TR-230876

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ASSOCIATION OF AMERICAN RAILROADS

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November 20, 2023

Kathy Hunter
Acting Executive Director and Secretary
State of Washington
Utilities and Transportation Commission
621 Woodland Square Loop S.E.
Lacey, WA 98503

RE: *In the Matter of the Rulemaking Petition Submitted by SMART Transportation Division*, Docket TR-230876

Dear Ms. Hunter,

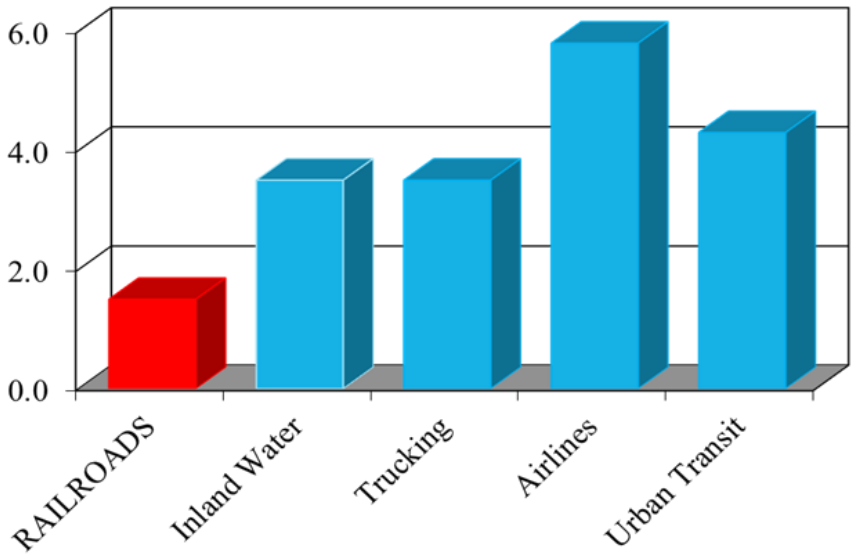
I write on behalf of the Association of American Railroads (AAR), which is a non-profit trade association whose membership includes freight railroads that operate 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service. AAR's members operate throughout the United States, including in the State of Washington.

AAR has an interest in the Petition for Rulemaking filed on October 9, 2023, by the SMART Transportation Division (SMART Petition), which was assigned to Docket TR-230876, because it will directly impact AAR's member railroads that operate in your state. The SMART Petition requests that that the Washington Utilities and Transportation Commission (WUTC) initiate a rulemaking to implement certain "experience requirements for employees of regulated railroad companies." AAR is commenting on the SMART Petition because the relevant facts and law can only lead to one conclusion: it must be denied.

<u>There is no safety justification for initiating the rulemaking.</u>

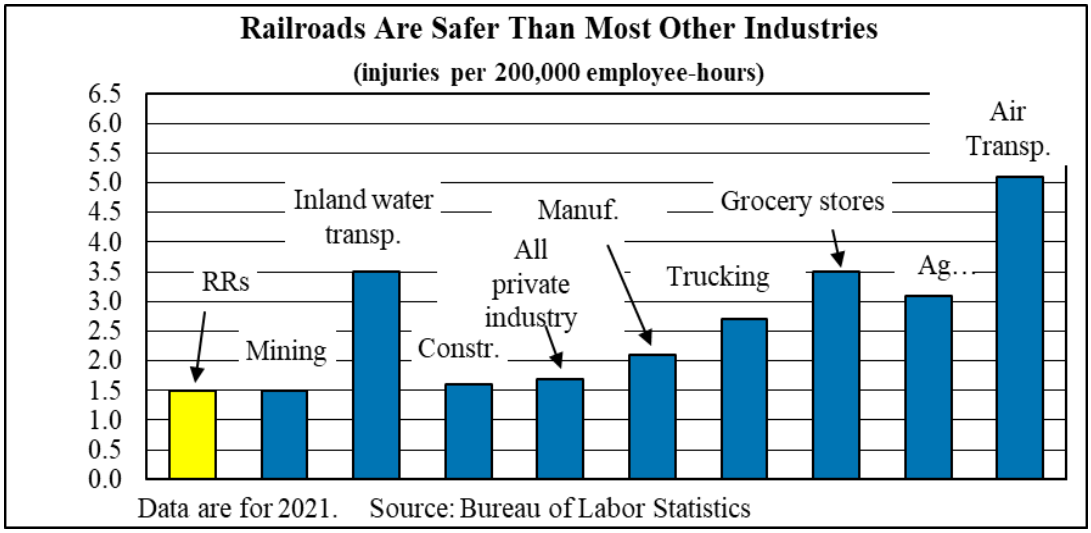
The safety of employees and the communities along train routes is top priority for freight rail companies. The last decade was the safest on record for railroads. The train accident rate per million train-miles has dropped 23% since 2000. Railroads also have reduced employee casualty rates by 47% since 2000. The safety record for railroads compares favorably with other transportation modes and industries. According to the Bureau of Labor Statistics, railroads have lower employee injury rates than other modes of transportation.

