Freight Rail & Performance-based Regulations

Key Takeaway: Railroads are dedicated to adopting new technologies for safety and efficiency, and they advocate for a modern, performance-based regulatory framework that encourages innovation and sets operational goals based on data. Prescriptive regulations are outdated and hinder safety progress.

Railroads are fully committed to developing, testing and incorporating new and emerging technologies to help improve safety, efficiency and customer service. However, there is no single industry-wide plan or schedule for rail automation. Progress is anticipated to be incremental and progressive, with individual railroads developing and carefully implementing technologies to benefit their operations and customers.

The current oversight of the development, testing and incorporation of emerging technologies — including automated systems — is becoming increasingly divergent across the various modes of transportation. Continuing with this approach to regulation could result in different regulatory structures and safety or operational standards being imposed on different modes of transportation, potentially further distorting the freight transportation market.

Railroads need an equitable regulatory framework.

Freight railroads encourage the development of guidelines that modal administrations can use to promulgate safety or operational standards. These guidelines would allow the industry to effectively experiment with and incorporate new and emerging technologies and processes, including automated systems, into their operations.

The freight rail industry also seeks a modern, effective regulatory framework at the U.S. Department of Transportation and the Federal Railroad Administration (FRA). One approach to achieve this is through performance-based regulations. This regulatory approach sets specific operational goals for an industry like freight rail, which can be measured and confirmed by scientific metrics and data while allowing railroads to develop and harness new technologies and approaches to improve their operations and reach those goals.

Performance-based regulations would help railroads build upon the safety of their operations more effectively than is possible today, utilizing prescriptive regulations which dictate the precise characteristics of workplace facilities, equipment, or processes for compliance with that regulation.

Prescriptive regulations freeze innovation.

Prescriptive regulations often cannot keep pace with the development of new technologies and may, at times, impede safety improvements by requiring the use of certain outdated processes or equipment.

For example, the FRA's prescriptive regulatory approach for when railroads seek to incorporate new safety technologies will often only permit the rail industry to use these technologies as a supplement to — not a replacement for — decades-old regulatory requirements. This results in a powerful disincentive to invest in the research and technology necessary to keep railroads competitive in the marketplace for time-sensitive freight.

Performance-based regulations are forward-looking and meet the needs of a world where technologies are constantly changing and improving. Policymakers should strive to create a regulatory framework that encourages innovation and the development of new technologies that would make railroads safer, while also ensuring sufficient governmental oversight. A performance-based regulatory framework can ensure that freight rail companies are able to continuously improve the safety of our operations, better meet our nation's growing freight transportation demand, and benefit U.S. manufacturers and consumers.

To incorporate a modern, effective regulatory framework, policymakers should:

- **Emphasize modal equity** in the development, testing and incorporation of new and emerging technologies.
- **Use performance-based regulations** to allow the industry to invest in cost-effective, innovative solutions that better enhance safety and efficiency.
- **Base regulations on verifiable data,** sound science and demonstrated need.
- **Encourage innovation** and avoid "locking in" existing technologies and processes.
- **Be transparent with decision-making** and encourage meaningful discussions with the industry and the public.
- **Ensure the benefit of a regulation outweighs its cost** by relying on data and expert input and examining the cumulative burden of regulations.
- **Use guidance documents to clarify ambiguous regulations**, not establish new obligations or coerce compliance.
- **Encourage waivers and pilot programs** to help the industry demonstrate new, cutting-edge technologies and practices that could enhance safety.