FEDERAL REGISTER NOTICE:
FRA NOTICE OF PROPOSED RULEMAKING
TRAIN CREW SIZE SAFETY REQUIREMENTS

DETAILS

Link to FR Notice: 2022-15540.pdf (govinfo.gov)

COMMENTS DUE: September 28, 2022

HIGHLIGHTS OF NOTICE

Summary

FRA proposes to require that railroads staff every train operation with a minimum of two crewmembers (including a locomotive engineer and an additional crewmember). The proposed rule prescribes minimum requirements for the location of crewmembers on a moving train, requirements to ensure any crewmember not operating the train and outside of the operating cab of the controlling locomotive can directly communicate with the locomotive engineer. The Notice of Proposed Rulemaking (NPRM) also provides special approval procedures for railroads to petition FRA to continue certain legacy operations with one-person train crews and to initiate new train operations with fewer than two crewmembers.

Background

On March 15, 2016, FRA issued an NPRM proposing regulations concerning train crew staffing. The 2016 NPRM arose out of two rail accidents in 2013. One accident was illustrative of how a second train crewmember might have prevented grave harm (Lac-Mégantic, Quebec) and the other showed how multiple train crewmembers can help prevent harm post-accident, as well as how an expert crewmember team can support each other during life-threatening conditions (Casselton, North Dakota).

FRA's initial response to the Lac-Mégantic accident was to issue Emergency Order 28 on August 2, 2013, which contained the preliminarily known details of the events that led to the accident and ordered

each railroad to institute and carry out specific measures with respect to securement of unattended vehicles and trains transporting certain types of hazardous material on mainline track and mainline sidings outside of a yard or terminal. On August 29, 2013, FRA followed the issuance of the emergency order by hosting an emergency meeting of its Federal Advisory Committee known as the Railroad Safety Advisory Committee (RSAC). In its 2016 NPRM, FRA summarized discussions of RSAC's Working Group and explained that, although no consensus was reached on any recommendations, the 2016 proposed rule largely reflected concerns FRA identified during the Working Group meetings.

The 2016 NPRM generally proposed to require a minimum of two crewmembers for all railroad operations except operations determined to not pose significant safety risk to railroad employees, the general public, and the environment. The NPRM proposed special approval processes to allow an existing, less than two crewmember operation to continue and to allow the initiation of a new, less than two crewmember operation. The approval processes proposed in the 2016 NPRM, however, contemplated that a requesting railroad would provide a description of the existing or proposed operation(s), along with "appropriate data or analysis, or both" or a "safety analysis . . . including any information regarding the safety history of the operation" to enable FRA to determine whether the proposed operation would provide "at least an appropriate level of safety."

On May 29, 2019, FRA withdrew the 2016 NPRM. In the 2019 notification of withdrawal, FRA explained that it was withdrawing the 2016 NPRM because the connections between train crew staffing and railroad safety with respect to the Lac-Mégantic and Casselton accidents were tangential at best and did not provide a sufficient basis for FRA regulation of train crew staffing requirements. FRA also explained that its accident/incident safety data did not establish that one-person operations are less safe than multi-person train crews and it concluded that the comments submitted did not provide conclusive data suggesting that there have been any previous accidents involving one-person crew operations that could have been avoided by adding a second crewmember or that one-person crew operations are less safe. In addition, FRA found that implementation of a train crew staffing rule might be barrier to automation or other technology improvements.

Four separate lawsuits were filed challenging the 2019 Withdrawal, which were consolidated in the U.S. Court of Appeals for the Ninth Circuit. On February 23, 2021, the Court vacated FRA's withdrawal and preemption determination, and remanded the rulemaking to FRA.

Specific Passenger and Tourist Train Operation Exceptions to Crew Staffing Requirements

The NPRM proposes four specific passenger and tourist train operation exceptions to the proposed requirement for assigning a minimum of two crewmembers on each train. Proposed paragraph (a) excludes a tourist train operation that is not part of the general railroad system of transportation from the proposed two-person crew requirement. Tourist train operation is a tourist, scenic, historic, or excursion train operation and not part of the general railroad system of transportation and conducted only on track

used exclusively for that purpose. FRA believes excluding these types of operations from the two crew requirements is consistent with FRA's jurisdictional policy that already excludes these operations from all but a limited number of Federal safety laws, regulations, and orders.