Lost Workday Injuries & Illnesses per 100 Full Time Employees, 2021



Source: https://www.bls.gov/iif/oshwc/osh/os/summ1_00_2021.xlsx

Data from the Bureau of Labor Statistics also demonstrates that railroad employee safety is amongst the lowest across a broad swath of industries.



The railroads' safety record is the result of significant investments in effective technological improvements and company-wide safety programs that have driven safety improvements. Railroads have invested billions of dollars in positive train control (PTC) systems, which are designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zones, and movements of trains through switches left in the wrong position. PTC is now operational on approximately 58,000 freight and passenger railroad route miles.[1] Railroads also have developed and implemented sophisticated programs related to training, qualification, and oversight; system safety; risk reduction;

[1] https://railroads.dot.gov/research-development/program-areas/train-control/ptc/positive-train-control-ptc#.

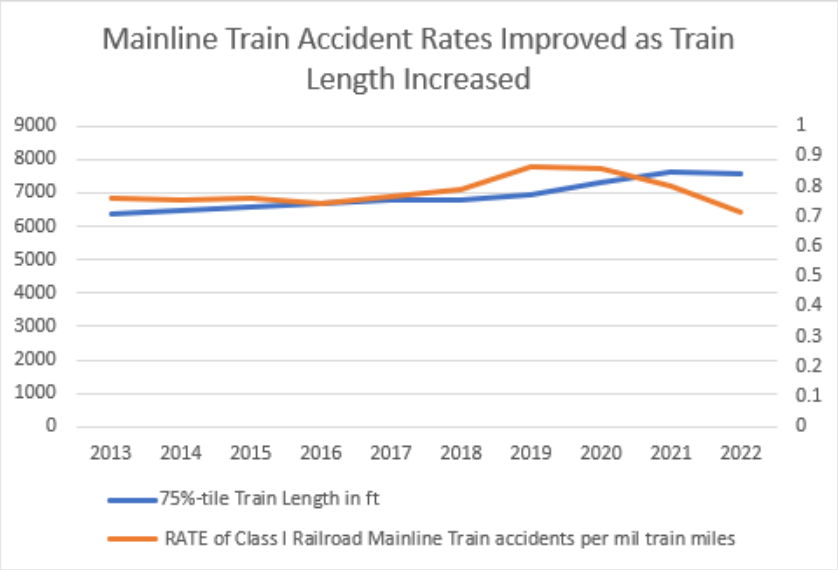
and fatigue risk management programs both voluntarily and in response to new FRA regulations. Indeed, the railroads' focus on employee training, industry investments, and the strategic use of technological enhancements have driven down the frequency and severity of railroad accidents and incidents over time.

Railroads have robust training programs for operating employees.

Railroads employ rigorous on-the-job training to ensure that train crew employees have the requisite skills to perform train operations in the territory for which they are operating. FRA regulations require locomotive engineers to demonstrate proficiency in operating trains in the most demanding class and type of service before becoming qualified on a territory. 49 CFR 240.127. Additionally, as required by FRA regulations, railroads provide continuing education for certified locomotive engineers. *Id.* § 240.123. That continuing education requirement ensures that "each engineer maintains the necessary knowledge, skill and ability concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics as determined by a qualified Designated Supervisor of Locomotive Engineers), and relevant Federal safety rules." *Id.*

