



A bold voice for transportation workers

June 15, 2016

Mr. Joseph D. Riley
Railroad Safety Specialist – Operating Crew Certification
Federal Railroad Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: Docket No. FRA-2014-0033, No. 1
RIN 2130-AC48
Notice of Proposed Rulemaking
Federal Railroad Administration**

Dear Mr. Riley:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to provide comments on the Federal Railroad Administration's (FRA) Notice of Proposed Rulemaking (NPRM) on Train Crew Staffing. By way of background, TTD consists of 32 affiliate unions representing workers in all modes of transportation including those employed in the passenger and freight rail industries.¹ We therefore have a vested interest in this proceeding. In addition, we endorse the comments filed by a TTD affiliate, The International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (SMART-TD).

At the outset, we commend FRA for continuing its commitment to safety by promulgating this common sense policy that requires rail operations be crewed with at least two qualified workers and sets minimum responsibilities for the second crewmember. We agree with the agency that multiple crewmembers enhance rail safety by providing the redundancy needed to help ensure the operations comply with important regulatory requirements.² While the agency must eliminate the proposal's loopholes that grant carriers leniency to evade the crew size mandate, requiring a minimum number of crewmembers will help save lives and we encourage FRA to expeditiously promulgate this new standard.

¹ Attached is a complete list of TTD's 32 affiliated unions.

² TTD's Executive Committee adopted a policy statement in October 2013 advocating that FRA establish a two-person crew mandate. <http://ttd.org/policy/policy-statements/mandate-two-person-crews-on-freight-trains/>

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Currently, most rail operations employ two-person crews consisting of a certified engineer and a certified conductor. Having two crewmembers provides the redundancy needed to prevent errors that could jeopardize safety while also helping ensure train operations comply with important regulations. But second crewmembers offer more than just passive redundancy; operating a train is a complex and demanding job that calls on both crewmembers to work as a team and undertake a variety of important tasks, often simultaneously, to ensure trains run smoothly and safely.

For example, two-person crews are needed in order to copy train dispatcher instructions; communicate with a foreman while performing a series of tasks such as checking signal indications and sounding the whistle; and backing up and separating trains to prevent hazards, among a host of other multi-person tasks. Two-person crews also provide unique on-the-job learning and mentorship opportunities.

And as the agency knows, fatigue continues to plague the rail industry. Employer-mandated long shifts and unpredictable work schedules create a fatigued workforce which has a direct and negative impact on safety. A second crewmember helps both employees stay alert and provides an essential backstop to prevent the costly mistakes that can occur when chronic fatigue affects memory or judgment.

Additionally, when emergencies occur, the ability of a lone crewmember to investigate or respond to the situation is severely limited. Expecting one crewmember to execute every required task while anticipating all possible operating scenarios is too risky and irresponsible. FRA's recount of the events of the December 2013 Casselton, North Dakota accident illustrates how multiple crewmembers working together to communicate and coordinate with emergency responders can help save lives and reduce destruction.

Still, some in the industry have stated before Congress and FRA their interests in transitioning to single-person operations. Currently, crew size is often the subject of a collective bargaining agreement. Forcing workers and their unions to secure essential and core safety standards such as crew size at the bargaining table is a mistake, given that doing so requires unions to give-up other priorities in order to achieve a safety objective that should be a federal mandate. Without this rulemaking, FRA would have only limited authority to address single crew operations, most likely through reactionary measures such as issuing emergency orders after a serious accident occurs. Instead of waiting until lives are lost, this proactive rulemaking strives to protect rail workers, communities, and the environment from injury resulting from preventable rail accidents caused by single-crew operations.

With this in mind, we are pleased that FRA is establishing a minimum crew size requirement of two workers, applicable to certain rail operations. TTD also agrees with the agency that the mere presence of a second worker does not make rail safer; rather, it is the addition of a second qualified professional, versed in the operational requirements and responsibilities of the assigned crewmembers, that improves safety. To ensure that the full benefit of two-person crews is realized, we urge FRA to require that the second crewmember be a certified conductor.

As FRA knows, several years ago, the agency fulfilled a congressional mandate by establishing certification requirements for train conductors (49 CFR Part 242).³ Those regulations are intended to reduce accidents and improve rail safety by requiring that prospective conductors become medically certified; demonstrate sufficient knowledge of safety and operating rules, physical characteristics of a territory, and compliance with federal regulations; and complete training on federal safety laws, regulations, and orders, as well as railroad rules and procedures.

Earning certification is not easy, nor should it be, given that conductors are integral to train operations. Conductors work side-by-side engineers, even taking-on some of their responsibilities to help engineers focus on their primary task of handling the train. These two skilled professionals have a long history of working as a team, and the Part 242 requirements ensure that new conductors gain the knowledge and training they need to meet the demands of their work. Given this history and the high bar set on becoming part of an operating crew, conductors are best positioned to continue working as second crewmembers. As such, FRA should require that the second crewmember be a certified conductor.

Proponents of single-crew operations often use a skewed statistical analysis to support their position. Specifically, they cite the lack of one-person crew accidents as a prime reason why a minimum crew size standard is unnecessary; however, they fail to recognize that most U.S. operations are crewed by two professionals.

We also share FRA's concerns that the industry's interests in reducing labor costs will cloud its judgement when determining whether a single-crew operation deteriorates safety. But given that most carriers presently employ multiple crewmembers and FRA's assessment that preventing just one fatality would exceed the costs of this rule, industry's economic motivation to reduce operating crew size should not be prioritized ahead of safety.⁴

Indeed, much of the public recognizes the safety benefits of multiple crewmembers. Public opinion polling performed by DFM Research reveals that across genders, age groups, education levels, party identification, and place of residence, the public consistently demonstrates strong support for legislation requiring two-person crews. Legislators also support a minimum crew size requirement, as several states legislatures have enacted two-person crew mandates and federal legislation has also been proposed to create a similar standard.⁵

In order to ensure the full benefits of this rule are achieved, FRA should establish a broad two-person crew requirement and avoid establishing a series of exceptions that would effectively exempt much of the industry from the minimum crew size requirement. If carriers seek exception

³ FRA also requires that locomotive engineers be certified through the qualification and certification regulations at 49 CFR Part 240.

⁴ Federal Railroad Administration, Department of Transportation, Train Crew Staffing Notice of Proposed Rulemaking. March 15, 2016, FR 81, 13920.

⁵ H.R. 1763, Safe Freight Act, is sponsored by Congressman Don Young (R-AK) and has 62 bipartisan cosponsors.

to the standard, FRA should require them to apply for a waiver through the process established at 49 CFR Part 211. Under that process, carriers would be required to describe the need for operating single-person crews and provide relevant safety data. This approach applies a consistent standard across the industry while still providing avenues for narrow exceptions.

However, if FRA does not require carriers to seek a Part 211 waiver and instead moves forward with one of its two special approval/continuance of operations proposals offered in the NPRM, we strongly urge FRA to close the loopholes in both options that would permit carriers to begin/continue one-person operations prior to FRA's affirmative approval.

The NPRM proposes two options by which carriers *not* employing two-person operations prior to January 1, 2015 may begin operating single-person crews. Option 1 proposed section 218.35 requires such carriers to file a petition with FRA and allows the railroad to file a subsequent request with the agency if it fails to issue a decision within 90 days of receiving the petition. Notably, if FRA does not reply to the second request after 30 days, "the railroad may implement the operation as described" in the petition, i.e. carriers can implement a new operating scheme that reduces its crew size without FRA's affirmative approval.⁶

FRA's Option 2 proposed 218.35 requires that carriers file with FRA certain information about the operation. At (e), the proposed regulation states that: "[a] railroad may initiate a start-up train operation with less than two crewmembers after the railroad submits the information identified in this section to FRA unless FRA informs the railroad that the information is incomplete."⁷ The preamble explains that once the carrier asserts its operations are safe and begins running, the burden is on FRA to disprove the carrier's asserted safety. Thus, this option substantially relies on carriers' assessment of their own plans, potentially allowing unsafe operations to take place until some unspecified impetus prompts the agency to investigate.

