

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

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

**COMMENTS OF
THE COMPETITIVE ENTERPRISE INSTITUTE**

May 7, 2018

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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”).¹

CEI is a nonprofit, nonpartisan public interest organization that focuses on regulatory policy from a pro-market perspective.² 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 2016,³ and again submitted comments to NHTSA in response to its Request for Comments on the Automated Driving Systems: A Vision for Safety in September 2017.⁴ CEI also submitted comments in response to 2018 requests from the Federal Highway Administration and NHTSA on automated driving systems.⁵

CEI’s Scribner appeared on a discussion panel at NHTSA’s December 12, 2016, Federal Automated Vehicles Policy Public Meeting and participated in the U.S. Department of Transportation’s March 2018 Automated Vehicle Policy Stakeholder Discussion.⁶

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.

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1. Request for Information on Automation in the Railroad Industry, *Notice*, FRA-2018-0027, 83 Fed. Reg. 13583 (Mar. 29, 2018) [hereinafter RFI].
 2. See About CEI, <https://cei.org/about-cei> (last visited Apr. 30, 2018).
 3. Comments of the Competitive Enterprise Institute, R Street Institute, & TechFreedom on the Federal Automated Vehicles Policy, *Notice*, NHTSA-2016-0090, 81 Fed. Reg. 65703 (Sep. 23, 2016), available at <https://www.regulations.gov/document?D=NHTSA-2016-0090-1000>.
 4. Comments of the Competitive Enterprise Institute and R Street Institute on the Automated Driving Systems: A Vision for Safety, *Notice*, NHTSA-2017-0082, 82 Fed. Reg. 43321 (Sep. 15, 2017), available at <https://www.regulations.gov/document?D=NHTSA-2017-0082-2810>.
 5. Comments of the Competitive Enterprise Institute on the Request for Information on Automated Driving Systems, *Notice*, FHWA-2017-0049, 83 Fed. Reg. 2719 (Jan. 18, 2018), available at <https://www.regulations.gov/document?D=FHWA-2017-0049-0091>; and Comments of the Competitive Enterprise Institute on the Request for Comment on Regulatory Barriers to Vehicles With Automated Driving Systems, *Notice*, NHTSA-2018-0009, 83 Fed. Reg. 2607 (Jan. 18, 2018), available at <https://www.regulations.gov/document?D=NHTSA-2018-0009-0061>.
 6. Transcript of the National Highway Traffic Safety Administration’s Federal Automated Vehicles Policy Public Meeting, Arlington, Va. (Dec. 12, 2016), available at <https://www.regulations.gov/document?D=NHTSA-2016-0090-1130>.

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?⁷

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.”⁸

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.⁹ 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.”¹⁰ 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.”¹¹

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.

9. Train Crew Staffing, *Notice of Proposed Rulemaking*, FRA-2014-0033, 81 Fed. Reg. 13917 (Mar. 15, 2016) [hereinafter NPRM].

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-person train crews, how it could competently evaluate future “data or analysis” provided by a carrier petitioning for special approval of its automated trains remains to be seen.

12. *See* NPRM Crew Staffing OIRA Edits, FRA-2014-0033 (Mar. 15, 2016), at 7, *available at* <https://www.regulations.gov/document?D=FRA-2014-0033-0003>.

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,

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17. RFI, *supra* note 1, at 13584.