



Kathy Hunter
Acting Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Rulemaking Petition Submitted by SMART Transportation
Docket No. TR-230876

Dear Ms. Hunter,

The American Short Line Association has submitted a petition to the WUTC related to Federal Preemption regarding crew sizing on railroads. The Central Washington Railroad would like to add our support, along with the ASLRRRA, on denying this proposed rulemaking:

When a state or local law conflicts with or stands as an obstacle to the objectives of a federal law or intrudes on a field that Congress reserved for the federal government, the Supremacy Clause of the Constitution of the United States preempts that state or local law. Any regulation covering the subject of train crew work experience, as proposed by the rulemaking petition, is preempted as a matter of federal law under the Federal Railroad Safety Act (FRSA). Congress directed under FRSA 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). To ensure national uniformity, FRSA provides that a state law is preempted when FRA, under authority delegated from the Secretary of Transportation, “prescribes a regulation or issues an order covering the subject matter of the State requirement.” § 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).

In any other form of transportation, there are an infinite number of variables which can impact safety. Pilots are not required to be certified on every airport or taxiway or terminal which they might encounter. It is a given that no pilot can possibly know every airport or taxiway. Commercial Truck drivers can earn a CDL license and are free to travel anywhere on any road system and are expected to be able to navigate, often without ever having been anywhere near the route before.

Truck drivers delivering farm goods don't even have to have a CDL as long as they are within 150 miles of the farm. Our longest train route is less than 25 miles. So truck drivers can go 150 miles without a license but railroaders need 2 years' experience to operate some 25 miles on a track that hasn't changed at all in 100 years. Local bus drivers as well as long-distance bus drivers are often in new territory without the benefit of years of experience. Boat Captains can move from Port to Port and navigate the entire globe without benefit of regulations like the ones being proposed here.

Contrast that with railroading where the track and territory never change. Never! Our crews have been operating over the same exact territory for 35 plus years. Railroads, particularly shortline railroads, are a closed-loop system where the track can be identically the same decade after decade. Trains only go forward and backward. There are no hidden detours. No airports to find in the dark. No one-way streets, or double-parked cars. No tight alleyways or bumper-to-bumper traffic to navigate.

The incidents sited in the SMART petition would seem to relate to FRA safety violations rather than crew inexperience. The string of cars that was run into was a temporary obstacle where the rail cars were placed in violation of federal safety rules. That same string of cars was not there the next day...or likely any day after that. No one else will ever run into this same string of cars. These were avoidable accidents for certain, but the remedy is following the existing FRA and GCOR rules. Not creating new laws which will have zero effect on improving safety.

Of all the major transportation systems, railroads are far-and-away the most uniform and easiest for crews to transition from one territory to another. Far easier to navigate than a truck driver, or airplane pilot or even driving an UBER in a large city. The proposed rule-making will have a serious impact on railroads being able to provide crews to operate in Washington State. It will be particularly impactful to shortline railroads which handle nearly 40% of the goods transported by rail in the State.

The FRA has developed comprehensive regulations and established extensive training and qualification requirements for locomotive engineers, conductors, and other safety-related employees. Beyond the preemption issue, which is certain to be litigated, the proposed rulemaking adds a layer of regulation which does not improve the safe operation of railroads. Further, it creates an enormous regulatory imbalance between all other forms of freight transport and railroading.

Very Truly,



Brig Temple,
President