Before the
FEDERAL RAILROAD ADMINISTRATION
Washington, D.C. 20590

In the Matter of )
) Docket No. FRA-2018-0027
Request for Information on ) 83 Fed. Reg. 13583
Automation in the Railroad Industry )
)

COMMENTS OF
THE COMPETITIVE ENTERPRISE INSTITUTE

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Prepared by:
Marc Scribner
Senior Fellow
Competitive Enterprise Institute
1310 L Street N.W., 7th Floor
Washington, D.C. 20005
(202) 331-1010
marc.scribner@cei.org
Introduction

On behalf of the Competitive Enterprise Institute ("CEI"), I respectfully submit these comments in response to the Federal Railroad Administration's ("FRA") Request for Information on Automation in the Railroad Industry ("RFI").

CEI is a nonprofit, nonpartisan public interest organization that focuses on regulatory policy from a pro-market perspective. CEI previously submitted comments to the National Highway Traffic Safety Administration ("NHTSA") in response to its Request for Comments on the Federal Automated Vehicles Policy in September 2016, and again submitted comments to NHTSA in response to its Request for Comments on the Automated Driving Systems: A Vision for Safety in September 2017. CEI also submitted comments in response to 2018 requests from the Federal Highway Administration and NHTSA on automated driving systems.


Our comments are structured to correspond to the numbered questions posed in the RFI. We address a single question on regulatory barriers to automated train system development and implementation.

RFI Response

23. Are there current safety standards and/or regulations that impede the development and/or implementation of automated train systems or technologies in the railroad industry, including the development and/or implementation of autonomous rail vehicles? If so, what are they and how should they be addressed?

In the RFI, FRA states that it aims “to support the integration and implementation of new automation technologies to increase the safety, reliability, and the capacity of the nation's railroad system.”

Despite this laudable assurance, a pending regulatory action before the agency, if implemented, would undermine the business case for increasing the development and deployment of automated systems in the railroad industry.

In March 2016, FRA published a notice of proposed rulemaking (“NPRM”) to require a minimum of two crewmembers per train, with several limited exceptions. FRA, in its own admission, could not “provide reliable or conclusive statistical data to suggest whether one-person crew operations are generally safer or less safe than multiple-person crew operations.” Rather, FRA's NPRM is an example of regulation by anecdote, purportedly in response to a deadly 2013 train derailment in Lac-Mégantic, Quebec, Canada, involving a one-person train crew.

Following the Montreal, Maine and Atlantic Railway (“MMA”) derailment in Lac-Mégantic, Transport Canada issued an order requiring all Canadian railroads to institute two-person crew minimums. "In response," reads FRA's NPRM, "MMA changed its operating procedures to use two-person crews on trains in Canada. However, FRA was concerned that MMA did not automatically make corresponding changes to its operating procedures in the U.S. even though the risk associated with this catastrophic accident also exists in the U.S."

Here FRA is exploiting a rail accident in a foreign country—and actions undertaken by a foreign regulator—to justify its empirically unsupported proposed rule. It is also worth noting that FRA's above-noted admission that it is unable to “provide reliable or

7. RFI, supra note 1, at 13586.
8. Id. at 13584.
10. Id. at 13919.
11. Id. at 13922.
conclusive statistical data” demonstrating a safety differential between one- and two- 
person crews was added to the NPRM after the White House Office of Management and 
Budget, Office of Information and Regulatory Affairs (“OIRA”) made edits to the initial 
FRA draft NPRM. Astonishingly, FRA’s draft NPRM included this false statement prior 
to its removal by OIRA: “Studies show that one-person train operations pose increased 
risks by potentially overloading the sole crew member with tasks.”12

FRA’s defective underlying basis for issuing the NPRM should be reason enough for the 
rulemaking proceeding to be discontinued and the proposed rule withdrawn. But even if 
this flawed approach were to stand, FRA’s failure to include exceptions for automated 
train operations provides an additional justification for withdrawal.

The proposed rule’s general exceptions to the two-person crew minimum include 
exceptions for helper service, tourist operations, unattached locomotives, non-revenue 
service work trains, and remote operations if remotely operated trains adhere to strict 
limitations on train power, length, weight, speed, and operating grade—broadly limiting 
such operations to terminal areas and railyards.13 Additional freight train–specific 
exceptions are for small railroads with under 400,000 total annual employee work hours, 
subject to 25-miles-per-hour maximum speed and track grade conditions, and mine load 
out and similar assembly line–style industrial operations.14

None of FRA’s exceptions would enable a carrier to demonstrate safety equivalence and 
deploy an automated train with fewer than two crewmembers. To FRA’s credit, the 
NPRM does include a “special approval procedure” that could conceivably enable 
railroads to petition for approval of future automated train operations with fewer than 
two crewmembers.15 However, one condition of approval is requirement that a petitioning 
carrier must provide “[a]ppropriate data or analysis, or both” to FRA demonstrating 
safety equivalence or better.16 Yet, given that FRA concedes it does not possess “reliable 
or conclusive statistical data” on the alleged safety differential between one- and two-

13. NPRM, supra note 9, at 13963–13964.
14. Id. at 13964.
15. Id. at 13965.
16. Id.
Conclusion

If FRA wishes to “best position itself to support the integration and implementation of new automation technologies to increase the safety, reliability, and the capacity of the nation's railroad system,”17 as it states in the RFI, it should immediately withdraw the 2016 NPRM on Train Crew Staffing. As conceived, the proposed two-person crew minimum rule undermines the business case for developing and deploying automated train technologies. Why would rational carriers invest in labor-saving technology if FRA regulations prohibit labor-saving?

We appreciate the opportunity to submit comments to FRA on this matter and look forward to further participation.

Respectfully Submitted,

Marc Scribner
Senior Fellow
Competitive Enterprise Institute

17. RFI, supra note 1, at 13584.