



September 15, 2025

VIA ELECTRONIC SUBMISSION

Mr. Drew Feeley, Acting Administrator
Federal Railroad Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Comments on FRA's Proposed Repealing Special Approval Requirement for Freight Cars More Than 50 Years Old [Docket No. FRA-2025-0117]

Dear Acting Administrator Feeley:

On July 1, 2025, the Federal Railroad Administration (FRA) published in the *Federal Register* its proposed *Repealing Special Approval Requirement for Freight Cars More Than 50 Years Old (50-Year-Old Freight Car)* rule.¹ The FRA's proposed rule would repeal the requirement for special approval to place or continue a freight car in service if it is more than 50 years old (or equipped with any design or type component listed in appendix A of the regulation). The requirement would be replaced with uniform safety requirements where the railroads would conduct comprehensive shop inspections by a designated inspector and certify that the freight car is safe for the service in which it will be placed.²

The FRA has determined that the new proposed procedures would provide an equivalent level of safety while reducing burdens on railroads and eliminating the added delay involved in petitioning the FRA for special approval.³ However, for the reasons discussed below, the Office of Advocacy (Advocacy) disagrees with the FRA's Regulatory Flexibility Act (RFA) certification that the rule merely offers flexibility (and is therefore voluntary). Rather, the rule sets up a new procedure that must be followed. Advocacy recommends that the FRA reevaluate the proposed rule and consider significant regulatory alternatives, including repealing the arbitrary 50-year threshold altogether, that would further minimize the regulatory impact on small entities while still achieving the agency's safety objectives.

I. Office of Advocacy

Congress established the Office of Advocacy in 1976 under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office

¹ 90 Fed. Reg. 28633 (published Jul. 1, 2025).

² *Id.*

³ *Id.*

within the U.S. Small Business Administration (SBA) that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),⁴ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.⁵ If a rule is not expected to have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of the factual basis for such a determination that adequately supports its certification.⁶

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁷ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.⁸

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁹

II. Advocacy Outreach to Small Entities

Regulatory burdens have increased within the United States with an overwhelming amount of red tape generated by federal agencies. As a result, President Trump has committed to a government-wide initiative aimed at unleashing prosperity, particularly for small entities, through deregulation.¹⁰ Advocacy has worked with federal agencies to assist in reviewing rules to determine the impact of the regulatory burden on small entities, and all agencies have been required to conduct retrospective reviews of their regulations since the RFA was enacted in 1980.¹¹

In furtherance of the President's goals, on April 3, 2025, the Department of Transportation (DOT) announced a deregulatory review initiative titled *Ensuring Lawful Regulation: Reducing Regulation and Controlling Regulatory Costs*. As part of this initiative, Advocacy hosted a small business regulatory roundtable on April 14, 2025, to hear directly from small businesses and their representatives about which regulations are most burdensome and in need of review and

⁴ Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

⁵ 5 U.S.C. § 603.

⁶ *Id.* § 605(b).

⁷ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

⁸ *Id.*

⁹ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

¹⁰ *See, e.g.*, Exec. Order No. 14,192, 90 Fed. Reg. 9065 (Feb. 6, 2025); *see also* Exec. Order No. 14,219, 90 Fed. Reg. 10583 (Feb. 25, 2025).

¹¹ *See* 5 U.S.C. § 610.

reform. Nearly 100 people participated in Advocacy’s roundtable and provided feedback. Advocacy received comments on 36 issues which were summarized and submitted to the DOT in a letter dated May 5, 2025.¹² One of the issues raised was the FRA’s *50-Year-Old Freight Car* regulation that is the subject of this proposed rule.

Further, on August 27, 2025, Advocacy hosted a web call with the short line railroad association and several of its small business members to discuss the proposed rule and their concerns with it.¹³ Advocacy’s comments are reflective of the concerns raised during that web call and at Advocacy’s earlier DOT regulatory reform roundtable.

III. The Proposed Rule

49 C.F.R. 215.203 restricts the operation of any railroad freight car that is more than 50 years old (measured from the date of original construction). A railroad may not place or continue in service any such railroad freight car unless it petitions the FRA and obtains “special approval” (essentially a “waiver”). That special approval requires an inspection by an FRA inspector, which makes the process time-consuming and expensive, especially for small railroads. To alleviate this burden, industry representatives recommended that the FRA simply repeal the 50-year age restriction, which they say is arbitrary and does not reflect modern technology and maintenance practices. Indeed, industry representatives note that when the 50-year ban was put in place in the 1970s, it addressed rail freight cars that were built in the 1920s of wooden construction and (now) obsolete technology. The rule now extends to rail freight cars that were constructed in the late 1970s and early 1980s made of steel frames and modern design.

49 CFR 215.13 already requires that freight cars be inspected every time they are placed in service. Additionally, the rail industry operates in accordance with comprehensive safety consensus standards that dictate that all rail cars must be inspected and repaired before they can be placed in service. Finally, according to the industry representatives, many small railroads do not employ inspectors to “certify” the cars under the proposed rule (although that term is not defined), and many cars would have to be moved to off-site maintenance shops to be properly inspected and certified under the proposed rule.

IV. Issues

a. The FRA has not responded to the industry and Advocacy’s recommendation to repeal the 50-year-old freight rail car restriction

As indicated above, industry representatives and Advocacy recommended to the DOT that the FRA consider repealing the 49 C.F.R. 215.203(a)(1) restriction on 50-year rail freight cars as unnecessary and rely instead on other, existing safety requirements and protocols as adequate to

¹² U.S. Small Bus. Admin., Off. of Advoc., Comment Letter on Department of Transportation’s Request for Information on Ensuring Lawful Regulation: Reducing Regulation and Controlling Regulatory Costs (May 5, 2025), <https://advocacy.sba.gov/2025/05/09/advocacy-files-comments-on-dots-regulatory-reform-initiative/>.

¹³ The American Short Line and Regional Railroad Association (ASLRRA) represents short line and regional railroads, the vast majority of which are small. The SBA size standards for the Short Line Railroads industry (NAICS 482112) is 1,500 employees. According to the Railroad Retirement Board, all short line and regional railroads have fewer than 1,500 employees, with the average railroad having 46 employees.

ensure safe rail car operation. Instead, the agency has proposed to shift from a “special approval and FRA inspection” process to a “self-inspection and certification” system (or to possibly to ban 50-year-old freight rail cars altogether).

However, as the short line industry noted, the 50-year limit is not distinctly special from some other age limit, does not account for modern technology and maintenance practices, and does not factor existing regulatory provisions (such as 49 CFR 215.13) that already require that freight cars be inspected every time they are placed in service. Further, the modern rail industry operates on comprehensive industry consensus standards which dictate that all rail cars must be inspected and repaired before they can be placed in service. For this reason, Advocacy recommends that FRA consider industry and Advocacy’s original recommendation that the 50-year restriction be repealed and that the FRA rely instead on other existing safety requirements and protocols as a less costly alternative to meet the agency’s safety objectives.

b. The FRA’s RFA certification lacks a factual basis and may be improper

The RFA requires that every agency prepare and publish for public comment an initial regulatory flexibility analysis (IRFA) unless the head of the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. In order to certify a rule, the agency must include a “statement of the factual basis” for the certification. This assessment requires a threshold analysis of the number of small entities that would be impacted by the regulation and an estimate of compliance costs. Unless the agency has a factual basis, it cannot certify a rule and must prepare and publish an IRFA (including a consideration of significant alternatives).

The FRA states in its RFA certification that “the proposed rule merely offers flexibilities that could result in cost savings, if a small entity or other regulated entity chooses to utilize those flexibilities.” Advocacy disagrees with this assessment and believes the rule would impose a new, de facto mandatory process and is therefore not voluntary.

First, the new option would be to either comply with the new rule (since the current special approval would presumably go away or be impractical to use) or take all 50-year-old freight cars out of service and scrap them. It appears from the very title of the rule that the FRA intends to eliminate the special approval process for 50-year-old cars and replace it with the new self-inspection and certification process. This alternative involves costs that must be analyzed, and Advocacy recommends that the FRA evaluate the cost of the proposed regulation compared to the existing baseline. That is, what does a regulated entity do now and what would they be required to do if the proposed rule was finalized? Small businesses representatives told Advocacy that the proposed rule would be more burdensome than the existing special approval process. For this reason, Advocacy recommends that the FRA compare the cost of the proposed self-inspection and certification process with the current baseline (and any other feasible alternative(s)).

Second, if the FRA intends to replace the existing special approval process with a full ban on 50-year-old freight cars, it should include that as a regulatory proposal. However, simply banning all 50-year-old freight cars seems arbitrary and capricious since many 50-year-old freight cars, with proper maintenance and care, are safe for service. This would represent a considerable departure

from the status quo and impose significant costs on the owners of these cars, which include railroads, shippers, leasing companies, and others.

V. Conclusion

Advocacy recommends that the FRA reconsider the impact of this proposed rule on small entities to determine whether it represents a significant economic impact on a substantial number of small entities. Advocacy is concerned that the new proposed rule might be more burdensome than the existing special approval process or other possible alternatives.

The FRA should consider other significant alternatives that achieve its objective and minimize costs to small entities. One alternative the FRA should consider is to repeal the 50-year threshold in 49 C.F.R. 215.203(a)(1). Advocacy also believes that the proper test under the RFA is whether an impact is “significant, regardless of whether the impact is positive or negative (i.e., beneficial or adverse). The purpose of the RFA analysis is to inform the agency’s decision making on how to minimize impacts on small entities. Advocacy notes that rail transportation is viewed as safer and more fuel efficient than other transportation modes (such as trucking), so unduly burdening rail transportation entails other considerations and costs.

Thank you for the opportunity to comment on FRA’s proposed *50-Year-Old Freight Car* rule. One of the primary functions of the Office of Advocacy is to assist federal agencies in understanding the impact of their regulatory programs on small entities. To that end, Advocacy hopes these comments are helpful and constructive.

Please feel free to contact me or Bruce Lundegren at (202) 205-6111 or bruce.lundegren@sba.gov if you have any questions or require additional information.

Sincerely,

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Dr. Casey B. Mulligan
Chief Counsel
Office of Advocacy
U.S. Small Business Administration

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Bruce E. Lundegren
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Mr. Jeffery B. Clark, Sr., Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget