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December 21, 2022

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U.S. Department of Transportation
Docket Operations (M-30)
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Docket No. FRA-2021-0032

Dear Docket Clerk:

The American Public Transportation Association (APTA) represents an \$80 billion industry that directly employs 450,000 people and supports millions of private-sector jobs. We are pleased to offer comments regarding the Federal Railroad Administration's (FRA) Notice of Proposed Rulemaking (NPRM) on Train Crew Size Safety Requirements published on July 28, 2022 in the *Federal Register* at 87 Fed. Reg. 45564.

Risk Assessment Methodology

The risk assessment methodology proposed in 49 CFR § 218.135, including the risk matrix and the probability/severity definitions, may be viewed as precedent in future regulatory proceedings unrelated to train crew size. In general, APTA supports risk-based approaches that allow railroads to identify, mitigate, and manage safety in a manner that reflects the scale and specifics of individual operations. Although FRA notes that it believes this rule does not conflict with other regulations, APTA views the introduction of a separate, but similar, risk assessment process as unnecessary for railroads that already follow an established methodology under 49 CFR Part 270.

APTA believes the concern raised by FRA regarding a railroad deciding "not to implement mitigations" could still be addressed by an appropriate review and approval process, so long as a railroad is able to work within the framework of its existing Part 270 processes. This would provide consistency and avoid potential confusion regarding the process by which the railroad manages operational risks.

Specifically, the proposed matrix and definitions, particularly severity definition components linked to 49 CFR Part 225 as applied to commuter railroads, could have the potential to create scale compression such that a minor event would be classified as catastrophic. The difference between the proposed matrix/definitions and widely accepted risk assessment standards such as MIL-STD-882E is notable. In MIL-STD-882E, a risk standard established by the Department of Defense and referenced in 49 CFR Part 238, a formal risk assessment matrix is outlined to reduce or eliminate risks posed by hazards. In this widely used model, only 25 percent of the safety risk matrix would be considered “red” meaning a “high” risk. In the proposed matrix in 49 CFR § 218.135, 50 percent of the matrix would be classified as “unacceptable.” It should be noted that MIL-STD-882E does not state what risk level is acceptable versus unacceptable. Such a determination would need to be made on a case-by-case basis, as noted by FRA, in its recognition that “every railroad operation is unique, and that the technical resources and capabilities of railroads vary.”¹

Additionally, having a parallel, but different assessment could cause confusion, diminish the utility of any assessments of similar risks performed under Part 270 programs, and raise security concerns by providing direct access to hazards in conflict with the legal protections provided by FRA under its risk reduction programs. To avoid these potential issues, APTA suggests a railroad’s 49 CFR Part 270 or 49 CFR Part 271 programs be adopted in the final rule as an acceptable alternative methodology, with an appropriate review and approval process that allows the legal protections afforded by Part 270 to be maintained.

Definition of “Train Crew”

The FRA defines “train crew” in 49 C.F.R. § 218.5 as “one or more railroad employees who are: assigned to a controlling locomotive; called to perform service subject to the Federal hours of service requirements; involved with the movement of the equipment they are called to operate; reporting and working together as a unit that remains in close contact, if more than one employee; and subject to the railroad operating rules and program of operational tests and inspections required in 49 CFR 217.9 and 217.11”.²

Currently, Utah Transit Authority and Regional Transportation District in Denver, both employ two team members on each train, who are both trained and qualified under the railroad’s Passenger Train Emergency Preparedness program under 49 CFR Part 239. One team member is a dual certified Engineer/Conductor and is responsible for the safe operation of the train. FRA notes that it is choosing not to define the duties of the two required crewmembers in the proposed rule, but in tying the definition to § 218.5, it is unclear for legacy operations who operate with more than one person on a train where they might otherwise fall short of the intent of the rule, as defined by § 218.121(a).

¹ See FRA, Train Crew Size Safety Requirements NPRM, 87 Fed. Reg. 45564, 45584 (July 28, 2022).

² *Id.* at 45578.

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APTA appreciates the opportunity to comment on this NPRM. If there are any questions regarding this letter, please contact APTA's General Counsel, Linda Ford, at lford@apta.com.

Sincerely,

A handwritten signature in blue ink that reads "Paul P. Skoutelas". The signature is written in a cursive style with a large initial "P" and "S".

Paul P. Skoutelas
President and CEO