

UNITED TRANSPORTATION UNION

July 18th, 2022

Washington Utilities and Transportation Commission
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 State Of WASH.
 UTIL. AND TRANSP.
 COMMISSION

RE: WSR 22-07-071, UTC Docket TR-200536

Dear Chairperson Danner, Commissioner Rendahl, and Commissioner Balasbas:

In response to the proposed adoption of agency rules pursuant to the enactment of HB 1841, Chapter 170, Laws of Washington State 2020; our joint organizations had no concerns or objections to the originally proposed rules issued on 5/6/2021.

However, we were appalled and shocked upon learning of the proposed revision of 3/18/22 to proposed WAC 480-62-255 that would add subsection (c) to the end of Section (3) to read:

“; or (c) one person remote control operations in compliance with 49 C.F.R. Parts 218 and 229, and any other applicable regulations regarding remote control operations.”

The addition of this language totally undermines the entire legislative intent of HB 1841 opening a Pandora's box of methods opening the door to rail carriers to completely evade and ignore this legislation.

Switching crews in the 1990s had been reduced from five or six crewmembers down to just an engineer and three ground crewmembers actually performing all the switching tasks. At that time rail companies forced rail labor to accept further crew reductions on switching assignments to an engineer and just two crewmembers. With the advent of Remote Control Operations (RCO), the rail carriers compelled the elimination of engineers, placing all the tasks and workload that had been performed by a four-person crew onto just two crewmembers.

As a result, today, usually only two ground crewmembers now operate the engine as well performing all of the production switching tasks and safety activities, work that originally was done by six, then four crewmembers. This has imposed significant additional workloads onto crews that are half or one-third the size of previous switching crews, creating a situation of task saturation as it requires extreme multi-tasking by just two crewmembers to the limits of reasonable human capability.

Be advised that compared to regular and traditional railroad operations, there is very little oversight of and minimal Federal Railroad Administration (FRA) regulations regarding Remote Control Railroad Operations. Each end of all train and railcar movements must be protected by a crewmember who is supposed to be in a physical position to view the leading end of the movement and able to stop the movement to prevent derailments, collisions, misaligned switches, derails, broken rail or any obstructions or anything (including humans) that may be foul of the track.

In a recent FRA Audit Report of Union Pacific Railroad (FRA Audit Number 2021 – UP Special Audit 06-1) dated November 8, 2021, in Section E – Operating Practices, subsection 2 the agency noted:

....” FRA also took exception for the failure to test for **remote control zones** at Colton, Council Bluffs, Portland, Proviso.”

The report went on to note:

“Although the UP’s testing officers focused their evaluations on switching-related rules that historically show an important correlation to employee injuries, FRA notes that there was a noticeable lack of testing for radio use, **remote control operations and remote control zones**, utility employees (where applicable), and restricted speed, all of which have been shown to play a role in causing accidents, incidents, and injuries on railroad property.”

On February 14th, 2001 the FRA published Notice of Safety Advisory 2001-1 in the Federal Register (Volume 66, No. 31, page 10340), addressing the establishment of recommended minimal guidelines for the operation of remote control locomotives. While some of the recommendations were codified into Federal Regulations mostly involving shoving movements, many were not and are still not in place today.

A review of 49 CFR Parts 218 nor Part 229 indicated they impose minimal regulatory oversight over a railroad carrier’s operational use of RCO’s.

While remote control pullback zones may be established in yards, there is no requirement that such zones be established or installed, additionally, there are no regulations limiting the use of RCO locomotives anywhere or any geographic location a rail carrier wishes to implement their use.

RCO Operations are among the most dangerous of operations because of the large number of tasks that must be performed by just two crewmembers. Enactment of HB 1841 was intended to ensure that no rail carrier is permitted to allow one-person train operations, even more so to prohibit placing the entire responsibility of a train’s operations and the tasks that require multiple individuals onto just one single individual, with no redundancy, no checks, and balances, and no additional crew member to cross-check operational safety, thus placing all responsibilities for a train’s operation on one single solitary person crew.

The Switching Operations Fatality Analysis (SOFA) Working group is an established, voluntary, non-regulatory, workplace safety partnership that was formed to examine commonalities among the all-too-frequent fatalities that occur during switching operations to prevent rail employee deaths. It’s a group that includes representatives of labor, the carriers, and the FRA.

The most common cause SOFA findings in Switching Fatalities are:

Close / No Clearance	25%
Inexperienced Employee	22%
Industry Hazard	21%
Inadequate Job Briefing	20%
Struck by a Mainline Train	17%

The issues, risks, and dangers involving rail workplace as well as operational and environmental public safety are complex, it would be completely contrary to the intent and purpose of the enactment of HB 1841, as well as the public interest for the UTC to include a regulatory blanket exemption of such extremely wide magnitude for ALL RCO rail operations!

Additionally, there is no provision within this legislation conveying authority to the UTC to lessen the statutory provisions and limited exceptions already written into the law; in fact, the statute presumes that the UTC will review and strengthen the safety requirements involving those limited exceptions rather than loosen them.

The addition of subsection (c) to Section 3 of WAC 480-62-255 undermines the entire statute passed by our legislature in 2020, as it would allow rail carriers to install RCO equipment on all road locomotives and direct a single crewmember to utilize such equipment and operate trains as a ONE PERSON train crew.

This proposed revision to the rulemaking completely undermines and nullifies Washington State's 2020 Minimum Train Crew Law; it significantly increases operational safety risks endangering the public, and the environment, additionally it places the one remaining crew member all alone in harm's way with no one else to provide the situational awareness necessary to prevent accidents.

WE URGE THE COMMISSION IN THE STRONGEST POSSIBLE TERMS TO STRIKE SUBSECTION C, FROM SECTION 3 OF PROPOSED WAC 460-62-255, PRIOR TO ADOPTION OF THE REGULATION!

We are very grateful that the UTC chose to reopen the comment period regarding this proposed rulemaking after learning that we as stakeholders were omitted and had not received any previous notification of future rulemaking activity regarding this critical matter.

Thank you very much for your serious and careful consideration of our grave concerns.

Very Truly Yours,

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