# INTERAGENCY AGREEMENT

Between

## WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

And the

## WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES

The Washington Utilities and Transportation Commission (UTC) and the Washington State Department of Labor and Industries (L&I) enter into this Agreement under Chapter 39.34 RCW.

## RECITALS

1. L&I, under the Washington Industrial Safety and Health Act, RCW Chapter 49.17 (WISHA), has jurisdiction to regulate and enforce employee occupational health and safety matters through its Division of Occupational Safety and Health (DOSH).

2. UTC, under RCW 81.04.540, has regulatory jurisdiction over the general safety practices of railroads for the purpose of participating in the enforcement of federal railroad safety regulations where Washington State law, rules, regulations, orders, and standards are preempted. Federal railroad safety regulations are codified in Title 49, Chapter II, of the Code of Federal Regulations. These regulations address some aspects of railroad employee health and safety.

3. Because there is an overlapping of jurisdiction pertaining to railroad employee health and safety matters, it is appropriate for the two agencies to enter into an agreement outlining their respective roles and responsibilities.

4. L&I and the UTC entered into an interagency agreement in 1981 that described their respective roles and responsibilities with respect to railroad employee health and safety under the laws in effect at that time. The two agencies have enjoyed a cooperative partnership and wish to continue that partnership. They have revised and updated the 1981 agreement to incorporate changes in state law, and to address subjects not specifically addressed in the 1981 agreement.

5. This agreement constitutes an allocation of resources between two state agencies. It does not create any private rights or obligations enforceable by a third party, and may not be enforced by a third party.

## PURPOSE

The purpose of this Agreement is to describe the respective roles and responsibilities of L&I and the UTC with respect to railroad employee health and safety.

## DUTIES OF THE PARTIES

1. Standards and Regulations:

   a. The Assistant Director of Transportation Safety at the UTC shall receive any and all standards concerning occupational safety and health from L&I, including statements of inquiry and notices of proposed rules under the Washington Administrative Procedure Act, RCW Chapter 34.05.

   b. L&I shall receive any and all standards concerning occupational safety and health from the UTC, including statements of inquiry and notices of proposed rules under the Washington Administrative Procedure Act, RCW Chapter 34.05.

   c. The agencies receiving standards, revised standards, proposed standards, consultative requests and requests for variance pertaining to occupational safety and health, shall review said standard for the purpose of identifying conflicts and potential problem areas. This review shall, whenever possible, be done within thirty (30) days and the result submitted to the originating agency in a timely manner thus allowing an orderly standard setting process.

   d. Whenever possible, all of the involved agencies shall adopt and enforce identical standards.

   e. Where standards do conflict and are not compatible, the inspecting agency shall have jurisdiction. However, the inspecting agency will consider the other agencies' standards.

2. Inspection Jurisdiction:

   Due to overlapping jurisdiction, inspection jurisdiction will be apportioned as follows:

   a. In general.

      (1) Fixed sites. L&I will be responsible for inspecting fixed sites such as railroad shops, offices, buildings, and associated sleeping quarters.

      (2) Rolling stock: The UTC will be responsible for inspecting railroad rolling stock and operating equipment, such as railroad cars, locomotives, track, roadbed, and associated devices.

(3) Contractors. L&I will generally be responsible for inspecting entities operating under contract with railroads. Staff from the UTC with certification under the Federal Railroad Administration may also inspect/observe contractors under the Federal Railroad Administration roadway worker protection regulations.

(4) Joint Inspections. Personnel from L&I and the UTC may conduct joint inspections.

(5) Occupational health and safety relating to ventilation, noise exposure, and radiation involving shops and other buildings used by non-operating railroad personnel are the responsibility of L&I.

(6) Occupational health and safety relating to ventilation, noise exposure, radiation for railroad facilities such as railroad yards, and roadbeds or along the right-of-way are the responsibility of L&I.

(7) General sanitation and shelter controls relating to railroad mobile facilities such as locomotives, cabooses, passenger and employee camp cars and railroad maintained sleeping quarters are the responsibility of the UTC.

(8) General sanitation and shelter controls relating to railroad static facilities such as terminals, yard offices, stations, shops, engine houses, section headquarters and other office work areas are the responsibilities of L&I.

(9) The UTC will be responsible for personal protective equipment regulations associated with railroad operations. For example, personal protective equipment regulations would apply to employees involved in uncoupling cars, operating locomotives (train and engine crews), or handling maintenance track work in railroad yards and maintenance work along railroad right-of-ways. The UTC will also be responsible for personal protective equipment regulations associated with safety hazards in railroad bridge work. For example, fall protection, hard hats, etc., are the responsibility of the UTC.

L&I shall be responsible for all other personal protective equipment regulations for railroad employees, including occupational health hazards (chronic chemical/hazardous material exposure) associated with bridge work.

(10) Medical, first aid and fire protection regulations for non-operating railroad employees at static facilities are the responsibility of L&I.

(11) Medical, first aid and fire protection regulations applying to operating employees on all rolling stock (cabooses, locomotives, and passenger equipment) are the responsibility of the UTC.

(12) Those railroad shop facilities, such as locomotive and car shops, and other maintenance shop facilities where compressed gas and compressed air equipment may be used, inspection and handling regulations of compressed gas and compressed air equipment are the responsibility of L&I.

(13) The shipment and transportation of compressed gases shall be subject to the United States Department of Transportation, Hazardous Materials Regulations, and shall be subject to the jurisdiction of the UTC.

(14) Material handling and storage regulations are the responsibility of L&I except where general requirements have application to the operation of railroads (i.e., pertaining to locomotive cranes and other on-track vehicles that are used for maintenance-of-way and other purposes).

(15) L&I regulations involving machine and machine guarding, hand and portable power tools, welding, and electrical standards apply according to their terms in railroad shops and other work places except electrical standards involving railroad rolling stock (i.e., locomotives, cabooses, camp cars, passenger cars) are electrical rail systems. **Note**: Other work places would not include the track and track structure and adjacent right-of-way where such work may affect the operation of railroads.

(16) Toxic and hazardous substances: Regulations are the responsibility of L&I except in the shipment or transportation of such contaminants by railroad rolling stock.

(17) General industry construction standards are the responsibility of L&I except said standards would not apply to hazardous construction working conditions that fall within the UTC's exercise of authority relating to the safety of railroad operations. For instance, bridge maintenance and construction, and track maintenance and construction affect the safe operation of railroads and would be under the jurisdiction of the UTC. Where structures are constructed adjacent to tracks that Common Carrier Railroads operate on, the UTC's Clearance Rules and Regulations would be applicable.

(18) Walkways located within the boundaries of a yard: L&I will inspect walkways located within a private rail yard as defined in WAC 296-860-300. If an inspector observes noncompliance with the rules of the UTC, the inspector will report the suspected violations. The UTC will inspect all other trackside walkways and railroad yards. If the inspector observes noncompliance with rules of L&I, the inspector will report the suspected violations. The UTC will attempt to resolve the areas of noncompliance. If the areas of noncompliance are not resolved within a reasonable length of time, the Washington UTC will forward this information to L&I in accordance with Section 3 below.

(19) Switches: The UTC will inspect switches within rail yards.

3. Reports

a. Inspectors from the UTC will prepare inspection reports and violation reports and submit them to the Federal Railroad Administration as required by federal railroad safety enforcement procedures.

b. If a UTC inspector observes suspected noncompliance with rules of L&I, the inspector will report the suspected violation to the L&I.

c. L&I will issue citations in accordance with WISHA and other applicable laws.

d. If a L&I inspector from the DOSH program observes noncompliance with the rules of the UTC, including federal railroad safety regulations that the UTC has adopted by reference, the inspector will report the suspected violations to the UTC.

e. Upon request by either agency, the other agency will make its employees available to participate in any administrative adjudicative proceeding or court action that may be commenced to address suspected violations.

4. Complaints and Referrals:

Complaints and referrals shall be handled in the following manner:

a. When either of the agencies involved with this agreement receives an employee complaint concerning occupational health and safety, a copy of the complaint shall be provided to the other agency to the extent allowed by law.

b. When either of the agencies involved with this agreement receives a railroad employee discrimination or whistleblower complaint, staff shall forward it as quickly as possible to the DOSH Whistleblower program for assessment.

c. The Utilities and Transportation will investigate complaints alleging noncompliance with federal railroad safety regulations, and will determine whether to refer suspected violations to the Federal Railroad Administration. L&I will investigate complaints alleging noncompliance with WISHA and rules adopted thereunder and will determine whether to initiate enforcement action. Either agency may provide assistance to the other in conducting the investigation.

d. The agency handling the complaint will report any action taken to the other agency.

e. In cases where the complaint falls into an area where jurisdiction is not clear, the matter shall be decided by consultation among the involved agencies.

It is believed that this agreement shall not only resolve conflicts, but shall also provide better service to employees, employers, and the general public. These procedures should improve the operations of the two agencies involved in railroad matters and eliminate unnecessary duplication of effort. Any problems not resolved shall be handled by consultation among the involved agencies.

**DURATION**

This agreement shall remain in effect until terminated upon written notice by either party.

Director
Department of Labor & Industries

Date 7/1/14

Executive Director and Secretary
Utilities & Transportation Commission

Date 7/7/14