign, defined as a standard R1-1 in the *Manual on Uniform Traffic Control Devices*;

(b) An emergency notification system (ENS) sign that:

(i) Displays the necessary information for the dispatching railroad to receive reports of unsafe conditions at the crossing including, at a minimum:

(A) The toll-free telephone number of the railroad company established to receive reports;

(B) An explanation of the purpose of the sign (e.g., "Report emergency or problem to \_\_\_"); and

(C) The United States Department of Transportation (USDOT) National Crossing Inventory number assigned to that crossing.

(ii) Measures at least twelve inches wide by nine inches high;

(iii) Is retroreflective;

(iv) Has legible text (i.e., letters and numerals) with a minimum character height of one inch; and

(v) Has white text set on a blue background with a white border, except that the USDOT National Crossing Inventory number may be black text set on a white rectangular background.

(c) A rectangular sign, at least three hundred square inches (twenty thousand square centimeters) in size, with the legend "Private Crossing" and the crossbuck symbol.

(3) All signs must have retroreflective tape applied to the sign posts.

(4) If the commission finds, after investigation, that a restricted sight distance, unfavorable roadway or crossing configuration, or other hazard exists at a private crossing, the commission will notify the railroad and to the extent the commission has contact information, the landowner. The railroad must ensure that additional safety measures are installed at the crossing including, but not necessarily limited to, signs authorized in the *Manual on Uniform Traffic Control Devices*, within one hundred twenty days of receiving notification of the hazard from commission staff.

(5) At private crossings where crude oil is transported, the commission will conduct inspections giving priority to private crossings with a high frequency of oil trains, in industrial areas, and high population centers.

(6) Nothing in this section modifies existing agreements between the railroad company and the landowner governing liability or cost allocation at the private crossing.

AMENDATORY SECTION (Amending WSR 04-05-031, filed 2/11/04, effective 3/13/04)

**WAC 480-62-300 Annual reports—Regulatory fees.** (1) The surface transportation board annual report form R1 must be used by Class I railroad companies ~~((as))~~ in addition to the annual report form ~~((for submission to))~~ published by the commission. Class II and Class III railroad companies must use report forms periodically published by the commission.

(2) Any railroad company that transports crude oil in Washington must submit to the commission, in addition to its annual report, a statement that contains:

(a) All insurance carried by the railroad company that covers any losses resulting from a reasonable worst case spill.

(b) Coverage amounts, limitations, and other conditions of the insurance identified in (a) of this subsection.

(c) Average and largest crude oil train, as measured in barrels, operated in Washington by the railroad company in the previous calendar year.

(d) Information sufficient to demonstrate the railroad company's ability to pay the costs to clean up a reasonable worst case spill of oil as defined in (e) of this subsection including, but not necessarily limited to, insurance, reserve accounts, letters of credit, or other financial instruments or resources on which the company can rely to pay all such costs. For the purposes of this section, the railroad company must calculate the total cleanup costs for a reasonable worst case spill based on a minimum cost of sixteen thousand eight hundred dollars per barrel multiplied by the percentage of the largest train of crude oil described in (e) of this subsection.

(e) For the purposes of this section, a reasonable worst case spill for railroads shall mean the percent of the largest train load of crude oil, as measured in barrels, moved by that company in the previous calendar year, as described below:

$$[(\text{Maximum Operating Speed}/65)^2 = \text{Reasonable Worst Case Percent}]$$

(f) For the purposes of this section, maximum operating speed shall mean the top speed that the railroad company operates any train carrying crude oil in the state.

(3) Each year every railroad company is responsible for obtaining the proper report form from the commission. Reports must be completed for the preceding calendar year's operations. One copy of the completed annual report, along with the regulatory fee, must be submitted to the commission no later than May 1<sup>st</sup> of each year.

~~((3))~~ (4) **Regulatory fees.** The railroad company regulatory fee for Class I railroads and companies that haul crude oil is set by statute at ~~((one))~~ two and one-half percent of gross intrastate operating revenue. The regulatory fee for all other railroad companies shall be set at one and one-half percent of gross intrastate operating revenue.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum regulatory fee that a railroad company must pay is twenty dollars.

(c) The twenty dollar minimum regulatory fee is waived for any railroad company with less than one thousand three hundred dollars in gross intrastate operating revenue.

(d) The commission does not grant extensions for payment of regulatory fees.

(e) If a company does not pay its regulatory fee by May 1st, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.