On Wednesday, the public comment period will close on a proposed rule from the Federal Railroad Administration (FRA). The proposal resurrects an idea from the Obama Administration: that the federal government needs to set a minimum crew size of at least two persons on the vast majority of rail operations, including freight and passenger rail.

Two is surely safer than one or zero, goes the thinking. But a closer examination of the facts and likely consequences reveals that there is a lot more that must be considered.

Back in 2016, the FRA – sensing it needed to do something in the wake of two high-profile 2013 rail incidents – proposed a similar rule. There was just one problem. It did not have sufficient evidence that two-person crews were safer than one-person crews, nor did the agency make any direct conclusions about staffing and the 2013 incidents. There was insufficient data on one-person crews because most rail operations back then used two-person crews – a practice that continues to this day.

In 2019, the Trump Administration’s FRA withdrew the proposal, citing the original proposal’s lack of supporting data, and also found that in the interim no such data had become available. Further, because most operations have two-person crews, there was no justification to mandate the industry practice, it said.

In the latest rulemaking, the FRA still lacks data to show the need for the requirement. It continues to rely on the premise that two-person crews must be safer than those with one. Unfortunately, should the rule be finalized, it will have obvious negative consequences. It will deter the rail industry from investing in the development of innovative technologies. These technologies could eventually allow for the prevalent use of one-person – or even fully automated – operations that could function more reliably and safely than today’s. Those technologies could also allow rail operations to better compete with the commercial trucking industry that is similarly working to automate where appropriate, lowering costs for producers and consumers.

The FRA’s proposed rule is a classic example of regulating via the precautionary principle – adopting measures despite a lack of evidence when the stakes are perceived as high. In an attempt to mitigate the negative consequences of the proposed rule, the FRA included a process to allow operators to apply for exceptions where they could use fewer-than-two-person crews. But the design falls flat. The FRA offered no measurable criteria whereby operators would automatically qualify for an exception. Instead, each situation is up to the subjective consideration of the agency’s decision makers. It is conceivable that no one-person crew exceptions would be granted.

While some form of a crew-size mandate could ultimately be the optimal policy choice, a mandate to impose that should be justified with data and consideration of the trade-offs, not merely precautionary assumptions. Unfortunately, the proposed FRA rule is just the latest example of regulators regulating without sufficient evidence of benefit.