

BEFORE THE  
FEDERAL RAILROAD ADMINISTRATION

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DOCKET NO. FRA-2021-0032:  
TRAIN CREW SIZE SAFETY REQUIREMENTS

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TESTIMONY OF CHUCK BAKER, PRESIDENT  
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

December 14, 2022

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Good morning, and thank you for the opportunity to share the short line industry's perspective on the FRA's proposed Train Crew Size Requirements rulemaking.

My name is Chuck Baker, and I am President of the American Short Line and Regional Railroad Association ("ASLRRA"). I am here today to represent the interests of the nation's approximately 603 Class II and Class III railroads<sup>1</sup>, commonly referred to as short line railroads.

My colleagues at the ASLRRA Jo Strang and Sarah Yurasko are also here and signed in as presenters so they can be available to answer any questions that might arise. After I speak, which will take about 25 mins, I'll briefly turn it over to

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<sup>1</sup> The ASLRRA and the STB generally recognize about 600 Class II and III railroads, but the FRA rule refers to approximately 700 regulated small freight railroads.

Dr. Bently Coffey, an economics professor at the University of South Carolina, to explain the modeling done on the survey data we collected that allows us to demonstrate the impact of this rule, and then after that there are six different short line railroad operators here or on Zoom to describe the specific impacts of this proposed rule on their operations.

Before I begin, I'll note that we really appreciate the opportunity the FRA holding this hearing, appreciate our opportunity to be here today, appreciate the work of each of you at the FRA, and in generally very much respect and appreciate FRA's crucial role as a safety regulator. We have serious concerns with this particular proposed rule, but want to distinguish our criticisms of this NPRM from any sort of broader critique of the FRA.

Short lines collectively operate about 50,000 miles of track in the United States, which is approximately 30% of the national freight network. We however only touch about 20% of the carloads on the rail network, employ about 12% of the railroaders in the industry, roughly 18,000 people, and produce about 6% of the annual revenue in the industry.

Short lines exist to maintain the viability of previously marginal branch lines of the larger railroads. We connect manufacturers, businesses and farmers in

rural communities and small towns to larger markets, urban centers, ports, and the larger freight rail network. In total, over 478,000 jobs throughout the economy are dependent on short line service remaining viable.

Almost all short lines are small businesses<sup>2</sup>. These small businesses have been able to survive, and in many cases thrive, over the decades because of their ability to be nimble, flexible, innovative, and focused on customer service while keeping safety at the forefront of their operations every single day. That has included the ability for them to tailor their operations, their equipment, and their staffing to meet the unique needs of each railroad and each customer. This new prescriptive crew size rulemaking though would threaten the ability of short lines to survive and thrive in the future by adding major new costs and regulatory burden for no attendant safety benefit.

I want to start with the most striking fact that we will present today and in our formal written comments that will be submitted next week. The NPRM states that only 7 short lines would be affected by this rule – that is unfortunately not even close to true. Our survey and modeling show that approximately 420 railroads operate at least some movements with only one person in the cab of the

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<sup>2</sup> See 13 C.F.R. § 121.201 and North American Industry Classification System code 482112, “Short Line Railroad.”

locomotive, and that approximately 195<sup>3</sup> of those railroads would not qualify for an exception to this rule and would not even be eligible to apply for a special approval of legacy one-person operations. 420 and 195 are not remotely in the same ballpark as 7, and thus the basic premise of this rule as it applies to short lines, the consideration of alternatives, and the cost-benefit analysis for short lines is thrown into serious question. If the government's estimate of the number of entities affected by a rule is off by literally more than an order of magnitude, that requires a rethink of the basic structure and applicability of the rule.

It is frustrating to short lines that we are here to discuss a proposed regulation that is a) not tied to any documented safety metric or improvement, b) has grossly underestimated the impacts to an entire class of railroads that are critical to the nation's supply chain, including decreased competitiveness, reduction of efficiency, and onerous compliance requirements and c) catches, we believe unintentionally, hundreds of small businesses in its net.

The history of the consideration of this rule is pretty well known, but it bears a very brief repeating. In 2009, when the FRA first considered a crew size rule, it

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<sup>3</sup> The 420 and 195 numbers are approximations and are still being finalized. We will include final numbers in our written comments to be submitted by December 21.

stated that there was *“no factual evidence to support a prohibition against one-person crew operations.”*

Then, in 2015, the National Transportation Safety Board (NTSB) found that *“There is insufficient data to demonstrate that accidents are avoided by having a second qualified person in the cab.”*

And then, in 2016 when the FRA last proposed a crew size rule, it famously stated that it 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.”*

And there has been ZERO additional evidence uncovered in the six years since the last crew size rule was proposed that one person crews are less safe than two person crews.

