

US Federal Railroad Administration finalizes regulations on two-person crews full of exceptions and loopholes

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Federal regulators finalized a new rule Tuesday requiring rail companies to operate with at least two-person crews. The rules are based on an initial proposal from 2022 made by the Federal Railroad Administration (FRA), which had rejected a similar rule in 2019 under the Trump administration.

Ostensibly, the rule requires all rail companies to maintain at least two people, an engineer and a conductor, on all trains as a safety precaution. Rail workers and rail safety experts have long noted that the drive by companies to reduce costs by implementing one-person crews would have disastrous consequences, especially for trains carrying hazardous materials.

The new rule “requires railroads to staff every train operation with a minimum of two crewmembers (including a locomotive engineer and an additional crewmember who will typically be a conductor) that travel with the train and can directly communicate with each other even if one crewmember is not in the locomotive cab, with certain one-person train crew exceptions permitted under specified circumstances.”

The Teamsters Rail Conference praised the rule, with the union calling it a “huge step forward in protecting our nation’s railroads” and thanked President Biden for “listening to workers.”

But the devil is in the details, and the two-person crew rule is full of loopholes and exceptions that make the regulation largely toothless.

Exceptions in the rule allow Class II and Class III carriers, the smaller regional and local rail lines, to roll over existing one-person crews if they were put in force two years prior to the implementation of the rule, and they may submit a request for one-person crew allowances pending a safety review by the FRA. Passenger and tourist rail lines are also subject to exceptions that allow for one-person crews.

None of these exceptions are based on any objective information about safety, but are entirely driven by the fact

that these groups of rail carriers have already implemented one-person crews in many cases and the FRA does not wish to interfere with this cost-cutting process for smaller rail lines. It is an entirely profit-driven move designed to help smaller rail companies keep their costs down and eliminate jobs.

Under these exceptions, the one-person crews are permissible if the train is equipped with an “alerter,” a device designed to stop a train if the lone operator becomes unresponsive, and they must follow minimum federal regulations to “(1) prevent uncontrolled train movements if a one-person train crew were to become incapacitated; (2) maintain communication between a railroad employee ... and the one-person train crewmember to convey operational instructions and ensure the one-person crewmember’s personal safety; (3) track the location of a train operated by a one-person crew in case communication is lost and a rescue operation needs to be initiated; and (4) establish protocols that ensure rail employees can take mitigation measures that provide a level of safety that is as safe or safer than a two-person train crew operation to address certain situations, such as an accidental or non-accidental release of any hazardous material, with the one-person train crew operation.”

Point four is incredibly vague and open ended, allowing for a significant amount of room for rail carriers to implement policies that meet the language of the regulation but do not actually uphold safety. Connected to this is language that, “FRA has modified the risk assessment requirements, allowing a railroad to make its determination either quantitatively or qualitatively, or both, rather than only quantitatively as expressly proposed.” In other words, the rail carrier can make a written case to the FRA on the safety of its policies without having to actually prove they are safe.

Most significant, however, is that “The requirements in this final rule will not apply to a train operation controlled

by a remote control operator, even if that remotely controlled train is operated by a one-person train crew.”

The FRA explained it “decided not to apply this final rule to a train operation controlled by a remote control operator because it has existing safety requirements for these operations and because there are other reasons mentioned later in this discussion of comments and conclusions.” Those comments were largely from industry representatives with an economic motive to obtain every exception to the rule possible.

Exceptions for remote control operations are a huge victory for the rail carriers. Remote control operations require less labor, allowing for reduced ground crew staffing, particularly for line switching, saving the company money. However, there are questions about the real safety of remote control locomotives.

There have been multiple cases of rail workers being injured or killed by a remotely controlled train. In February 2022, a switchman for BSNF in Denver, Colorado was working as a remote control operator helper when the train suddenly decelerated, throwing the worker onto the track where he was struck and killed by the train.

This past fall, a carman in Walbridge, Ohio was struck and killed by a remotely controlled locomotive that was being controlled from the rear of the train. Both incidents were investigated by the National Transportation Safety Board and found to have been preventable, with remote control determined to be a factor in the deaths.

According to the FRA, several unions opposed the remote control exception, including BLET, SMART-TD and TTD, but they did “not seek FRA to regulate remote control operations through this rulemaking” and instead requested a separate safety review of remote control locomotives by the FRA.

But now they are praising federal regulations that are full of loopholes and exceptions undermining the very safety they claim the rules uphold. The union bureaucracy is continuing the role that it played in 2022, where workers demanded national strike action against one-man crews, among other key demands. Instead, the bureaucracy first tried and failed to push through a sellout contract brokered by the White House. Then they stalled, giving Washington time to pre-emptively ban a strike and impose the contract workers had rejected.

Almost immediately afterward, the major Class I railroads moved toward implementing one-man crews, with Norfolk Southern and Union Pacific announcing plans for pilot programs to replace the conductor with a ground-based “expediter.”

The new rule even leaves the door open for one-person crews on Class I railroads, containing language that

“specifies how a railroad may petition FRA for special approval of a one-person train crew operation not covered by an exception.” It adds, “Each petition for a train operation with a one-person train crew that is not permitted under §§ 218.125 through 218.129 [subsections covering the previously mentioned exceptions] must contain sufficient information for FRA to determine whether approving the operation described in the petition is as safe or safer than a two-person minimum train crew operation.”

In other words, the rule is less a “ban” on one-person crews as it is a procedure for obtaining approval for them from the federal government.

This did not stop the rail industry from bemoaning even the most modest of regulatory interferences. Association of American Railroads CEO Ian Jefferies complained, “FRA is doubling down on an unfounded and unnecessary regulation that has no proven connection to rail safety. Instead of prioritizing data-backed solutions to build a safer future for rail, FRA is looking to the past and upending the collective bargaining process.”

Relationships with the unions have been a sticking point for the rail companies in their criticisms of the rule. While it provides ample exceptions, the rule interrupts any understandings the rail carriers had made with their union bureaucrat counterparts in securing contract permission for one-person crews, which would have been more advantageous and customizable for the carriers in their ongoing assault on safety and jobs.

How much the FRA will choose to open this backdoor to one-person crews remains to be seen, but the existing exceptions and the endorsement of remote control operations as an alternative will open massive attacks on worker safety and jobs. Remote control in particular will be used as a spearhead to attack jobs across all crafts, as the carriers move to severely cut down on their current workforce.

The rule demonstrates that the defense of safety and jobs cannot be handed over to the pro-corporate Biden administration and union bureaucracy. Both have worked to block strike action by railroaders, impose pro-company contracts, and now implement a toothless regulation that will open the way for one-person crews and extensive implementation of remote control operations. It is only the rank and file who can oppose these attacks on rail workers and organize to demand adequate safety measures and job protections.



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