We also note that only option 1 requires that labor officials be notified of carriers' plans to reduce crew size, as option 2 makes no such requirement. Under both scenarios, employees and their representatives must be required to be part of this decision-making process and must be notified of such impending changes to operating procedures.

The NPRM also offers two competing proposals by which carriers operating one-person freight trains prior to January 1, 2015 may request to continue such operations. Option 1 proposed 218.133 requires that railroads file with FRA a description of the operation which includes a series of elements including a safety analysis. This option seemingly permits carriers to continue one-person operations "[u]nless FRA notifies a railroad that an operation is deemed unsuitable for continuance or may only continue with any additional conditions attached..."⁸ While the preamble describes this option as requiring carriers to receive FRA's explicit approval before continuing operations, the actual regulatory text quoted above suggests the opposite is true.

⁶ *Id.* at 13965.

⁷ *Id.* at 13966.

⁸ *Id.* at 13965.

Even more concerning, option 2 proposed 218.133 permits carriers to continue conducting one-person operations simply “upon filing the description of each operation with FRA.”⁹ Notably, under this option, carriers must perform a safety analysis but merely keep it on file and make it available to the agency upon request. Moreover, FRA states that existing one-person operations “will be presumed to have been operating with an adequate level of safety, unless FRA determines otherwise.”¹⁰ We have serious concerns for the weight this option gives to carriers’ judgement of their own safety. FRA must carefully review current single-person operations and make its own determinations as to whether operations are safe.

No single-crew operations should be permitted to operate with fewer than two professionals until FRA has reviewed carriers’ plans and determined safety will not be diminished. While we endorse a broad two-person crew requirement and instructing carriers to pursue a waiver through Part 211, if FRA moves forward with either proposed options for existing or start-up operations, the shortcomings addressed above must be closed. Otherwise, FRA’s work to regulate the safety of operations by establishing a minimum crew size will be swiftly subverted.

Passengers traveling by rail and communities through which trains transport commodities and goods must have confidence that the carriers running those routes are held to the highest level of safety. This rulemaking helps meet that goal by ensuring that lives, property, and the environment are not needlessly put in danger by overloading a single operator with tasks intended for two professionals. While the NPRM must be strengthened, we believe this is an important proceeding that must be swiftly finalized, and we encourage FRA to do so.

We appreciate FRA’s leadership on this important safety issue and thank you for the opportunity to provide comments.

Sincerely,



Edward Wytkind
President

⁹ *Id.* at 13965-13966.

¹⁰ *Id.* at 13952.



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TTD MEMBER UNIONS

Air Line Pilots Association (**ALPA**)
Amalgamated Transit Union (**ATU**)
American Federation of Government Employees (**AFGE**)
American Federation of State, County and Municipal Employees (**AFSCME**)
American Federation of Teachers (**AFT**)
Association of Flight Attendants-CWA (**AFA-CWA**)
American Train Dispatchers Association (**ATDA**)
Brotherhood of Railroad Signalmen (**BRS**)
Communications Workers of America (**CWA**)
International Association of Fire Fighters (**IAFF**)
International Association of Machinists and Aerospace Workers (**IAM**)
International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (**IBB**)
International Brotherhood of Electrical Workers (**IBEW**)
International Longshoremen's Association (**ILA**)
International Organization of Masters, Mates & Pilots, ILA (**MM&P**)
International Union of Operating Engineers (**IUOE**)
Laborers' International Union of North America (**LIUNA**)
Marine Engineers' Beneficial Association (**MEBA**)
National Air Traffic Controllers Association (**NATCA**)
National Association of Letter Carriers (**NALC**)
National Conference of Firemen and Oilers, SEIU (**NCFO, SEIU**)
National Federation of Public and Private Employees (**NFOPAPE**)
Office and Professional Employees International Union (**OPEIU**)
Professional Aviation Safety Specialists (**PASS**)
Sailors' Union of the Pacific (**SUP**)
Sheet Metal, Air, Rail and Transportation Workers (**SMART**)
SMART-Transportation Division
Transportation Communications Union/ IAM (**TCU**)
Transport Workers Union of America (**TWU**)
UNITE HERE!
United Mine Workers of America (**UMWA**)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (**USW**)

These 32 labor organizations are members of and represented by the TTD

