

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Amending/Adopting/ Repealing ) DOCKET NO. TR-981101  
Chapter 480-60 WAC and )  
Chapter 480-66 WAC ) GENERAL ORDER NO. R-469  
)  
Relating to Railroad Companies - Walkways and )  
Clearance Rules and Railroad Companies - ) ORDER REPEALING, AMENDING,  
Sanitation rules. ) ADDING, and ADOPTING RULES  
) PERMANENTLY  
)  
..... )

STATUTORY OR OTHER AUTHORITY: The Washington Utilities and Transportation Commission takes this action under Notice WSR # 99-15-083, filed with the code reviser on July 20, 1999. The Commission brings this proceeding pursuant to RCW 81.04.160 and RCW 80.01.040.

STATEMENT OF COMPLIANCE: This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 34.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

DATE OF ADOPTION: The Commission adopted Chapter 480-60 WAC and Chapter 480-66 WAC on October 13, 1999, except WAC 480-60-035. The Commission adopted WAC 480-60-035 on December 22, 1999.

CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: The proposal would repeal obsolete rules, establish minimum criteria for railroad employee walkways in railroad yards, require drinking water to be provided for all personnel regardless of work location, require sanitary conditions in locomotive eating areas, and require lockers for employee use in more locations.

REFERENCE TO AFFECTED RULES: This order amends the following sections of the Administrative Code:

- WAC 480-60-010 Application of rules;
- WAC 480-60-020 Exemptions;

WAC 480-60-030	Definitions;
WAC 480-60-040	Overhead clearances;
WAC 480-60-050	Side clearances;
WAC 480-60-060	Track clearances;
WAC 480-60-080	Operation of excess dimension loads; and
WAC 480-60-090	Narrow gauge railroad transporting freight cars.

This order adopts the following new sections of the Administrative Code:

WAC 480-60-012	Contacting the commission;
WAC 480-60-014	Rule of practice and procedure;
WAC 480-60-035	Walkways;
WAC 480-66-100	Definitions;
WAC 480-66-110	Application of chapter;
WAC 480-66-120	Contacting the commission;
WAC 480-66-140	Rules of practice and procedure;
WAC 480-66-150	Exemption from rules;
WAC 480-66-160	Filing a complaint;
WAC 480-66-170	Reporting requirements;
WAC 480-66-200	General obligations;
WAC 480-66-210	Locomotive cabs and cabooses;
WAC 480-66-220	Stationary facilities;
WAC 480-66-230	Miscellaneous;
WAC 480-66-300	Drinking water;
WAC 480-66-310	Washing facilities;
WAC 480-66-320	Showers;
WAC 480-66-330	Dressing rooms and lockers;
WAC 480-66-400	General;
WAC 480-66-410	Water closets;
WAC 480-66-420	Urinals;
WAC 480-66-430	Chemical toilets;
WAC 480-66-440	Incinerator toilets;
WAC 480-66-450	Privies;
WAC 480-66-460	Specifications for toilet rooms;
WAC 480-66-470	Number of toilets required;
WAC 480-66-480	Supplies for toilets;
WAC 480-66-490	Location and types of toilets;
WAC 480-66-500	Eating places;
WAC 480-66-510	Lunch rooms;
WAC 480-66-520	Specifications for lunch rooms and eating places;
WAC 480-66-600	Specifications for all accommodations; and
WAC 480-66-620	Stationary facilities.

This order repeals the following sections of the Administrative Code:

WAC 480-60-070	Marking of cars;
WAC 480-60-99002	Table B Class of highway;
WAC 480-60-99003	Diagram B Clearance diagram for underpass two-way highway traffic;
WAC 480-66-010	Definitions;
WAC 480-66-020	Water supply;
WAC 480-66-030	Toilets;
WAC 480-66-040	Eating places and lunch rooms;
WAC 480-66-050	Sleeping accommodations;
WAC 480-66-060	Cleanliness and maintenance; and
WAC 480-66-070	General.

#### PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS

THEREUNDER: The Commission filed a Preproposal Statement of Inquiry (CR-101) on October 7, 1998, at WSR # 98-20-105.

#### ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL

STATEMENT: The statement advised interested persons that the Commission was opening an inquiry to review the rules in chapter 480-60 WAC (Railroad Companies - Clearance) and chapter 480-66 WAC (Railroad Companies - Sanitation) in accordance with Executive Order 97-02 and would consider issues related to workplace health and safety. The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all railroad companies operating in the state of Washington, the Commission's list of transportation attorneys, and those people who have identified themselves as having an interest in transportation rulemakings.

Pursuant to notice, the Commission held three rulemaking workshops on November 9, 1998, January 7, 1999, and April 20, 1999. The workshops were attended by representatives from the Brotherhood of Locomotive Engineers (BLE), the United Transportation Union (UTU), the Burlington Northern Santa Fe Railway (BNSF), the Union Pacific Railroad (UP), and the Columbia Basin Railroad. Workshop discussions and proposed rule drafts included walkways, meal periods, lockers and dressing rooms, locomotive toilet cleanliness, refrigerators and microwaves on locomotives, and heat requirements on cabooses.

The workshop discussions and proposed rule drafts concerning clearance rules in chapter 480-60 WAC focused mostly on language, format, and repealing sections that are no longer valid in the current environment. Rules governing excess height loads were pared

substantially because railroad employees are no longer allowed to walk on train roof tops. The rules governing the marking of excessive width loads were also eliminated at the suggestion of the American Association of Railroads and after railroad management and unions concurred.

The inclusion of walkway rules in chapter 480-60 WAC were also discussed at workshops and in written comments. The unions and Staff believe a walkway rule with objective standards is needed while the railroad companies do not believe a rule is necessary. Further, the railroad companies believe any walkway rule is preempted at the federal level.

**NOTICE OF PROPOSED RULEMAKING:** The Commission filed a Notice of Proposed Rulemaking (CR-102) and Small Business Economic Impact Statement (SBEIS) on July 20, 1999, at WSR # 99-15-083. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 99-15-083 at 9:30 a.m., Wednesday, September 22, 1999 in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.

**COMMENTERS (WRITTEN COMMENTS):**The Commission received written comments jointly from the BNSF and UP which questioned the need for a walkway rule and asserted that the walkway issue has been pre-empted at the federal level. BNSF and UP rely on authorities which acknowledge that the Federal Railroad Association (FRA) has not issued a specific rule on walkways. BNSF and UP argue that walkways are subsumed by the larger subject of roadbeds contained in Subpart B and Subpart D of the FRA's track safety standards. 49 C.F.R. § 213.31 et seq. Staff believes that the FRA's standard for roadbeds does not address the same safety concerns as the proposed walkway rule. As a result, Staff believes that the proposed walkway rule is not preempted by federal action. (See Commission Staff's September 22, 1999 Open Meeting Memorandum, Section 6.a., for a detailed discussion of preemption). Staff submits that need for walkway rules has been established from Commission Staff investigator knowledge, complaints which are included in the public files, and documents submitted by the UTU. The UTU submitted written comments requesting a more stringent walkway rule than the one proposed by Staff. Staff believes a more stringent walkway rule may be excessive. Both groups verbally restated their positions at the June 23, 1999 open meeting.

**RULEMAKING HEARING:** The proposed rules, including the walkway rule, were considered for adoption, pursuant to the notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on September 22, 1999 before Chairwoman Marilyn Showalter and Commissioner William R. Gillis. The Commission heard oral comments from Mike Rowsell representing Commission Staff, Tom Retterath representing the UTU, Alan Bridges representing BLE, and David Reeve representing BNSF. Lawrence Mann, a Washington, D.C. attorney appearing on behalf of the UTU, provided oral comments in support of Staff's position on preemption. Jeff Goltz of the Attorney General's Office provided information on the issue of preemption. The matter was continued until October 13, 1999 due to

concerns raised regarding Staff's proposed walkway rule.

**RULEMAKING HEARING CONTINUED:** The rule proposal was considered for adoption at the October 13, 1999 rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner William R. Gillis. The Commission approved the adoption of all rules except WAC 480-60-035 - Walkways. The Commission heard oral comments from Kim Dobyms representing Commission Staff. Staff requested additional time to meet with interested parties and revise the SBEIS concerning proposed WAC 480-60-035. No other interested person made oral comments. The Commission continued the hearing on the walkway rule to November 30, 1999.

**MEETINGS OR WORKSHOPS; ORAL COMMENTS:** Staff held a workshop on November 9, 1999, to discuss proposed WAC 480-60-035 with interested persons and to invite participation regarding what should be measured in the amended SBEIS. Representatives from the UTU, BNSF, UP, the Columbia Basin Railroad, and the Palouse River and Coulee City Railroad attended the workshop. While the railroads continue to question the need for the rule and still believe walkways may be preempted at the federal level, they offered alternatives that would be acceptable if a rule must be adopted. The union also still believes more stringent rules are needed but also offered alternatives that may be acceptable. Staff considered the alternatives proposed by the union and the railroads. Staff incorporated some of these proposals, such as adding native material as an acceptable surface material for walkways, changing the measurement standards to more closely reflect those in use in the industry at the present time, restricting the rule to apply to railroad yards only, and incorporating other clarifying changes suggested by the workshop participants. Staff did not incorporate more restrictive changes that were recommended by the union because Staff did not believe the public record supported more stringent rules.

The Commission received comments concerning the elements to be measured in the amended SBEIS. Staff prepared a survey instrument based on those comments to all railroad companies in Washington State. Staff redrafted the proposed walkway rule and sent it and the survey to all parties on November 23, 1999, for further comment.

**WRITTEN COMMENTS AND SBEIS RESPONSE:** The Commission received written comments from the UTU again urging more stringent rules. In a joint letter, BNSF and UP again stated their belief that there is no need for a walkway rule and that state action is likely preempted by federal law. However, the railroads indicated that the November 23, 1999 draft rule addressed many of the railroads' concerns.