The next passenger exception would allow a passenger or tourist train operation with fewer than two crewmembers if the train's cars are empty of passengers and passengers will not board the train's cars until the crew conducts a safety briefing on the safe operation and use of the train's exterior side doors. FRA believes this exception is appropriate because it requires a safety briefing requirement, consistent with FRA's passenger equipment safety standards to help ensure passengers board, and later exit, the train safely.

The third exception to the two-person crew general requirement for a passenger or tourist train operation involving a single self-propelled car or married-pair unit, e.g., a DMU or EMU operation, where the locomotive engineer has direct access to the passenger seating compartment and the passenger railroad's emergency preparedness plan for this operation is approved under 49 CFR 239.

The fourth proposed exception is most applicable to transit. This exception from the two-person crew requirement is rapid transit operation in an urban area connected with the general railroad system of transportation under certain conditions. The proposed exception clarifies that a rapid transit operation in an urban area means an urban rapid transit system. For the exception to apply, a railroad operating a rapid transit operation in an urban area connected with the general system must ensure that all three listed conditions are met. First, the operation must be temporally separated from any conventional railroad operations, meaning that the rapid transit operation in an urban area is strictly time separated from conventional operations. By requiring that these operations be "temporally separated from any conventional railroad operations," the NPRM proposes to ensure that the excepted rapid transit operations could not potentially collide with heavier, conventional trains. A temporally separated urban rapid transit operation on the general system is required to obtain an FRA-approved waiver from all applicable FRA regulatory requirements demonstrating an acceptable level of safety, so FRA would have assurances that sufficient measures are in place so the operation can be conducted safely on the general system. The second condition for this exception is that there is a Federal Transit Administration (FTA) approved and designated State Safety Oversight (SSO) Agency that is qualified to provide safety oversight, while the third condition is that the operator has an FTA/SSO approved Public Transportation Agency Safety Plan in accordance with 49 CFR parts 673 and 674. The second and third conditions that must be met relate to the fact that these rapid transit operations in an urban area on the general system may be subject to FTA's jurisdiction and FRA does not want to assert jurisdiction over an operation where FTA is already asserting jurisdiction.

Petitions for Exceptions

It is worth noting the requirements for petitioning FRA to initiate a new train operation staffed with fewer than two crewmembers that is not otherwise prohibited or permitted by the other requirement must contain a risk assessment of the proposed operation that follows accepted hazard analysis processes and provides for mitigation of identified hazards to acceptable levels. A risk assessment is the process of determining, either quantitatively or qualitatively, the level of risk associated with a proposed train operation staffed with fewer than two crewmembers, including mitigating the risks to an acceptable level. Generally, FRA believes an acceptable level of risk is achieved when it is determined that further risk reduction measures will not result in an additional, significant reduction of risk in excess of the cost of such measures. The minimum process and content requirements for a railroad's risk assessment are proposed in § 218.135. Section 218.135 would also allow a railroad to use alternative methodologies or procedures, or both, to conduct a risk assessment if the Associate Administrator finds they will provide an accurate assessment of the risk associated with the proposed operation. FRA estimates the time burden for a railroad to prepare a petition will be 40 hours per petition for legacy train operations and 48 hours per petition for new operations. The proposed special approval procedure is expected to take 120 days once a railroad submits a petition for special approval. FRA also proposes an annual requirement to ensure that each railroad is regularly reviewing the safety of its operation and the accuracy of its risk assessment, and to provide FRA with enough data to identify any safety trends in the approved operations.

FRA estimates the 10-year costs of the proposed rule to be $2.0 million, discounted at 7 percent. The annualized costs would be $0.3 million discounted at 7 percent.

ADDITIONAL INFORMATION

In April of this year, APTA participated with ASLRRA and AAR in a call with the Office of Management and Budget (OMB) to raise concerns about FRA's two-person crew requirement. The presentation to OMB can be found here: