

**RR Operations Workshop**  
**TR-981102**  
**November 8, 1999**  
**WAC 480-62**

**Attendees:**

Tom Retterath, UTU  
Debbie Bodey, PRCC Railroad  
Patrick Halstead, BNSF  
Pat Bodey, PRCC Railroad  
David Reeve, BNSF  
Carolyn Larsen, UPRR

**WUTC Staff:**

Kim Dobyms  
Mike Rowswell  
Scott Barrett  
Ann Rendahl

**Conference Bridge:**

Tom Kimbrell, WUTC  
Karen Caille, WUTC

KD: Overview, Welcome, Outline of Meeting, Introductions

The first issue that we haven't talked about is repealing rule 480-62-010 and that was the locomotive speedometers (page 5 of the draft).

MR: At a former workshop we mentioned the speedometer provisions and found that the FRA has provided rules that address the issues directly and our rule was either outdated or simply not needed so we proposed repealing it.

DR: We'll remain silent. Yes we agree that the repeal is appropriate.

TK: I don't have a copy of the rule in front of me. As I recall, part of the trouble was locomotive speed indicators in yards under 20 or under 15 or under 10 miles an hour. Can someone speak to the fact that the federal requirement takes care of those low speeds? Crews have mentioned to me in the past that they have not known exactly what their speed is in low speed range areas. That's a comment and a question both.

MR: Does anybody have any history or knowledge of specifically low speed train operations and being able to know your speed based upon the speedometers that are available in locomotives today? That's something that maybe we can get some direct input from Stu Gordon - would that be an appropriate person?

- TK: Yes, I just personally would need to do a little more research. The problem comes in for me if I'm doing radar train speed tests which is a part of my assigned duties and then I later hear a complaint from a crew member that they don't have any quality indicator on their unit. I'm speaking as a track safety inspector. I can find the answer I'm sure.
- MR: When you do will you let us know? Then if anything comes of some of those considerations we will certainly communicate with everyone that is here and all of the stakeholders.
- TK: I'll get back to you, yes.
- KD: Next is "Traffic Control Devices", 480-62-020, on page six. We did receive one written comment on this.
- MR: Traffic Control Devices is a topic required by statute. However, we did go further and adopt the manual and uniform traffic control devices that were consistent with highway operations. This is for a crossing or an overpass so it always has to be coordinated with road authorities. We're trying to be consistent with road authority type of rules as well as meet the needs of the statute. One thing I haven't checked is the rules of the WSDOT to make sure that they don't have something a little bit different. If there's any detail that will be communicated directly and incorporated simply because it is a road authority requirement.
- AR: The state DOT has additional rules to the MUTCD that they issue periodically and this is kind of an update is that what the issue is?
- MR: Yes. It's been re-written in plain english. It's maybe just a little easier to read.
- TR: Can I go back to speedometers? Would it be appropriate to adopt the federal regulations so your inspectors can enforce them also? I know that in the new section on safety and operating rules and statutes you've adopted a lot of the federal rules - so would it be appropriate to adopt the speedometer rules also?
- MR: It may be. The issues that we are adopting others in reference for we will have an inspector that is federally certified that will actually enforce the federal rule. I had not been made aware that the types of inspectors we had would actually have a direct enforcement capability for speedometers. If that's the case it should be adopted. If we ever obtain a motor power & equipment specialist I suspect that's where that might fall. We will look at that particular issue.
- TR: I believe that there is a state law that requires speedometers to be calibrated also.

MR: Correct.

KD: Our repealing this rule does not change the state law.

AR: When we looked at whether to repeal this rule we looked at the federal rule to see that it covers everything that was in the state rule. What's in the federal rule is also - I think it required the same calibrating requirement, if not a more stringent one than was in the state rule. I think that was the thoughts on repealing.

TR: I understand and if we have a problem we can go through the federal inspectors.

MR: We will definitely consider that.

KD: David and Carolyn do you have any comments on traffic control devices?

CL: I circulated this rule among my various departments and didn't receive any comments on it. If I do get some I'll put them in written comments but I don't have any at this time.

DR: First is a question. I could be wrong but I thought somewhere else the MUTCD was incorporated by reference in another section or rule.

KD: In each individual section we say we adopt it by reference. The other section that you are talking about is just a master rule which is where we would update the dates.

DR: So, what you've done is adopted it by reference in another section then referenced that adoption here?

KD: Correct.

DR: I think we made a general comment in the first submission on this rule with respect to the idea of adoption by reference and I think we have more problems doing that with a UTCF than what was done with the federal regulations. That aside I, like Carolyn, have not received any comments one way or the other on this and I'll have to reserve comment until I do get some kind of feedback from the company.

MR: I don't understand the concern about adopting by reference parts or all of the MUTCD - what's your specific problem there?

DR: I know that we commented on it in the first letter. I really don't remember what was said on it.

KD: The flag persons rule, page 7, 480-62-030. It should say "flaggers."

MR: This rule was pretty much reduced in size simply by adopting again the MUTCD, the section that governs flaggers. There are some minor differences with WSDOT and we will be coordinating and making sure that those are covered and it will all be reported to you. Subsection 3 that seems like a strange requirement in a way. However, that is what the statute says. Number 4 is the one that we had some difficulty with. I know that there's some discussion of keeping certification cards that are available. However, there was discussion that flaggers are trained in safety meetings and records of those meetings are kept. So all we are doing is requiring the training for flaggers which is critical. Then being able to, if there is an accident, that we have the ability to determine whether the individual has been trained. It was designed to how we could best do that without creating a burden on anyone.

KD: Go ahead Carolyn.

CL: As with the prior rule we discussed, I have circulated this for comment and have not received any yet and so I assuming that it means it's fine with UP but if I find out otherwise I will say so in written comments.

KD: Thank you.

DR: Same is true for me.

TR: We don't flag.

MR: It's the signal men and maintenance folks that usually do the flagging on the bigger railroads?

TR: From one of the first workshops I brought up the specific question if the trainmen were covered in this rule and I got the word no. I still believe that so I'm not going to object.

KD: You look puzzled about one thing. You can ask clarifying questions also.

DB: No, not really.

DR: Tom brings up a question in my mind. I guess there are rules that require you to flag crossings if you're shoving back across the crossing. Just so that we're clear here, that's not intended to be covered here?

MR: Flaggers must be used when required by any law or rule of the US or the State of Washington or by the railroads own rules or procedures. If it's within any of those things then it's covered.

DR: So, if we make a shoving movement across a crossing which required by rule the trainmen to get off the train and flag that crossing even though it's a different thing than I think you're talking about - you're talking about construction here?

MR: Construction or gates that are inoperative or any other situation where someone is directing traffic. I suppose if they're going out and simply stopping traffic, that may not be covered, I don't know.

KD: Tom Kimbrell, do you have a comment on that?

TK: I think we're mixing. Someone made the comment, construction or a signal malfunction. I think in my experience flagging rules per se for train crews is addressed under GCOR. I'm not positive.

TR: I don't know exactly where it's covered under your rules. I know from time to time we do stop traffic to make shoving moves across crossings. That's why I asked if this was covered when we first started talking about it and I got the answer no so I haven't really paid any attention to it.

MR: You got the answer no from me?

TR: From this meeting, I can't remember exactly where.

DR: In answer to that last question that rule which would require flagging on a shoving movement is covered by the GCOR at least on the BNSF.

MR: Which would be covered by the railroads own rules or procedures. Tom, do your trainmen receive any sort of training at all about what to do to flag a crossing?

TR: No.

MR: None?

TR: Just word of mouth from other crew members unless it's changed since I worked on the ground.

MR: Would it be difficult to incorporate a 5 or 10 minute presentation at safety meetings on these issues? We're talking really pretty minimal types of training I think.

TR: I'm going to have to take a look at it. Are there any specific standards for stop signs or things like that?

MR: There are some things that are . . .

TR: Because when we're riding on trains that go here and there we don't have a whole lot of equipment with us, except for what we have on our person.

MR: There are some alternatives if you don't have the equipment. I'll get a copy of those rules to you, the MUTCD rules and WSDOT rules, and see what you think. We'll wait for comment from you on that. I think that if a person's out on a roadway and is now acting as a road authority type person and stopping vehicular traffic. At least it raises the specter that they're working for the safety of those people. So, maybe some minimal amount of training is appropriate which is one of the things that this is serving - safety for the employee as well as for the vehicular traffic.

TK: I think we're mixing a number a different flagging situations here. Those which would be UTU members flagging a crossing - and as I recall they're not required to have reflective vests or signs or any of that - and one person in that situation can flag a multiple lane highway as I have read the rule in the past. In federal roadway worker rules they have to have specific equipment, reflective vests and signing and there's one flagger for each direction of roadway travel and so you may have a requirement for at least two flaggers at a crossing. We need to look at this a little further to clarify what we need to address.

MR: I think you're absolutely right. I think we need to be clear in the rule what it covers. When I read the first line it seems to cover everything because own procedures would include GCOR as well as FRA rules. If we are going to exclude things then we need to be specific about it so no one encounters a penalty that is inappropriate. We need to make sure that the purpose of the rule - employee safety and public safety - is served.

AR: These rules are derived from the statutes, in particular 81.53.400, 410 and 420, and those statutes require the Commission to adopt rules. They particular address construction maintenance and repair of crossings and overpasses. So it's not dealing with shoving movements and those types of things. If our rule as drafted now covers those situations, I think it was not intended to do that. I think we have to go back and look at the rule that we've drafted and make sure it covers only what the statute requires.

MR: Also, if there is a concern, especially from people that are on the ground about safety of their employees trying to flag a crossing then please raise it. If you have that kind of concern then we can look at it.

TR: We generally wait until the traffic is clear before we go. Just looking at this it talks about orange vests, red flags and paddles. When you're working on the train you don't carry all of those things with you and we just don't have them.

MR: You don't see that as a problem though for your employees to do this type of activity?

TR: The one thing that I liked was when you were talking about maybe two people on a crossing. A lot of the crews only have one person on the ground now so that wouldn't be a good option.

MR: We might run into a little opposition on that.

TR: Basically we need to look at it and make sure this rule doesn't cover train crews.

MR: Ann has pointed out that statute that this is based on really applies to the construction. I'm not sure if a downed crossing is construction. The issue you say of employees going out and flagging - at least stopping traffic, which is a lot easier than trying to direct people through - isn't a concern of the union and members who have to be out there. It hasn't been a problem up to this point.

TR: Not that I'm aware of.

MR: We'll probably exclude that so that we aren't having a rule that covers a non-problem.

KD: Carolyn and Dave - that was your understanding. We weren't adding requirements here is that correct?

CL: I guess that would be my assumption. Although reading the rule now I can see that it was broader than I was thinking it was. I hadn't even thought of it being applicable in a situation where there's a shove being made across a crossing.

AR: I think part of the confusion comes from the statute that requires the commission when it adopts any rules under this section that the rules have to conform to national standards established by the current manual. I think that's maybe where the confusion comes in. We'll see if we can narrow it.

KD: We did add one requirement to maintain the record of the training dates for each flagger assuming that we're not talking about shoving movements.

PB: How about the case of the signal maintainer? It was brought up about having two people on a crossing. I don't know that I'm clear on that.

MR: At a crossing, say a crossing malfunctions, the trains have to stop and protect the crossing at that point. They can do it with one flagger or person. If they want to operate at track speed they can do it as long as they have a flagger on each side of the crossing for each direction of traffic. That's where the two requirement comes in - if you want to continue

operating through that crossing at track speed. It's my understanding that those flaggers have to be appropriate and I think there may be federal rules on those.

PB: I guess what I was getting at was there's come confusion as to whether this applies to train crews or trainmen on the ground at a crossing. How about a signal maintainer situation?

MR: We'll have to look at that. If it was would that be a major problem?

PB: I don't think it's been a problem up to this point so I wouldn't think so.

TR: If you look at line 258 and 259 it talks about flag persons (reads). So basically it was just written originally for crossing things and work sites where there's a crew there all the time. I don't think it was intended to cover anything else. I think we need to put that language back in there someplace so it narrows it.

MR: Again we don't want to impose burdens that are inappropriate.

TK: I'd like a little more clarification. Certainly under the federal rules a signal maintainer is a roadway worker. That person must be protected and safe and if they feel threatened in any way then they have the right to question your direction to perform a task at whatever location. In the situation of replacing a gate arm do you have help in the form of another person or persons to help a signal maintainer?

PD: Yes in that case we would Tom.

TK: The idea is to provide a safe workplace.

PB: I guess what I was thinking about was an activated signal and a lone signal maintainer coming to the site as opposed to a gate off.

TK: I think it's a situational type of thing. I'm trusting that there's some kind of radio or telephone communication and when that person can elect to say I need more help then hopefully it can be provided to assure return to normal flow of both rail and highway traffic.

PB: I think this is for construction type situation so I just wanted to make that clear.

MR: Pat, if a signal maintainer came up to a crossing that was activated and no train is approaching, obviously he has to call in immediately and there has to be a slow order put on that track. What else would you expect that signal maintainer to do at the crossing?



PB: I guess I just wanted to make clear for myself that this wasn't addressing any signal maintainer type situations is all.

MR: Are there situations where signal maintainers are directing traffic?

PB: Yes there could be.

MR: So that's an issue that we want to address in this rule to make sure that if they are directing traffic they have some minimum safety precautions that they don't flag a bus in front of a train. That's why we're looking about some safety training for that person. That requires some safety precautions. Number 2 would be fairly easy to accomplish as far as just a little bit of training.

KD: Are there any other comments on the flaggers proposed rule?

Let's move on. The next rule passenger carrying vehicles. Page eight basically adopts some logging and industrial passenger carrying rules. We got some comments that we didn't think that was sufficient so we went back to the drawing board and looked at what our existing rules were and thought perhaps we could just re-write those and that's what attachment 1 was.

MR: This has gone through a number of changes and that's why you have what you have. One of the other ideas that came up was adopting Code of Federal Regulation requirements on certain types of vehicles so that it would be kind of standardized. Turned out that by adopting some of those CFR's, we were adopting a large number of additional requirements that we weren't intending to do so we dropped that idea for now. On page eight of the handout it does adopt a number of items that L&I have put into effect and they are fairly simple. The attachment 1 is an attempted first draft of re-writing the existing rules in better language. I tried to incorporate all of the sections into one (050) and as I went along and what I found was that it seemed like it was getting more and more confusing and it was better broken out. It doesn't change anything in the current rules except for, I think, on page 1 of the handout, subsection H at the bottom, the first aid kit has to comply with the L&I rule. Additionally have gloves that are capable of preventing exposure to blood borne pathogens which L&I don't require. I think that almost everyone is doing that now. Gloves are required in first aid kits. We would like comments about this rule. It's fairly long and if you need some time to read it and digest it, or comments about whether the possible alternative on Page 8 of the larger handout is most appropriate. Whatever you can come up with for ideas would be much appreciated.

KD: Does everyone want to take a ten minute break and have a chance to look this over before we talk about it?

\*\*\*BREAK\*\*\*

KD: We're resuming the RR Companies Operations Rules. The next item we're going to go to is passenger carrying vehicles.

***NOTE: THIS SECTION WAS INADVERTENTLY NOT RECORDED ON TAPE SO MUCH OF THE DISCUSSION IS MISSING.***

TR: Just looking over both the rules, the alternate rule and the rule on page eight, I see that the language is no longer in the rule any place. Is that a problem.

MR: It may be a problem. It's a good point. The title is passenger carrying vehicles. My intent every time it mentions in the rule passenger carrying vehicles. We'll look at it to make sure. Sometimes when you do that . . .

TR: With . . .

KD: The definition

MR:

KD:

AR:

MR: We looked at this a number of different ways. It would take . . . we're going to rewrite it in plain language later on down the line. Given the number of rules and scope of rules we have to deal with.

CL: You had mentioned earlier Kim that you had received some comments on the rule that was on page eight.

KD: Those were comments from staff.

CL: Could you expand . . . ?

KD: Let's back up to the very beginning. The signalmen union said that their concern was that when a railroad there is an accident that the railroad employees are not covered unless . . . The research that we did internally was inconclusive. One of the areas we were considering expanding in this rule. . . . When there's charter service and they're covered. . . . So if they're operating off road. . . and we weren't going to take on the issue. So, we thought in a charter . . . . When we looked at L&I's rules . . . but we

thought that there were some stuff missing from the original rules. That's why we took another shot at it. I think the unions would . . .

MR: One other thing that our charter service expert brought up the other day. . . . They have to have the appropriate insurances. She believed that in most cases that uninsured would actually . . . There are some issues out there. I know that there are some negotiations coming up. If this continues . . .

TR: I'll explain our position one more time. We are one of the groups that objected. They basically say there's a vehicle coming, you get in it and you go. Uninsured basically anybody can waive that insurance if they want. The railroad does not require their contract carriers to have uninsured motorist coverage. It's not the drivers fault driving the van. For us to collect damages when we're hurt we have to prove fault. If there's a third party at fault . . . I've been to meetings the past three or four days . . . . When you're driving with somebody else, that's a contract carrier. It's just a gray area. A lot of the private insurance companies will not . . . If it's not addressed here, I'm sure I'm going . . .

AR: If this was the appropriate . . . . We cant' get to the third party carriers with this rulemaking. I think our suggestion or our thought . . . . It may be appropriate . . . If not, and if your suggestion of going to the legislature . . . we would like to hear back.

TR: Also, I'll give you a copy of this generic contract. If you want this I'll . . .

MR:

TR:

CL: You say the railroads. Is it all the railroads?

TR: It's from the out source. I got this at a . . . They said it's a generic . . .

MR: One other comment about this rule in general. And there was a notice out of Spokane, BNSF newsletter or some other document . . . So, in fact, at least Burlington Northern is doing substantial . . so that's one of the reasons . . .

TR: We've looked at the contract agreement and it's basically . . .

MR: Thank you and we would like to have a copy of that agreement to look at.

AR: The issues . . . . Not to dismiss the issue because we do think it's appropriate . . .

CL: I don't think I fully understand the issue. The substantive difference between . . . I was just wondering if there are particular items that are not included in the incorporation . . .

MR: I can't go out and spell out . . . The rules that were enforced were specific. Just in abundance of caution, in favor of just kind of . . . We opted or are at least inclined. . . Unless there's a good reason to . . .

CL: Yes I understand that better.

KD: Have you looked at the L&I rules?

DR: It's really going to . . . As far as the BNSF goes I don't think there's any objection. Then you don't run into inconsistencies. We'll get back with whatever comments . . .

KD:

DR: There's DOT rules that deal with certain vehicles. I know I had an extensive conversation . . . driver's age and things of that . . .

AR: I think the original proposal that . . .

KD: No.

AR: We had an internal draft where we were thinking . . . It looked like they may be even broader than what was in the current rule. We would like to get your thoughts. It would be helpful for some of our investigators. We didn't want . . .

KD:

AR: In terms of equipment safety a little . . .

TR: One thing I haven't seen in here is I think there should be something about seatbelts, particularly shoulder seatbelts be required . . .

MR: If seatbelts . . . obviously that is a requirement, however issues do come up in passenger carrying vehicle to provide some input on that. I know there is . . .

CL: I certainly at this point don't feel prepared to comment on that issue. I'm not . . .

KD:

PB: Yes

KD:

PB: I don't have any problem with it.

TR: The reason I brought up the seatbelt issues, because the train have their seatbelts on.

KD: I though this was going to be a very involved issue. . . . then go to staffs proposal to repeal . . .

MR: The only reason for that is that federal government . . . and those are adopted by reference. That hasn't been questioned, but if . . . . Do those things that they would be doing under the federal rules . . . To report it would not be a separate . . .

TK: The bridge safety rules . . . I have . . . it's basically roadway worker stuff.

MR: No.

TK: Very good.

KD: The first issue is to repeal . . .

MR: Yes

KD:

***TAPING RESUMES HERE . . .***

MR: . . . You look at control of alcohol and drug abuse, radio standards and procedures, rear end marking devices - have nothing to do with bridges. Within one of those, I think it's 49 CFR part 214, that includes bridge safety rules.

CL: We have no objection to that repeal.

DR: We have no objection to repeal of the rule and we also think we're coming to a much clearer understanding with respect to incorporation by reference. Our objection was incorporating federal rules for state enforcement but as long as it's part of the federal enforcement program we think that's an appropriate step to take.

MR: Thank you.

TR: Since this rule covered bridge construction, bridge repairs and structure repairs or replacement and our workers don't work under those conditions, I don't have any

objection to changing or repealing this rule and replacing it with federal rules.

PB: No objections.

TK: I still need a little clarification. Train crew members is that a separate issue or apart from the rules? Is everybody in agreement to repeal the state rule?

MR: I think the walkways and handrails are a different issue. I don't see that within the terms of this and I'd have to look at our walkway rule to see if we were discussing that which is something that we'll be talking about tomorrow.

KD: I don't think we address walkways on bridges and trestles.

Let's move to train operations which is staff's proposal to repeal 480-62-120. Train operations in Tacoma. This is the rule that specifically talked to one spot in Tacoma. Staff's research indicated that there's already federal rules that require that they stop. There's GCOR that require that they stop. So we looked at this rule to see if there was a need for writing a general rule instead of a specific rule and we felt that the existing federal rules covered this and we didn't need to have this rule.

DR: We agree that there is not need for the specific rule. There have also been changes in the area that make it a much safer place than it was at the time the rule was written . We agree that it should be repealed.

AR: There is a specific statute that covers basically this same thing. That's another reason we felt a rule wasn't necessary.

KD: We don't want to send a message that we don't care about safety because we are repealing this, though.

TR: That's why I haven't objected to some of these repeals - because there are statutes including this.

MR: One thing, once we get the rulemakings we are going to put together a packet that includes state law, states rules, contacts to make up for different types of problems, and provide those to all railroads and unions so that everybody has a full packet. It's not our intention to ignore or to put aside some of these issues, but to clean up the whole scheme.

AR: I think rules tend to be really useful to explain a statute. Where a statute is particularly clear, there may not necessarily be a need to have a rule. If you have objections Tom please submit them.

TR: I don't have any objection.

KD: The next one has to do with adoption by reference on Roadway Worker's Safety Operating Rules and Statutes and this is a new section. We've discussed this a little bit.

MR: The sections that were incorporated by reference were researched by Scott Barrett who is in a certification program to become a federally certified inspector. It was also run by the specialist, Mark Daniels, to make sure that an operating practices inspector would be involved with and it kind of goes over to roadway worker and those things that all inspectors look at as well. That's where it came from - that's why they were included. All violations of the above rules and statutes will be submitted to the FRA for enforcement action pursuant to the state safety participation program with the CFR listed. Hopefully that's what makes it clear that the intent of the incorporation by reference was not to set up a state scheme but to be part of the enforcement action of the federal government.

KD: Do you have any comments on the way we have written that or does that satisfy your concern?

CL: I think that satisfies the concerns.

DR: There was some confusion as to what the requirements were for the state law and with the explanation that you gave and discussing it with them I think they are satisfied. I don't think we have any objections to the way it's written.

KD: What the issue was around was whether or not the state could adopt by reference federal rules and the Class I railroads felt we didn't have authority to do that and our position was that we have to do that in order to participate in the federal state participation program. The Class I railroads were concerned about if there was a violation on those rare occasions that we would submit it for a federal penalty and also a state penalty and that was not our intention. We're going to do it the same way we've always done it - we submit it to the feds and they determine if there's going to be a penalty.

Let's move on to the next one. We're going to a new proposed administrative process rule and that is on Page 3 - "Grade Crossing Petitions."

MR: This rule has two sections. It basically outlines and provide detail to two different statutes - one is RCW 81.53.060 and it simply provides that petitions must be filed to open or close a railroad highway crossing; construct supplemental safety measures pursuant to RCW 81.48.015(1) which is the whistle ban statute; realign highways; widen highways; construct moveable tracks; change crossing surfaces or make any other physical change to the crossing or to it's highway approaches that affects the crossing

itself. It basically makes clear those instances that petitions are required. This has not been clear. We've had a lot of questions in the past. Those should be addressed early on not later. The second section deals mainly with signals and it just outlines those things that petitions are required for. One of the bigger ones really that haven't been included before are inner ties between railroad crossing signals and highway traffic signals, although we do not have jurisdiction in first-class cities on those issues and that's spelled out in subsection 3. It is really important that these situations be reviewed and thought out among a variety of people before they are instituted and that's the reason for the rule.

- CL: The items in this proposed rule that cause me some concern are in paragraphs 1G and I think the next one should be H - the change of crossing surface. I don't think it's been our practice in the past that we felt we needed to do a petition to do that. Am I wrong about that? I'm not aware that changing from asphalt to wooden planks or that kind of thing has been something that required a petition.
- MR: That has not been required in the past. I was hoping that we could do a rule so that if you upgraded a crossing you didn't have to ask permission, but I was told we couldn't do that - there has to be a petition. What we will do, and I've already prepared a petition that is almost more of a notification as opposed to one of those big long petitions that we've had in the past - all we'll require is to advise what is going to be done, and a sketch of what is going to be done. It just provides the ability to coordinate with the highway road authority - they may have another idea as to what may work at that section. I don't think the requirement will be onerous. It's more of a notification type of thing. There could be an occasion where something that is being proposed would be negotiated so that would result in a better surface being used.
- KD: Could I just clarify this - G & G which should be H - are these additional requirements or have they always been in the statute and we haven't enforced them?
- MR: Technically any change to the method and manner of a crossing is a change. It's never been spelled out or looked at. That's something that our section would like to do - have just a little more of a handle on that issue.
- CL: I'd really recommend that H be eliminated or maybe you should clarify to me what it means. If there's a pothole and we go in and fill it, that is making some physical change to the crossing but clearly it's not your intent that that be something where we would need a petition first. The catchall in the end is a problem for me - it's not clear enough.
- MR: I honestly don't remember why we did that and certainly a pot hole being filled is not what we intended. Again this is one of those things trying to make sure we weren't excluding things that really are appropriate and we may have included more than we needed to. We will revisit that very carefully.



- CL: Is it for instance your intent that if a city was repaving it's street and it comes up close to the tracks that it has to petition the WUTC first or if the railroad is resurfacing a line it might raise every crossing by a couple of inches that it needs a petition first?
- MR: It shouldn't be raising any crossing anywhere under any circumstances unless it's to bring it back up to grade. Once a crossing is in place, the surface level should not be changed ever unless there is a petition. Standard maintenance to bring it up to grade, yes. But if a railroad goes in and raises the surface then it has created a bump and it is causing a traffic danger and it should not be done.
- TK: I've got several things regarding crossing surfaces. Is there some notification required of roadway agencies to the railroad - this is a complaint I receive often from roadway maintenance engineering people - is that county and municipal jurisdictions seal coat or repave a roadway and leave the railroad in a hole as it were. A lot of times the notification is "next week we're going to be in your area and we're going to repave the county roadway" I'd like to see some reciprocal notification here.
- MR: I think that's contained in the notification requirement and if I'm wrong then it should be looked at. It's unfair to the railroads to have a highway go in and make a change that actually makes their crossing unsafe or less safe than it was. If we haven't addressed that we'll make a note of that.
- TK: Again you're asking for a one page notification of change of crossing surface. I would like to see some timeframe on that as well. Sometimes in the field the bread and butter defect I have out here in the field is a rough crossing out there somewhere and I look at it with a railroad maintenance person and it's agreed that it's rough and it needs repair and I would like to see some kind of a timeframe on it - either negotiated or something that nails it down. To correct a defect may not require a new crossing surface but it may require some remedial action in the near term before a rebuild is scheduled for some time further in the future.
- KD: Is your suggestion that in the grade crossing petitions rule we build in how long it will take things to happen?
- TK: In other words in my personal situation, in the inspection field I'll take a citizen's complaint of a rough crossing and I'll visit that crossing and report it to the railroad. Often times I'm told we plan to rebuild that which entails tearing the crossing up and it's a reconstruction then. Often times to correct a defect, reconstruction is not necessary but then again if the railroad elects to reconstruct it generally means that they won't have to do maintenance on that crossing other than minor repairs for 10-15 years. That's why the move currently in my estimation is to move to concrete which is more weather resistant. My problem day to day is getting things done on a timely basis.

- MR: There are two issues that are involved here. One is that we do run into a problem, for example in signal systems, where railroads are ordered to put in a signal and they don't do it for five years. We are contemplating in our orders to put in a reasonable period of time. One of the complaints by the railroads is that it takes a year to get materials, however Harmon Industries indicates that it takes a maximum of 90-120 days. We have a little better fix on timing and the WSDOT is very interested in having timelines in orders as well. As far as crossing surface problems or maintenance or repair problems that's something that can be discussed under the crossing surface standards issue which is still under consideration. We haven't had a rule that would help us on those issues and that's why we're going into that crossing surfaces area.
- KD: The short part of that is what you were just recently talking about would be addressed in a different rule than what needs to be petitioned, which Mike is still working on.
- TK: I just wanted to be an advocate for the railroads in the issue of the chip sealing and the repaving. Often times the Commission becomes kind of a go-between. That's good but I would like to see that the railroads and the road agencies have some reciprocal respect and notification things on-going. So those are relationships that I would certainly encourage.
- KD: Thank you Tom. Any more comments of this proposed rule?
- CL: Are the road authorities aware of this? If in fact 1H would require cities, counties, WSDOT to notify railroads if they are going to resurface - I don't see any of their representatives here?
- MR: Kim, I believe WSDOT has been provided copies and county road administration - I believe they were on the interested persons list and if not we will send this out to them before we make a final rule.
- TK: I would encourage that because the people on the ground perhaps have not been notified by people higher up that these things have been negotiated at a higher level. A lot of this is weather contingent.
- KD: Pat or Debbie do you have any objections to this rule?
- PB: No, we appreciate that Tom Kimbrell - that would certainly be a help.
- KD: Definitions. Please tell us if something needs to be there that's not there.
- MR: I'm going to go back and revisit what Tom said and Pat's comment about appreciating the help. It is the policy of the section that we will act as an intermediary between any

railroad and road authority to assist in working out problems. So any problems that do come we'd be very happy to provide assistance working out problems. We are very interested in having good relations between railroads and governmental authorities.

- TK: I'm thinking as we go along here. Say for instance there's a crossing with three tracks with three different owners. I would like to see some language addressing carrier or track owner too.
- MR: In a general sense that's probably good. There's a section called miscellaneous reporting requirements on the agenda and a proposal for all railroads to report sales, abandonments, those kinds of things for information purposes, so that we can start keeping record of that.
- TK: Very good, thank you.
- KD: Definitions - any comments?
- DR: Nothing pops out at me.
- KD: I'm going to give everyone a few minutes to read that.
- CL The word spur. Later on in the notification section there's a requirement that we give you notice of a main track - I can't remember exactly but it includes the word "spur is abandoned or sold" and the way that I understand the word "spur" I think that's getting down to too small a level of track to be the subject of notification. I can understand the mainline or the branch line sales being. As I interpret the word spur it means a track that only serves one customer - it comes off of a lead track which could serve many. Spur tracks are generally covered by a contract between the railroad and the shipper. If the shipper stops using the rail service there's usually a termination clause in the track agreement where the railroad can give notice that because of non-use that we're going to take out the switch instead of having to maintain it. It has never been the subject of any regulatory authority by the state so far in terms of getting involved in that decision. I'm wondering if in the use of the word "spur" you were thinking of something different than what I think of.
- MR: We don't want to be involved in the decision of whether to abandon or change buyer a track of any sort. The issue comes in a lot of times in Eastern Washington where a grain elevator owns the spur - one operator goes right through the middle of a crossing. We issue a crossing defect to BNSF or the UP or a shortline and we get back "well we don't own that. It is not our responsibility." Then we have to go out and find out who owns the track and who to issue it to and keep track of those issues. Maybe the language in the rule is too broad.

CL: I always get concerned by rules that maybe the railroad won't remember to comply with. If it's a situation of a spur that goes across a crossing - how hard has it been to track it down? Is it a matter of a few phone calls to get your answer - if so, that seems like less of a burden than everytime that there is some change in a spur track to notify the WUTC about it.

MR: Sometimes it takes a couple weeks to find out. We do run into fairly serious problems. (gives example). There are circumstances where knowing in advance will save time and allow us to keep our records up. There will be times when mistakes are made and unless we see a pattern of willful ignoring of the rule - our desire is not to create penalties, but to use it as a way of gaining cooperation and getting a system that will allow everyone to know whose track is whose.

CL: Do you have an inventory of each crossing where you think you know which railroad is crossing each road in the state?

MR: Yes.

CL: How is that updated - by the railroads or by the WUTC?

MR: It's updated several ways. We may inspect every crossing in the state this year, but at least in 18 months. We make changes in the inventory based upon those inspections. We cannot tell if ownership has been changed. The other way is that the railroads are supposed to provide the FRA an update to any changes to a crossing and I assume that would include change of ownership and that might be the way to handle it. It may be on the USDOT form when there's a change to the crossing that it shows a change in ownership - I'll check that.

CL: I will talk to John Tremble as to whether there is some existing mechanism - such as updating crossing inventories or something that is ongoing anyway that might be a better solution for providing this information to you.

MR: That would be great. We don't want to have a rule and then not have anything change.

KD: We'll categorize that under the notification rule and there's a couple of other notifications so when we get to that we'll talk about it but we don't need to repeat what we've already said. Also, we had a written comment deadline that was the first part of this month and we didn't receive much response so we're going to give you another one. We'll use these to create our next draft.

DR: (tape ended - missed some here) . . . tracks on railroad property or that cross a highway grade or a road grade, would that meet your requirements in terms of what you're trying

to do on the notification issues?

MR: It very well might. I meant to pick that up as a possible suggestion that we narrow it down to tracks that cross roadways - public crossings. That might fit what we need more and maybe more automatic in the types of things that Carolyn and I were talking about.

KD: We do have one other issue that we need notification on. When they are sold or changed and it might not apply to spurs but that's our annual reports and how we receive funding from the railroads. If we don't know who to contact for an annual report and to pay fees - that's a problem for us.

DR: That would be a sale of actual railroad property so if you're talking about tracks on railroad property or that cross a public road or grade that would eliminate this issue of spur tracks that we run on to somebody's private property to serve them and then all of a sudden they stop shipping with us and we want to pull that track out or remove the switch. If that's all on private property and it's just a contractual thing it doesn't seem to affect what you're talking about.

MS: You've raised some good points that we need to look at and make sure we're not asking for something we do not need.

KD: Any other comments? I think we can do the adoption by reference defined then before we go to lunch. This would be the place that has the actual dates that get updated annually or every two years. This would be the actual adoption by reference and the other places wouldn't have dates, they will refer to them in here. This says which version is in effect.

DR: I don't have anything to add other than what we've already said today.

KD: Let's move on to the saving clause which is on page 2, beginning on line 77. This is one of those legal clauses.

AR: My understanding is that this is something that the commission is putting in different rulemakings as a standard. Maybe Kim can speak to that - I'm not familiar with it.

KD: It's a standard clause that the Commission is putting in as standard in all rules. Basically this means you have to follow all the laws of the land.

MR: This is just to make sure and clear that the passage of these rules isn't a narrowing of the Commission's jurisdiction - it's an explanation of what is there and it doesn't foreclose using other means like the complaint process to address a specific safety issue.

KD: When Jeff Goltz was asked - he stated it applies whether it is there or not and the Commission wanted it clearly stated on there.

DR: What would be the process for the Commission to impose an additional requirement?

AR: If a larger issue that involved all the railroads, it would be another rulemaking. If there's a particular issue say at a particular crossing, the Commission may impose a more stringent requirement for some particular area that don't lend themselves to general rules but to a particular situation.

DR: What would the process be?

AR: For example, a crossing case - either a city or railroad or the commission would issue a petition and then the other parties would be notified. If the Commission pursues it on its own motion they would send it to the railroad involved and the local jurisdiction involved. There is generally a hearing in front of ALJ then there would be an official order coming out of the Commission. There's definitely an opportunity to be heard there.

MR: Another example would be the UTU filed a complaint and we investigated - it had to do with asbestos - if during the investigation we determine there was something inappropriate going on - that probably would have gone to the FRA but if it had been a state law or rule we could have taken that complaint and put it into a formal process with an ALJ.

KD: When we come back from lunch - commission proceedings covers what happens in that whole process, which is the next rule. Let's break for lunch.