Also, the language of the NPRM shows that the agency is focused on preventing **future crew size reductions**, not on current short line railroad operations. It states, *“this proposed rule would help FRA ensure that safety is not adversely affected when **initiating** train operations with fewer than two crewmembers.”* Also, *“without this NPRM, FRA has a limited ability to address the totality of potential safety issues related to the **reduction** of crew staffing levels.”*

All of the research studies shared by FRA as supporting evidence in the NPRM presuppose a two-person crew. The NPRM states that these studies *“contain presentations from multiple research reports, identifying many safety considerations with reducing train crew staffing to fewer than two persons.”*<sup>4</sup> In other words, language explaining FRA’s purpose behind the NPRM and all of the studies shared by FRA looked at concerns of moving **from** a two person crew **to** a less-than-two-person-crew - *none of the studies addressed any concerns with current single-person train crews operating in the country.* As stated earlier, our evidence shows that in fact the majority of short lines operate single person crews safely and have done so for decades. This all stems from the original fatal flaw of this NPRM, which again is that it dramatically underestimates, by more than an order of magnitude, the number of short lines that currently operate with some type of one person crew that would have their operations significantly and immediately affected by this rule.

In fact, one person operations may be equally as safe or safer in many situations than two person operations, but the FRA has not considered or studied the safety or variety of real-world short line operations prior to issuing this NPRM.

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<sup>4</sup> NPRM at 45,572 and 81 Fed. Reg. 13,924-30.

In the NPRM, the FRA has assumed that only nine non-Class I railroads operate with single person crews in the cab of the locomotive – two passenger railroads, one Class II, and six Class III railroads. In fact, the universe of affected railroads is far greater than the FRA’s estimation based on our survey of our nearly 500 railroad members and the statistical modeling completed by Dr. Coffey. Again, approximately 420 short line railroads currently operate with a single person in the cab of a locomotive for at least some train movements and approximately 195 of those railroads would not qualify for either the small railroad exception or even be allowed to apply for special approval of their legacy one-person operations. Many of those approximately 195 railroads would either:

- 1) be forced to cease operations, or
- 2) be forced to significantly change their operations to accommodate the new requirements at significant cost.

For those railroads that have one person operations, don’t qualify for an exception, but would be able to apply for special approval, they would be subject to an uncertain and undefined process for gaining permission to operate in the manner in which they have already been safely operating for decades.

And all of these small businesses would be subject to these rule changes and new prescriptive oversight immediately, since there is no compliance timeline proposed in the rule, despite the fact that they have been operating safely for years or even decades.

And FRA is proposing this onerous path entirely on its own, absent any Congressional request or direction. In fact, Congress has actively considered and then declined to legislate on this issue on numerous occasions, as will be documented in our written comments. In these situations, the Supreme Court has recently cautioned that *'absent specific direction from Congress, delegations of broad regulatory authority should not be lightly presumed.'*<sup>5</sup>

From the short line viewpoint, this proposed rule continues to be a drastic solution in search of a problem.

### ***Safety***

The title of this proposal is *Train Crew Size **Safety** Requirements*. Yet, there are no measurable improvements to safety included in the stated goals it intends to achieve with the implementation of this rule. This is because there is no safety analysis that would indicate any measurable improvements should this rule be

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<sup>5</sup> [West Virginia v. EPA](#), 985 F. 3d 914 (2022).



implemented. Short line railroads are already committed to operating safely, and that very much includes considering how to staff and operate our trains. We are committed to bringing every employee home safely, every shift. There is no acceptable loss of life or limb, and as small businesses with employees that live and work in their communities and feel like family, and in some cases **are** literally family, this is very acutely felt. We see our colleagues and employees in the grocery store, on the baseball and football and soccer fields at our kids' games, and in our churches, synagogues, and mosques. Operating safely is good for our team members, it's good for our customers, it's good for business, it's good for our communities, and it's very personal for us.

We are ALL IN on *any* technology, *any* practice, or *any* operational change that would result in a safer environment.

However, this proposal fails the test on that measure. The FRA has not shown any specific safety gap closed by scheduling a two-person crew to do a job currently done by one person, nor has it identified statistical data to suggest that one-person crew operations are less safe than multiple-person crew operations.

