



Insight

FRA Crew Size Withdrawal Holds Lessons for Other Regulators

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On May 23, the Federal Railroad Administration (FRA) [withdrew](#) a three-year-old proposed rule that would have mandated railroad crews of at least two individuals. While the action is certainly relevant to the railroad industry, it serves as a broader example of prudent regulatory action that all regulators can learn from.

The withdrawal goes beyond the railroad industry in three important ways. First, it reinforces that regulators should not regulate when lacking evidence that the proposed solution will address a problem. Second, it shows that regulators need to be sure not to unnecessarily stifle innovations that may be possible in the future. Third, it prevents a patchwork of state-level requirements.

WITHDRAWAL OF TRAIN CREW-SIZE PROPOSED RULE

The May 23 action withdrew a [Notice of Proposed Rulemaking](#) (NPRM) published in March 2016 that would have mandated that all covered trains – both passenger and freight – operate with at least two crew members. The proposal cited major accidents in Lac-Mégantic, Quebec, and Casselton, North Dakota, that occurred in 2013 as a justification for proposing the mandate. These same accidents had already served as justification for several rules previously issued by the FRA.

In the crew-size proposal, however, the FRA conceded that it did “not have information that suggests that there have been any previous accidents involving one-person crew operations that could have been avoided by adding a second crewmember.” In the public comment period and public hearing that followed, no evidence was presented to show that the accidents happened because of one-person crews. The National Transportation Safety Board (NTSB) submitted comments on the NPRM and it did not recommend adopting the crew-size standard, but rather recommended that the FRA capture data on crewmember size to evaluate the adequacy of crew-size regulations.

In withdrawing the NPRM, the FRA cited this lack of evidence that a two-person mandate would have prevented these accidents or others. The FRA also cited concerns that adopting a crew-size mandate of any kind would have impeded possible innovations in the railroad industry, including automated trains. The withdrawal also affirmatively stated that the action asserts the FRA’s stance that it preempts efforts by states to impose crew-size mandates.

LESSONS BEYOND RAILROAD REGULATION

The FRA’s decision to withdraw the NPRM provides important lessons for regulators of all types. The first is that regulators should avoid imposing mandates when there is no evidence the agency’s preferred mandate would solve the issue in question. This approach should seem obvious, but regulators often prefer to take action in an attempt to solve a problem – particularly in tragic and high-profile circumstances like the train accidents in Lac-Mégantic and Casselton. The FRA deserves credit for not imposing a costly mandate – estimated at [\\$40.9 million](#)

– on industry when it was not reasonably sure it would be the solution.

A second lesson is to consider the impact that a regulation today could have on future innovation. As FRA noted in its withdrawal, the imposition of a crew-size mandate of any size could inhibit “the integration of technology and automation across our transportation system that has the potential to increase productivity, facilitate freight movement, create new kinds of jobs, and, most importantly, improve safety significantly by reducing accidents caused by human error.” The FRA cited its 2017 safety data that showed that 38 percent of accidents were caused by human error. Technological improvements, including eventual automation, could substantially reduce or even eliminate accidents caused by human error – vastly improving safety.

A crew-size mandate would serve as an obstacle to automation and delay its development and implementation in at least two ways: depressing near-term investment in rail automation and the time it would take to remove the regulatory barrier. Regulators of all types should learn from this example to consider how today’s mandates affect innovative progress and future deployment.

A third lesson is that federal agencies should take action to prevent states from imposing standards that could impose unnecessary costs and logistical issues on the economy when they can. Current federal law states that laws, regulations, and orders “related to railroad safety” have to be nationally uniform. Because the FRA had never issued a crew-size mandate of any kind, however, nine states recently imposed crew-size requirements, and proposals had been introduced in about 30 other states. These state-level requirements would have the effect of forcing rail operators to use crews of a specific size or face a logistical challenge of tailoring its crew size as it traveled from a state with no mandate to one with a mandate – and vice versa.

The FRA took the opportunity afforded by its withdrawal to affirmatively assert for the first time that its decision to not impose a crew-size mandate means that states cannot either. While the notice defends this decision because of a lack of evidence that crews of a certain size improve safety, it is just as important in preventing barriers to innovation. This assertion will likely be challenged in court, however, so the assertion is far from the last word on this matter. Nevertheless, federal agencies would do well to emulate this example on issues where they have remained silent and state action could unjustifiably impose regulatory requirements and limit innovation.

CONCLUSION

The FRA’s decision to withdraw its Train Crew Staffing NPRM offers lessons to regulators beyond the railroad industry. Regulators should not impose specific and costly mandates when lacking evidence they will solve a problem. Regulators should also be mindful of the implications today’s regulatory decisions will have on future innovation, particularly when evidence suggests those innovations could improve safety. Finally, federal regulators should recognize that states may impose mandates when federal agencies remain silent – and therefore need to assert authority in instances when state action will impose expensive mandates and stifle innovation.