Similarly, FRA regulations require that train conductors demonstrate that they are qualified on the physical characteristics of the territory over which they will perform service. 49 CFR 242.301. As with locomotive engineers, FRA regulations also require railroads to provide continuing education for certified conductors. *Id.* § 242.119. FRA's continuing education requirement ensures that "each conductor maintains the necessary knowledge concerning railroad safety and operating rules and compliance with all applicable Federal regulations, including, but not limited to, hazardous materials, passenger train emergency preparedness, brake system safety standards, pre-departure inspection procedures, and passenger equipment safety standards, and physical characteristics of a territory." *Id.*

Railroads comply with FRA's training and qualification requirements by conducting skills testing of engineers and conductors to ensure that they are appropriately trained to conduct safe train operations within the territory that they are operating. This includes the types of scenarios described in SMART's petition regarding train length, geography, and weather conditions. As an example of the type of advanced, scenario-specific simulation training Class I railroads provide their engineers, simulations offered by one Class I include a variety of trains in excess of 7,500 feet (several exceeding 14,000 feet) and with various tonnages, including mixed freight, double-stack and intermodal trains (all with distributed power), grain and coal trains operating in unusual conditions, and mixed consist trains. Also offered are numerous territory-specific simulations for distributed power coal trains, all exceeding 12,000 feet and with tonnages ranging from under 5,000 tons to over 35,000 tons. Other Class Is offer similar simulations involving trains in excess of 7,500 feet. Combined, these and other strategies help ensure that our trains are safely operated, no matter their length. As a result, FRA's Class I accident data for mainline accidents actually shows that over the last decade and across the system, mainline accident rates have decreased as train length has increased.



Railroads Regularly Monitor Employee Proficiency and Compliance with Operating Rules

FRA regulations require railroads to periodically conduct operational tests and inspections to assess compliance with applicable operating rules, timetables, and special instructions. 49 CFR 217.9(a). These regulations require supervisory railroad personnel to be qualified on railroad operating rules, qualified on operational testing and inspection program requirements, and receive appropriate field training as necessary. *Id.* § 217.9(b). In addition to FRA requirements in part 217, railroads leverage modern communication systems associated with PTC and locomotive telemetry systems to constantly monitor train performance and can automatically notify a supervisor when an anomaly is detected. Moreover, locomotive on-board event recorder systems and in-cab cameras allow railroads to retrospectively to study events, observe employee rules compliance, and implement corrective actions that improve safety.

FRA Regulations Preempt State Action to Regulate Training.

Congress directs in section 20106 of the Federal Railroad Safety Act (FRSA), as amended, that "[l]aws, regulations, and orders related to railroad safety" must be "*nationally uniform* to the extent practicable." 49 U.S.C. § 20106(a)(1) (emphasis added). To ensure national uniformity, the FRSA generally provides that a state law is preempted when FRA "prescribes a regulation or issues an order covering the subject matter of the State requirement." *Id.* § 20106(a)(2). A federal regulation or order covers the subject matter of a state law when "the federal regulations substantially subsume the subject matter of the relevant state law." *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664–65 (1993).

FRA has promulgated an array of federal regulations covering the subject matter of SMART's petition. As noted above, part 217 requires railroads to monitor train crew proficiency and assess operating rules compliance. Part 217 contains an explicit preemption section outlining that no state can issue a law, regulation or order that covers the same subject matter except under certain limited conditions (e.g., essentially local safety hazards, which are not applicable to the SMART Petition). 49 CFR 217.2. Part 240

establishes qualifications and certification requirements for engineers by "prescrib[ing] minimum Federal safety standards for the eligibility, training, testing, certification and monitoring of all locomotive engineers." 49 CFR 240.1(b). The stated purpose of part 240 "is to ensure that only qualified persons operate a locomotive or train." *Id.* § 240.1(a). Part 242 establishes qualification and certification requirements for conductors. The purpose and scope of part 242 mirrors that of engineers, but applies specifically to conductors. Additionally, part 243 establishes training, qualification, and oversight requirements for all safety-related railroad employees, which includes engineers, conductors, and those who supervise them, as well as others. The stated purpose of part 243 "is to ensure that any person employed by a railroad or a contractor of a railroad as a safety-related railroad employee is trained and qualified to comply with any relevant Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders." 49 CFR 243.1. Given that FRA has acted to establish extensive training, qualification, and monitoring requirements for engineers, conductors, and other safety-related employees, the WUTC is preempted from implementing additional state regulations addressing the subject matter of the SMART Petition.

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Thank you for your consideration of these comments.

Respectfully submitted,

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