TR: On page 14 where it talks about remote control operations and that the railroad must report but doesn't say who to. Is that just to presume that it is to the Commission? Line 58.

KD: Yes - the Commission. We can make that more clear.

MR: That is an oversight. Yes. Thank you.

KD: Lets come back at 1:15.

\*\*\*LUNCH BREAK\*\*\*

KD: (Welcome back recap) Let's go to "exemptions from rules" on page 3. This was another general rule that we are incorporating into all rules. If there's some reason a

railroad needs an exemption or waiver from a rule - this outlines what the process is. Are there any questions or comments?

DR: Is this rule any different or is it the same as the procedure as it now exists?

MR: I'm pretty sure it is. It's been the practice to do it this way and this may formalize just an on-going practice or just restate a rule.

AR: In many chapters there's a provision about exemptions from the rules and there were no rules implementing those exemptions. Some statutes have statements saying "exemptions". Some of the rules in the past have had provisions for exemptions. This is something the commission is doing in each chapter because it is a practice. It formalizes the process so people know how it happens.

KD: Not a change from practice. Just describes what the practice was. Everyone else agrees with this? Let's go back to commission proceedings.

AR: The Commission uses a particular chapter of the WAC - Chapter 480-09. That governs how the commission will hold hearings and allow people to participate in hearings and how the Commission will make its decisions. A lot of those practices and procedures governed formal rate cases before the Commission. There's a great deal that would not be used in the railroad context that are included in those rules but those are the rules that the commission follows in any formal proceeding. This rule just states where they are and allows people to look them up and apply them to the particular proceeding.

KD: Let's move on to the compliance policy - Page 3 line item 100.

MR: I didn't write this rule but I helped revise it. The concept was to try to provide some indication of the policy of the Commission on what we are trying to do. We are trying to enhance safety and to have railroads comply with the rules and general safety precautions. There's two ways we do this: 1) voluntary compliance through programs which emphasize education, technical assistance; and also 2) Direct compliance program that includes inspections and investigations of railroad operations. It's primarily used to gather information to provide technical expertise and education but then if there's a major problem we can go down to subsection 2 and pursue administrative actions in major safety issues. It doesn't have to be one or another but our preference is to start with voluntary compliance and not move to the other. Our goal is to work in a partnership for safety with all railroads and that's the number 1 of the two prongs of our compliance policy. If that doesn't work then we have the capability and will to go to number 2.

TR: You said you took action against a railroad for non-compliance. What would that entail?

Are there penalties? Did you have to take them to court?

MR: My understanding is that for Commission orders - for direct violations of the rules - we can file a complaint as staff with the Commission and have a proceeding which would impose penalties. As far as going to court - I don't know if we would have to go to court to collect.

AR: The Commission has penalty provisions in RCW 81.04. If a railroad would violate a commission rule or statute that aren't covered by the federal standards, the commission can assess \$100 per occurrence per day penalty against the railroad that would allow the railroad to seek mitigation on that penalty. It's basically a paper process. There's another provision that would allow the commission to assess up to \$1000 per day per occurrence penalty but that involves going to a hearing to evaluate the facts.

KD: We did recently use the \$100 penalty to assess against a shortline for failure to file annual reports and pay regulatory fees. We use it if we cannot get compliance.

MR: The reason we haven't had to use it a lot is that in our experience, the railroads, unions and employees all really do want to operate safely. When something is brought to the company's attention that usually solves it. There are borderlines and gray areas. In certain circumstances an injunction can be obtained. There's a specific reference in 81.04 about that.

AR: If there was something clearly egregious and the railroad wasn't willing to comply then one of the options is to seek a cease and desist order. We've never had to do that.

KD: Comments on compliance policy? Let's move on to exemptions on cities, 480-62-040. Staff is proposing an amendment for clear writing. The only city that qualifies for this particular rule is Seattle. They are the only one with the population of this amount.

MR: This is just a statement of the statute so that it's in the rules.

KD: The flagger rules and traffic control device rules do not apply to the City of Seattle and if Vancouver or Spokane get over 400,000 it would apply to them either.

CL: Do you know why some rules do not apply to first class cities and then there's the secondary 400,000?

MR: The first class city stems back from whenever - it's lost in the history - and at that time the larger cities wanted to maintain control. When states could and cities could enact ordinances that controlled railroad operations in their own town. It has just kind of held on.



- AR: Legislative history has not been researched.
- KD: Any comments or opposition to making these amendments? No. We have agreement. Proposed reporting rules, page 15. This is a new rule.
- MR: During the process of our workshop and after some research we found out that the Governor's office issues commissions to railroad police officers. It's unclear to what extent we get involved with rules involving railroad police. This is simply a notice rule. The inspectors are often out on the rail and can have contact with railroad police. We need to know who we are dealing with. We have started a fairly aggressive anti-trespassing program which has been very successful as far as getting cooperation of law enforcement. This allows us to help coordinate a lot of those activities. Finally there is a requirement in a WAC rule that before a railroad police officer can exercise any police powers in this state they have to have certain types of training. We simply need to know who is out there and why and be able to coordinate communications between railroad police and local/state authorities.
- KD: Comments?
- DR: I need to ask what RCW 81.60 says about commissioning. It's been a while since I looked at it but it seems to me there is a federal rule that applies and then the state rule.
- AR: Yes there is a federal rule that applies. It's a reporting requirement for the railroads to report to the state certain attributes about the person. What sort of training they received, their qualifications - that allows the state to know who is out there. The statute allows the Governor to appoint special police and states the requirements.
- DR: Doesn't the federal rule talk about an officer that's commissioned in one state can operate in another state? Is that intended to be covered here? There's no problem with reporting - no opposition. It's unclear if this rule says what we want it to say so that you get that result.
- AR: We want to know who is operating in this state and who is covering what areas.
- DR: Is there a gap there where you could have someone who is not covered by RCW 81.60 who is nonetheless operating in the state in some function under the federal regulations?
- MR: This rule initially contained some language about notification requirements for people who come into the state but have commissioned elsewhere. I can't remember why that language was taken out. It was an objection raised by someone and it was taken out. Now it really only covers - I think - look at Section 1. It's very likely that the only people covered are those commissioned within this state. I think we decided that usually when someone comes in from out of state it's usually on a temporary basis and possibly

we don't need to know that.

AR: We did try to cover that under subsection 3(d). There may be a gap, we can go back and look at.

DR: For our railroad there isn't. We go through the Criminal Justice Training Center and I know they are all commissioned under the state rule.

AR: We'll take a look at that. The intent is to capture those folks who are working here on a continuing basis that we might need to have a relationship with and be able to contact.

KD: Any other comments on railroad police officers? Let's move on to "Miscellaneous Reporting Requirements" on page 12.

MR: The attempt here was to address certain information that we need to continue to do the type of analysis we're doing for safety purposes. We've talked about subsection (1). I think that some excellent points have been raised about some of the things we may not need to know. One of the primary things we were aiming at - any track that goes through a crossing - who owns it, has it been transferred, so we can contact that person. For subsection 1 we do have a lot of crossing with multiple owners. The second one has to do with accident prediction model for us to use and is required by FHWA for administration of Section 130 money (federal monies used for crossings.) The third section is a requirement that helps us know who to contact if an emergency occurs. Number 4 - track profiles - we've had some in the past and access to others - but we don't have them all. Questions come up that really require the track profiles. Number 5 - is simply copies of timetables that we need to have to answer questions and just to be aware of what is out there.

CL: We've already discussed Subsection 1 - spurs - and I will try to think about some alternative way to provide information on who owns the track through a crossing. I'm surprised by you saying that subparagraph 2 is something we already have to gather for the FRA. This is something that is extremely difficult to do. Are you saying that we are already gathering this in some other context?

MR: This is information that I understand is being reported to the FRA. I could be wrong.

CL: This is an incredibly difficult job for the people who would have to gather this information. There isn't any easy means to gather this for each crossing. Could you get back to me if we are already gathering this from some source I didn't happen to contact?

MR: I will do that. We can discuss these issues and where that information is being gathered and sent and I will talk to the FRA. If not now, the information will be required in a few

years.

DR: I had an understanding similar to Carolyn's. Tom - is there anything that the switchmen would generate that would lead to this kind of information?

TR: Not that I'm aware of.

DR: I guess we have to look at it. If you can give us any kind of leads we can talk to the right people. Maybe it's generated on a system basis rather than regionally here.

AR: I had a question. The accident prediction model comes from FRA or from . . . ?

MR: The one we are using is actually the USDOT accident prediction model. As far as through trains we often get that information from superintendents' offices. Lori Halstead has this information.

AR: We need to look at this proposed rule and try to make it less administratively troublesome.

KD: One clarifying question: The dates, June 30 and Dec. 31 - is that a workload issue that we want to not have one day to enter it in or . . . ?

MR: Actually that doubles the work because we have to enter it twice per year since things change. The specific dates were arbitrary and are flexible.

AR: The goal of gathering the data and putting it into the model is to predict where problem areas are so we can look at problems in the crossing - is that the purpose?

MR: That is one of the purposes - to identify problems and prioritize which crossings need attention first. That is an FHWA requirement.

CL: For some crossings it will make a difference what season we are talking about. I'm going to have to go back and knowing the reason why you want this information, see what is available. We should come back with some suggestions to you as to what kind of information we could provide that fits in with information that we are already gathering.

MR: Suggestions from railroads are most valuable. I think it's best described as an estimated average that way we aren't that refined. We don't need day by day or month by month exactly how many moves are being made.

TK: There are two documents that I refer to occasionally that are supplied by the Class I railroads that provide information. One is the annual density chart. It shows how much

traffic is going east and how much is going west. The other is the condensed track profile used by engineering departments to program rail wear, replacement rails, tie programs and things like that. Those documents are readily available. The FRA in Washington DC would like to have on hand both of those documents. But they are not normally available on a regional level. I don't know any shortlines that produce those documents but they could have other records.

KD: Do you produce anything that gives an idea of how often you move trains?

PB: The only thing I can think of is the information Tom was talking about but no, we don't .

MR: If I came over and sat down with you and took a look at your line on the map I would assume you would be able to give me an idea of how many moves are being made generally. I think that probably is the kind of thing we are looking at and maybe that should be done on a visit that we do annually or semi-annually.

CL: I want to talk about subsections 4 and 5 - track profiles. Why do you need a rule in this area? Have there been problems? It's the problem of having a regulation that we might not remember to follow. We don't have these distribution lists of track profiles and also UP is planning to put their track profiles on line. I was told that they wouldn't have a problem with you getting a password to look at those on line. Why do you need a regulation here?

MR: I don't think there's been a problem. This is more of setting out the more important pieces of information that we like to have and setting it out in rule form as notice that these are the things we are looking for. The way we operate, if something didn't come in and you weren't on line - to be able to call up and get it is normally the way we would do it. Having it in rule provides a tool to require it if there is any objection.

CL: "Upon request" would be better.

MR: We will look at it. If it would prevent work for you, great.

AR: If it's on line and the password is provided then there's no need to request it. In the case of a railroad where it's not on line that would cover the situation.

KD: We will mention that we still have no password to UP's database. . .

MR: Do the shortlines generally have track profiles of some sort and keep them up fairly regularly?

PB: It's been from an inspector coming in and asking for a track profile or a time table. I

don't see a problem with the way it's going right now.

MR: We will try to go in direction of formalizing the way it's going now. We'll request it and you'll provide it.

AR: Carolyn, are timetables also going to be put on line?

CL: It's something that's being talked about. It's not a firm plan like it is for the track profiles. I think everyone who goes out on the track to inspect has timetables don't they?

MR: No, I don't believe they do. That could be an internal issue more than an external problem.

KD: Pat, do you have access to internet and would this be the kind of information you could post on your home page so you wouldn't have to send it in?

PB: Yes.

MR: We wouldn't require it but if it's there it's an opportunity and an option. I also have heard that it takes quite a bit to keep information up on a web page.

TK: In my duties I don't want to be on the track without the good graces of the dispatcher and permission to be there, as well as timetables and special instructions. Those documents are company policy or part of the GCOR to have those in your possession when you are on the track. All those are provided to me upon request. I don't see a problem with the availability of the documents. I would like them to be available when we request them as part of our inspections.

MR: Your points are well taken. I understand you to say that you are most interested in when you are out and about and talking with a railroad employee that they have the track profiles, etc. that they are supposed to have to ensure their safety and yours.

TK: Yes. I'm real happy to see they have other documents as well.

MR: This rule will not change the requirement to have documents to refer to.

TK: Understood.

MR: Any other comments?

CL: In terms of the timetables I would prefer to see this as an "upon request" item also. If an inspector goes out on the track it's important that he have access to the very latest

amendments. Upon request would cover this.

MR: Yes. We will look at language.

SB: I disagree. I have a hard time getting timetables. Upon request sometimes does not get this done.

MR: Communications may be a problem. If there's a rule that says "upon request" - if we don't know who to call could be a problem. That's an operational thing we can work on.

KD: Is there anything in these rules that would be bothersome for a shortline to comply with?

PB: No.

KD: Any more comments on reporting rules? We'll move on to "Annual Reports", page 14.

MR: This is a rewrite of existing rules for clarity. There are no additional requirements in this rule.

KD: Any comments on that one? Does anybody know the definition of Class 2 and Class 3 railroad? I didn't know the difference between them?

MR: The definition has to do with the amount of revenue secured by a railroad during the course of a year. If it's over \$20 million and below a certain amount it's a Class 2. Below \$20 million is Class 3. \$20 million sticks in my head. That information is contained in the surface transportation board regulations on reporting to them for economic statistics.

KD: This means something to the railroad industry, right? I don't see any other distinguishing language in the rule that you do things differently if you're Class 1, 2 or 3 except for here. It appears that Class 2 and Class 3 use the same form.

MR: Yes. The Class 1 railroads are like the Burlington Northern that have to do very extensive reporting to the surface transportation board. The Class 2 and 3 that earn less income have different reporting requirements which are less extensive. The information that we are asking is information that they have to provide to the surface transportation board. We've never had an objection that I know of. At some point we may want to go through that. That's for another day.

KD I know on the annual reports we ask for different things.

MR: There's no distinguishing between Class 2 and 3. I'm not sure there would be any reason

to. I think all of the railroads in our state - the shortlines - are Class 3.

KD: Does that mean something to shortlines?

PB: No, not normally.

KD: That was the last of our rules. We have the time available to revisit any of the previous issues covered at our last workshop.

MR: I do have a request for us to look at briefly page 18. We have not had the opportunity to put together a workshop to discuss reasonable and objective standards. I would like to go over what was proposed so that we know where there's clearly disagreement. The first section - crossing surfaces - subsection 1 and 2 is simply straight out of the statute, 81.53. It's the requirement for maintenance. That is specifically out of statute and we don't have much choice on that.

CL: Is that unless agreed otherwise in the statute?

MR: Always if there's agreements - there's a specific section that says railroads, cities, etc. can agree differently.

AR: I'm not familiar with this section enough right now to say one way or the other.

MR: That's an interesting question. I honestly don't know the answer to that.

CL: It might be a point of - if in fact it says that . . .

MR: We'll note it as a question. Subsection three - roadway approaches must blend into crossing surfaces . . . Does that make sense to everybody? Instead of having a five inch gap between the roadway surface and the crossing surface and this would probably be an obligation of the road authority. I don't know for sure.

KD: I just want to clarify our process. I know that the railroads didn't bring their engineers to this meeting. What you are looking for is items that we can agree on here that won't be brought up in a future meeting?

MR: No. If people could say that we agree 100% that would be great, but I didn't expect that. I was hoping that people would take a look at this and get back to us with some information about which of these items really aren't a big deal and which ones are. For example, the next one four, is the one that David Lutz indicated would be an impossible standard. Number five may not even be reasonable to consider. The purpose of that was people in wheelchairs that get stuck on crossings. There was an ADA standard proposed

but never adopted. That was just a rough idea. Those two clearly are things that have to be discussed in detail. Number six crossing surfaces must not be broken or lose. I don't want to go into a full working session and hammer out something that's not an issue. One of the things that Tom Kimbrell mentioned about notice is covered in number 10. I would really request that this be looked at before a working session to see if there are areas of agreement and what the specific concerns are. On 4 and 5 I know what they are.

DR: Do you want Mike ? to give you a call and say "these are the issues I see that we can talk about?" Do you want us to write something formally to you?

MR: Informal or formal, doesn't matter. Maybe first of December might be more logical for the workshop. I'm not sure that John, Mike and I are going to have that productive a session unless we get more input.

KD: I think maybe we're looking for narrowing the issues on this rule.

CL: Again I would much prefer that you have something that you could look at case by case. You really have to be able to make priorities and determine what needs to be done where. I think it's still going to present us with a problem of how to prioritize. I have preferred the complaint-based approach to it. If the motorists are telling someone something is unsafe that seems the better approach to identifying the higher priority crossings.

MR: Maybe a general rule like that would work. One of the problems we run into, we have crossing inspectors that look at every crossing at least every 18 months now. They go out and see a bunch of broken pavement in front of a rail. They write up a defect and send it in to the railroad and two years later they fix it. Those are the kind of things we run into. If we write a defect report we want it fixed. If we leave it generalized then it becomes the opinion of the inspector and that can lead to problems. The point is well taken.

KD: Do the Class 1's have existing standards for their crossing surfaces in their engineering manuals? Maybe they could bring those.

CL: If they did they'd be for initial construction. There's an on-going maintenance issue for crossings. They'll start off in one condition and gradually they deteriorate.

KD: Maybe if we started with those standards and then in talking with your engineers came up with - at this point of deterioration then you need to do the maintenance on it. This range of area that you could operate in?

CL: As I think we discussed at the last workshop on this issue that can become very



problematic depending on the amount of traffic that's using the crossing, whether there's a stop sign and everybody is stopping. There's so many variables in there.

MR: (tape ends - missed some here) . . . where you have some planking and very little ADT but you have weather conditions and trucks that beat the heck out of it. That needs to be addressed at least from a compliance policy and standards policy too.

PB: If we had to take care of every loose . . . we try to keep up with that but with the grain trucks beating those crossing like they do it's very hard to keep them up. It can be very expensive.

MR: That's all I had on this issue. I'm glad we re-acquainted ourselves with some of the discussions we had before. It gives us some food for thought on going forward.

KD: To recap: the railroads will re-look at this and come back to us on if there is any way to narrow the focus. You will have you engineers either in writing or by telephone and they'll have a discussion before the meeting about this rule. We'd like to make sure that the shortlines get included in this too. When we impose new standards then we are required to measure what the cost is for those new standards. If we find there is a disproportionate cost associated with the new requirement we can as an agency choose to mitigate or offset that. If this is going to be very expensive we need you to tell us what kind of mitigation measures would you want to have. How could it offset the cost for you? Would you also mind giving Mike Rowswell a call after you have a chance to try and figure out what the effects would be on your company?

PB: Yes we will.

MR: Tom and Pat and I might be able to sit down and just kind of discuss what Tom has seen out on the rail. Also get Pat's input.

PB: Yes. We can get the road masters involvement too.

TK: Yes, I would like that very much.

MR: I'll give you a buzz and we can talk about that.

KD: You're proposing to do that in lieu of him independently having to go through the rule.

MR: Pat's going to get his road master involved and I think we can have a really fruitful discussion over there.

TK: Thinking of the rulemaking process - in any engineering situation - roadway, railway,

bridge or whatever, you're talking design standard and then the practical standard, which is everyday operation. Certainly Pat and others are fighting heavy tonage trucks and lightweight crossing surfaces. I'm glad we're visiting this issue because it's a problem.

KD: Did anybody want to revisit any of the other rules? Except for Walkways. That's tomorrow.

PB: I would like to touch on the remote control issues.

MR: What page?

TR: 14.

KD: We'll let Mike introduce that one.

MR: It's simply a request for information. It provides us the opportunity to monitor those situations. We don't have an intent to control them at this particular time. The FRA is looking at this also and may come up with some rules - they may want to avoid it too. Also, we found that we can be an ability to address complains. We had several citizen complains on the PS&P which is the only railroad that's operating remote control. We had several complaints and we were able to go out and investigate those and to say from a governmental safety standpoint that there was no problem with the system. That's kind of the purpose of these rules. Remote Control - we mean the train is being controlled itself in an operational standpoint. We're struggling with the definition. But the little guy on the ground with the remote control unit is what we're talking about. The PS&P has made an objection to this rule and maybe you have some thoughts too.

PB: No, I don't. I just wondered basically what had been discussed. I think it needs to be controlled.

MR: In looking at this and getting complaints, if we get any more that come up with the operational issues on safety, then we'd have to address those. The PS&P went through an extensive process with the FRA to look at their operation and kind of give an informal blessing that they were doing things that were appropriate to avoid safety problems. At this point I don't think any of the major railroads are considering it.

KD: Any other issues?

TR: I was wondering any significant dates upcoming when we'll be meeting again?

MR: That's on the agenda.

KD: Tomorrow we are going to be doing a walkway rule. Our next date is the 30<sup>th</sup> of this month when we report back to the Commissioners. We're looking at getting a new draft out to the stakeholders in early January on this particular rule. One more stakeholder workshop late in January. Then we'll do our CR-102 in February some time.

MR: We learned from our last go round that we want to put all the comments we get into a draft so we don't get into the adoption meeting and find that we've missed something or that there's some new considerations that weren't considered.

KD: We've already had our deadline for comments on this draft but we'll still accept them. If you choose to send us written comments I would say have them in no later than the end of this month.

TR: Basically there won't be any more workshops except for the one tomorrow?

KD: Correct. There's going to be the crossing surface standards . . .

MR: But that's a small working group.

AR: We're trying not to ruin anyone's holidays.

MR: They start early in December and go all the way through for a variety of people.

KD: (Brief overview of plan for tomorrow's workshop)

\*\*\*END\*\*\*