



**American Short Line and  
Regional Railroad Association**

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November 20, 2023

**VIA ELECTRONIC FILING** ([www.utc.wa.gov/e-filing](http://www.utc.wa.gov/e-filing))

Kathy Hunter  
Acting Executive Director and Secretary  
State of 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 and Regional Railroad Association (ASLRRRA) welcomes this opportunity to provide comments in response to the referenced petition from SMART Transportation, which asks the Commission to issue a new rule “requir[ing] new railroad train crew employees to obtain a minimal amount of actual working experience before being placed in a supervisory or lead position involving the operation of trains.” Pet. at 1. This proposal should be denied as it is preempted by federal law.

ASLRRRA is a nonprofit trade association representing the entrepreneurial owners and operators of short line and regional railroads throughout North America. Short line freight is a critical part of the U.S. freight network. The nation’s approximately 600 short line carriers provide the first and last mile service for one in every five cars moving each year.<sup>1</sup> Operating nearly 50,000 track miles, or 30% of freight rail in the U.S., they play a vital role in the transportation network.<sup>2</sup> Short line rail service provides safe, efficient, competitive, and environmentally responsible access to transportation for nearly 10,000 rail customers.<sup>3</sup>

Rail is an integral part of Washington’s multimodal freight transportation system, offering an environmentally and economically efficient way to move goods and support the

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<sup>1</sup> Short Line and Regional Railroad Facts and Figures. American Short Line and Regional Railroad Association, 2017; reprint Dec. 2019. Page 1.

<sup>2</sup> *Id.*

<sup>3</sup> See *id.*; and Webber, Michael. “Freight trains are our future.” *Popular Science*, May 9, 2019. Available at: <https://www.popsoci.com/power-trip-excerpt/> (last visited Nov. 16, 2023).

statewide economy.<sup>4</sup> It would have taken approximately 1.1 million additional trucks to handle the 20.2 million tons of freight that originated by rail in Washington in 2021. With 75 ports, nearly 20 percent of Washington's economy is tied to international trade.<sup>5</sup> Short line railroads operate over 40 percent of the rail in Washington, playing a strong role in supporting the state and national economy. ASLRRRA's member railroads in the state have a vested interest in any proposal to regulate their operations in Washington.

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).

SMART Transportation's proposed rule seeks to regulate the minimum qualifications for an individual to serve as a train conductor or locomotive engineer. Federal rail safety regulations, issued by the Federal Railroad Administration (FRA) pursuant to FRSA, comprehensively regulate this subject, preempting state law. Part 240 regulates the qualification and certification requirements for locomotive engineers by prescribing “minimum Federal safety standards for the eligibility, training, testing, certification and monitoring of all locomotive engineers.” 49 C.F.R. § 240.1(b). The regulations provide that the purpose and scope of this part is “to ensure that only qualified persons operate a locomotive or train.” 49 C.F.R. § 240.1(a). Likewise, Part 242 prescribes minimum Federal safety standards “for the eligibility, training, testing, certification and monitoring of all conductors.” 49 C.F.R. § 242.1(b). The purpose of this part is “to ensure that only those persons who meet minimum Federal safety standards serve as conductors, to reduce the rate and number of accidents and incidents and to improve railroad safety.” 49 C.F.R. § 242.1(a). Finally, FRA regulations at 49 C.F.R. Part 243 establish training, qualification, and oversight requirements for all safety-related railroad employees. 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 C.F.R. § 243.1(a).

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<sup>4</sup> Washington State Freight System Plan. Washington Department of Transportation, 2022. Page 32. Available at: [https://wsdot.wa.gov/sites/default/files/2022-12/WA-State-Freight-System-Plan-2022\\_0.pdf](https://wsdot.wa.gov/sites/default/files/2022-12/WA-State-Freight-System-Plan-2022_0.pdf).

<sup>5</sup> Association of American Railroads, “Freight Rail in Your State.” Available at: <https://www.aar.org/data-center/railroads-states> (last visited Nov. 20, 2023).

As FRA has promulgated comprehensive regulations pursuant to FRSA establishing extensive training and qualification requirements for locomotive engineers, conductors, and other safety-related employees, Washington UTC is preempted from issuing additional regulations addressing the topic proposed by the SMART Transportation rulemaking petition. ASLRRA appreciates the opportunity to provide comment on this issue and asks the UTC to deny the petition.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sarah Yurasko".

Sarah Yurasko  
SVP – Law & General Counsel