Two short line railroad companies submitted SBEIS information in response to Staff's survey. Both indicated that strict compliance with the walkway rule could be costly. The Class I railroads did not submit SBEIS information. Staff believes that immediate compliance in

all areas would be difficult for Class I railroads as well as short lines. Staff proposed mitigating language to address hardship in complying with the rules.

**RULEMAKING HEARING CONTINUED:** Proposed WAC 480-60-035 - Walkways, was continued with direction for a status report to be presented before the Commission on November 30, 1999. At the November 30, 1999, open meeting, the Commission continued the adoption hearing of WAC 480-60-035 until 9:30 a.m. Wednesday, December 22, 1999, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington.

**RULEMAKING HEARING ADOPTION:** Proposed WAC 480-60-035 - Walkways was considered for adoption during the Commission's regularly scheduled open public meeting on December 22, 1999 before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner William R. Gillis. The Commission heard oral comments from Mike Rowswell representing Commission Staff and from Tom Retterath representing the UTU. Mr. Retterath urged the Commission to adopt Staff's proposed WAC 480-60-035. The Commission adopted WAC 480-60-035 - Walkways on December 22, 1999. No other interested person made oral comments.

**COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission adopted, amended and repealed the proposed rules with the changes described below.

**CHANGES FROM PROPOSAL:** The Commission adopted the proposal with the following changes from the text noticed at WSR #99-15-083.

1. chapter 480-66 WAC and chapter 480-60 WAC - Non-substantive clarifying language, grammatical and punctuation changes.
2. WAC 480-60-010 (1), Application of rules - Language eliminated from the original rule reinserted at the request of UP to preserve the issue of whether the Commission has jurisdiction over entities other than common carriers on clearance rule violations.
3. WAC 480-60-035 (1) - Eliminated requirement for walkways on the mainline around track side switch-throwing mechanisms. The UTU advocates a rule that addresses all areas in Washington State where its members are required to perform service on the ground, both in yards and outside of yards. The Class I railroads maintain that there is no need for any walkway rule. The Class II and III

railroads agree with the Class I railroads and submit that it would result in a significant economic burden. The present rule is limited to walkways in yards based on the available evidence of need for a rule, the economic impact that a more extensive rule would have on all railroads, and recognition that experience gained with a limited rule can be used to determine whether a more extensive rule is necessary.

4. WAC 480-60-035 (2)(a) - Adopted UP's suggestion for use of the railroad technical definition of one and one-half inch rock to meet the least restrictive of the railroad's standards. Added note recommending the use of three-quarter inch rock or less on switching leads in yards in response to UTU concern that larger size rock would be used.
5. WAC 480-60-035 (2)(c) - Added an option of native material for walkway surfaces in response to railroad concerns.
6. WAC 480-60-035(4) and (7) - Increased the restoration time from ten days to thirty days for repairing damaged walkways in response to railroad concerns.
7. WAC 480-60-035 (7) - Added the adverb ~~A~~ermanently@to modify ~~A~~removed@to address railroads concern regarding a distinction between temporarily and permanently removing walkways on bridges and trestles.
8. WAC 480-60-035(8)(a) - Added compliance mitigation measures for Class I, II and III railroads to address concern regarding the financial burden of strict compliance.
9. WAC 480-60-035(8)(b) - Provided a mechanism for railroads to seek time extensions to bring walkways into compliance if experiencing financial hardship.

STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: In reviewing the entire record, the Commission determines that WAC 480-60-070, 99002, 99003, WAC 480-66-010, 020, 030, 040, 050, 060, and 070 should be repealed; WAC 480-60-010, 020, 030, 040, 050, 060, 080 and 090 should be amended; and WAC 480-60-012, 014, 035, WAC 480-66-100, 110, 120,

140, 150, 160, 170, 200, 210, 220, 230, 300, 310, 320, 330, 400, 410, 420, 430, 440, 450, 460, 470, 480, 490, 500, 510, 520, 600, and 620 should be adopted as set forth in Appendix A, as rules of the Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

**ORDER**

THE COMMISSION ORDERS:

1. WAC 480-60-070, 99002, 99003, WAC 480-66-010, 020, 030, 040, 050, 060, and 070 are repealed, WAC 480-60-010, 020, 030, 040, 050, 060, 080, and 090 are amended, and WAC 480-60-012, 014, 035, WAC 480-66-100, 110, 120, 140, 150, 160, 170, 200, 210, 220,, 230, 300, 310, 320, 330, 400, 410, 420, 430, 440, 450, 460, 470, 480, 490, 500, 510, 520, 600, and 620 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

2. This Order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

3. The Commission adopts the Commission Staff memoranda, presented when the Commission considered filing a Preproposal Statement of Inquiry, when it considered filing the formal notice of proposed rulemaking, and when it considered adoption of this proposal, in conjunction with the text of this order, as its Concise Explanatory Statement of the reasons for adoption and for rejection of proposed changes, as required by RCW 34.05.025.

DATED at Olympia, Washington, this      day of January, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner

*Note: The following is added at Code Reviser request for statistical purposes:*

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0;  
Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0,  
repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 33, amended 8, repealed 10.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0,  
amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule  
Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.