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Competitive Enterprise Institute Letter in Support of DOT Request to Reduce Regulatory Burden

On behalf of the Competitive Enterprise Institute (CEI), I respectfully submit the following comments in response to the Department of Transportation's (DOT) request for information, "Ensuring Lawful Regulation: Reducing Regulation and Controlling Regulatory Costs," published in the Federal Register on April 3, 2025.

Founded in 1984, the Competitive Enterprise Institute is a non-profit research and advocacy organization that focuses on regulatory policy from a pro-market perspective.

The DOT solicited "views from the public on how best to conduct its analysis of existing DOT regulations, guidance, or reporting requirements" including comments on "specific regulations, guidance, or reporting requirements or DOT-imposed obligations that should be altered or eliminated."

CEI proposes that the DOT's Federal Railroad administration (FRA) rescind its rule "Final Train Crew Size Safety Requirements," regulatory information number (RIN) 2130-AC88, 89 Fed. Reg., 25, 052, 25,108 (Apr. 9, 2024) codified at 49 CFR pt. 218. Reasons for the rescission follow.

The FRA's minimum train crew size rule is unnecessary

The FRA rule requires that in most instances trains must have a minimum of two crewmembers, one conductor and one engineer, on board during the train's operation. The rule states that this minimum is required to ensure the trains are "adequately staffed" and have "appropriate safeguards" in place. The rule is unnecessary and burdensome on the rail industry. Its main impact will be to discourage development of rail automation, preventing faster and more efficient means of interstate commerce.

The rule fails to establish any need for this minimum. The evidence is scant to non-existent that this will make any difference in the safe operation of trains, according to the data cited in the FRA's own rulemaking.

The main purpose of this rule is to benefit railway worker unions by artificially boosting the employment of its members. The rule will block further automation of railways, prohibiting the industry from refining techniques to quickly and efficiently deliver cargo through remote operation. This prohibition will harm:

1) the industry, which faces competition in interstate commerce from trucking, shipping, and now drone aircraft;

2) the reliability nation's supply chain, which has faced several shocks in recent years due in part to antiquated technology and infrastructure, and;

3) the broader public, which needs goods delivered quickly and efficiently.

The train crew size rule will slow innovation

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The supply chain shock of 2020 was sparked by COVID-19 quarantine restrictions and exacerbated by the antiquated nature of much of the technology used by stakeholders in the supply chain. Lack of automation created delays up and down the chain, in turn creating shortages and price spikes. The crisis was a wake-up call to update and modernize all element of the chain.

If any transportation industry should be at the leading edge of automation, it is railways. Trains run on dedicated tracks not used by the public, giving them an edge in safety that trucking or aircraft cannot claim. Yet technological innovation for drone aircraft and self-driving cars continues apace while the rail industry is limited in the experimentation that it can engage in thanks to this rule.

The final rule can point to no specific data that single-operator or remotely-operated trains are less safe. Rather it posits that the "latest annual rail safety data reflects some troubling trends that point toward a need for heightened caution." The rule notes, citing FRA data, that the rate for "all human factor incidents" increased from .95 accidents per million train miles to 1.34 between 2013 and 2022, a 41.1 percent increase. and that the percentage of train accidents attributed solely to human factors increased from 38.5 percent to 45.6 percent between 2013 and 2022.

The rule does not break down the data any further to indicate what the crew size was in these incidents, much less to present any theory that larger crews would have prevented the accidents. Thus, not only does the rule fail to present a case that crew size was a causative factor in these incidents, if fails to even demonstrate any type of correlation between crew size and accident rates. Surely, if the DOT had data did that showed some connection between crew size and accident rates that supported imposition of the rule, it would have cited it in the rulemaking. It does not. The only logical conclusion is that DOT does not have any such data.

Note also that the data cited by the rulemaking specifies "human factor" incidents, presumably excluding accidents caused by purely mechanical failures or extreme weather conditions. Why exclude that data? If it could be shown that there was some correlation between crew size and those type of accidents – say, because larger crews took more precautions that prevented incidents before they could occur – the rulemaking would surely cite that. It does not.

The FRA claims that the rule will "ensure risk mitigation" but concedes that it "does not have sufficient data to monetize those benefits."

The FRA's data shows that one-man crews don't cause more accidents

Here's what we know broadly about crew size and safety: Up until the 1990s, most rail lines utilized three or more crew members. The overall rate of accidents of any type was 4.6 per million miles of railways traveled in 1991, according to FRA data. In the decades since, the standard crew size has shrunk down to one engineer and one conductor. Some trains have used just one engineer. The overall rate of accidents has steadily fallen since then, reaching 2.8 per million miles in 2024.

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Further undermining the case for the rule is the fact that there are existing single-operator train lines. The rulemaking grandfathers in "Class II and Class III railroad with legacy one-person train crew." This includes operations that haul hazardous materials. The rule further allows petitions for "special approval of one-person train crew operation not covered by the exception." There are at least two existing train operations for which the FRA has already approved of one-person train crews.

The existing exceptions and the fact that the rule explicitly allows for further exceptions in the future again underscore that the two-person minimum serves no practical purpose. All that has been accomplished is to ensure that those railway operations with the most skilled lobbying operations in Washington will have a better chance at getting their exceptions granted. These exceptions will give them a competitive edge over rival operations that lack lobbying muscle.

Conclusion

The FRA has limited the ability of the railroad industry to automate trains by requiring them in most instances to use two-person crews. The FRA has done this in the name of safety but without providing any data that would justify the claim. The rail safety data that the FRA has made publicly available does not show any causal relationship between crew size and safety. Rather, it has shown that accidents overall have declined as the industry has steadily shrunk crew size. One person crews are already in limited use, and the rule grandfathers in certain cases while also creating a process for further exceptions on a case-by-case basis. The number of exceptions calls into question the need for the rule in the first place. There is no practical reason why these trains could not operate with just one-person crews or be operated entirely remotely.

Furthermore, the rule will limit the rail industry's ability to modernize at a time when the nation's supply chain remains fragile. Because the rail industry runs on dedicated non-public lines, as opposed to public roads or open airspace, it is uniquely situated to adopt further automation. The only purpose that the two-person minimum rules serves is to protect the jobs of the workers represented by the rail industry unions.

If the unions want to make crew size an issue in their collective bargaining with management, that is their business. However, the federal government should leave the matter to those negotiations. It should rescind this rulemaking.

Respectfully submitted,

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