FRA's own statistics do not show a need for this regulation. In 2018, FRA reviewed accident/incident data over a seventeen-year period ending in 2018 and

could not determine that any of the accident/incidents involving a one-person crew would have been prevented by having multiple crewmembers.<sup>6</sup>

Additionally, since 2016, FRA has not attempted to collect operational data that would allow the agency to more thoroughly examine the question of whether crew size impacts the safety of train operations. There are a variety of ways the FRA could have accomplished this, from adding questions to data currently required of every railroad, to collecting additional data on any accident, to asking OMB for approval to conduct its own survey of Class II and Class III railroads, to bringing this to an RSAC and within that process simply asking us at the Association to conduct a survey of our member railroads, as we in fact ended up doing.

Furthermore, FRA has not complied with two safety recommendations issued by the National Transportation Safety Board (“NTSB”) suggesting that FRA capture crewmember data and use the data to evaluate the adequacy of current crew size regulations.<sup>7</sup>

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<sup>6</sup> See 84 Fed. Reg. 24,735 (May 29, 2019) at 24,739.

<sup>7</sup> NTSB recommendations R-16-33 and R-16-34. The NTSB made a finding that FRA’s “accident database is inadequate for comparing relevant accident rates based on crew size because the information about accident circumstances and number of crewmembers in the controlling cab is insufficient.” NTSB, RAR-16/02, Derailment of Amtrak Passenger Train 188 at 19 (2016).

It is somewhat shocking that after FRA has not collected any of this data that it clearly COULD have collected, for the FRA to then issue this NPRM and have it be based off such a dramatic underestimate of the number of short lines affected.

There are actually many short lines who have shared that, in their experience, single person crews are safer than two person crews. You will hear from some of them later this morning. In their experience, a single person focused on a single task eliminates distractions. In their experience, single is simpler, and simpler is safer.

Without reliable studies supporting a safety improvement when adding one more crew member, the NPRM is simply levying additional regulatory burdens on a short line industry that can ill-afford additional cost burdens as it strives to compete with ubiquitous single person truck operations on publicly funded roadways.

We also question whether the FRA has the authority to issue this particular rule. The FRA clearly has authority to *“prescribe regulations and issue orders for every area of railroad safety,”* which nobody would dispute, but this NPRM does not demonstrate a safety concern with current short line one-person crew

operations or demonstrate that the proposed crew size and second crew member location mandate would improve railroad safety.

### ***Data on Short Line Industry***

The NPRM is seriously flawed in its quantification of the operational impacts to short line railroads. It failed to even come close to accurately counting the number of small entities that would be impacted, as required under the Regulatory Flexibility Act. The rule assumes that there are only a handful of railroads currently using less than two person operations, when, as we've now stated a few times, this is not close to reflecting the true number of railroads using less than two person crews. This is frustrating as it would have been eminently doable for the FRA to obtain an accurate estimate of the number of short lines affected by the rule.

Since the FRA did not accurately assess the number of affected railroads, it thus did not accurately reflect the cost of this rule's implementation on short line railroads.

Upon the effective date, if finalized as is, the NPRM would place a short line railroad that currently operates with a single-person in the locomotive cab and is ineligible for the small railroad exception in the position of having to either:

- (1) hire and train additional employees; or
- (2) alter their existing operations in significant ways such as restricting train length or breaking up some trains or limiting train speed or adding alerters or dispatching; or
- (3) petition the FRA for a special approval for its legacy operation, which would then include the new burden of an annual review and analysis, and may also include operating rule restrictions.

And many railroads would not even qualify to petition the FRA to approve the continuance of a legacy one-person train crew operation due to the restrictions that FRA has placed in the NPRM, such as on the amount of HazMat traffic that can be moved.

We will be providing two flow charts in our formal comments due next week, showing the spider web of requirements to obtain an exception or gain special approval. It's an easy way to visualize the complexity of the rule and the fact that most roads lead to NO. There would be many short lines who would simply have to add a crew member to comply with the rule. At that point, at least 18 months would be needed to hire and train additional employees, and that's ignoring that many short lines simply don't have the funds available to hire extra

personnel, and that's of course also ignoring the question of whether those people are available at all.

The Regulatory Flexibility Act requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a Significant Economic Impact on a Substantial Number Of Small Entities (what the SBA calls a SISNOSE) . This NPRM would clearly have a SISNOSE.

It is evident that FRA did not take the appropriate steps to determine the magnitude of the impact of the NPRM on the short line railroad industry. It is clear to us that this rule, if implemented as proposed, would have a massive impact on our industry.

Increasing labor costs to cover an additional crewmember with no quantifiable safety benefit would be risking viability for many short lines over time. Short lines I have spoken with tell me they would be looking at increased labor costs of 10, 20, or even 30%, which they simply cannot afford. You might then ask; can't short lines simply raise their rates to cover the burden of additional regulatory compliance?

Quite simply, no. As short lines, we are the first and last mile of a longer journey, and oftentimes the rates are dictated by the Class I handling the longest

part of the journey. And even if a short line were to be in position to increase rates on their own, short line service is typically quite competitive with trucking. Raising our rates would in many cases just result in a modal shift from rail to truck, cutting our revenues and risking our ability to operate, which in turn affects all the other customers on our lines. Each customer and each carload is significant for short lines. It is no exaggeration to say the loss of one customer can send a short line into a vicious tailspin resulting in bankruptcy.

In addition, a modal shift to trucking would cause negative public impacts that are well established – increased air pollution, increased micro plastics from shredded truck tires seeping into the water supply, increased risk to the motoring public, increased taxpayer costs to cover road infrastructure damage, and increased traffic in local communities. Nationwide, in 2008 there were 4,245 truck-involved fatalities, and in 2021, there were 5,601 fatalities, an increase of nearly 32 percent. On the other hand, freight trains incur only 14% of the fatalities that large trucks do per trillion ton-miles. Similarly, freight trains incur only about 3% of the injuries that large trucks do per trillion ton-miles. The freight railroad rate of hazmat incidents per billion ton-miles is about 7% that of trucks, and railroads incurred **zero** fatalities from 2012 through 2020 due to hazmat while trucks incurred 81.

Put simply, it is easy to see how this rule could result in traffic moving away from rail onto the highway, and that would most certainly **harm** safety and result in **more** deaths and **more** injuries in the transportation system as a whole. This would be a lose-lose-lose-lose result for us as short lines, our customers, the USDOT, and the American public.

Short lines already operate on very thin margins in most cases and have survived over the decades by being flexible, nimble, responsive to customers, and innovative in their operations and business practices. Adding this heavy-handed, unnecessary, prescriptive regulation with very limited exception criteria and uncertain special approval processes hampers our ability to survive and thrive for the next generation.

And this all comes at a time when other parts of the USDOT are actively helping our competitors in the trucking industry develop fully autonomous systems that would have NO person in the delivery vehicle, on public roads.

I'm about to wrap up, so soon you will hear from six of our member short lines to speak to the real-world impacts of this rule on short lines – Mitch Harris of the Rio Grande Pacific Corporation, Robert Bullock of the Florida East Coast Railway, John DeWaele of the Grafton & Upton, Scott Conner of Transtar, Adam



Robillard of the Madison Railroad, and Dewayne Swindall of the Indiana Rail Road Company later this afternoon. While we would have liked to have had sixty short lines instead of six here to testify, we wanted to be cognizant and respectful of the time constraints today, and also being completely honest some of our members were hesitant to testify publicly out of concern for souring their relationship with the FRA and risking increased scrutiny or perhaps lowering their chance of winning a desperately needed CRISI grant. We assured our members that those concerns were unfounded, and that the FRA would constructively accept feedback on this NPRM with an open mind.

To sum up, short lines believe that they should retain their current flexibility to deploy skilled staff based on their specific operational and safety requirements. We see no need and no justification for this crew size and crew location rule that would solve a non-existent problem. This NPRM does not solve any safety concern associated with one person crew staffing on short line railroads. **Hundreds** of small business railroads, not seven, would be directly and immediately affected on an operational level, and it would be exceedingly difficult and burdensome for railroads to apply for and win special approval to continue their current safe and customer-focused operations.

Staffing has always been handled by short lines with safety as the first concern and customer service and financial survival as the next concerns. This NPRM is written at the train level, rather than the company level, which makes it exceedingly difficult to adhere to. There is no *de minimus* exception, and it fails to recognize the decades long existing safe practices of short lines. It risks our ability to service our customers and provide an economic engine to the communities in which we operate, and the modal shifts that it would inadvertently cause would not serve the American public well.

We urge the FRA to withdraw this NPRM or completely exempt short line railroads from any crew size and crew location mandate.

I thank you very much for your time and attention, and I look forward to your questions, either now, after our panel is complete, or at the end of the day.

If there are no questions right now, I will turn it next to Dr. Bentley Coffey to explain the data analysis and modeling he performed with the ASLRRA crew size survey data.