ASSOCIATION OF AMERICAN RAILROADS

MODERN REGULATORY FRAMEWORK

- Performance-based rules foster innovation and improve safety in the modern regulatory framework for freight rail.

- Prescriptive regulations enforce outdated methods in the freight rail industry.
- DOT and FRA should ensure fair, tech-friendly oversight across all transportation modes, including freight rail.

Railroads develop, test, and incorporate new and emerging technologies to help improve safety, efficiency, and customer service. Meanwhile, a modern regulatory framework for freight rail could address regulatory impediments. These impediments regularly get in the way of adopting technology-based improvements.

One major problem is that the current regulatory oversight of the development, testing, and incorporation of emerging technologies — including automated systems — is becoming increasingly divergent across the various modes of transportation. Some modal agencies seek to encourage advancements. Others seem intent on locking in the status quo. The Department of Transportation should strive for modal parity, including in regulations, to allow for fair and balanced competition. It should not further distort the freight transportation market.

Railroads need an equitable regulatory framework.

The freight rail industry seeks a modern, effective regulatory framework at the U.S. Department of Transportation and the Federal Railroad Administration (FRA). This framework should embrace new technology and operational improvements to drive safety and efficiency. One approach to achieve this is through performance-based regulations. Performance-based regulations define specific outcomes or standards that must be met. They give railroads flexibility in how to achieve compliance instead of mandating rigid methods or processes.

For railroads, this regulatory approach sets specific operational goals for the industry. Scientific metrics and data can measure and confirm these goals. Moreover, it allows railroads to develop and harness new technologies and approaches to improve their operations and reach those goals. A modern regulatory framework for freight rail using performance-based regulations would help railroads build upon the safety of their operations more effectively than is possible today. This is in contrast to 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. They 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 often only permits 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 modern regulatory framework for freight rail that encourages innovation and the development of new technologies that would make railroads safer.

They should also ensure sufficient governmental oversight. A performance-based regulatory framework can ensure that freight rail companies are able to continuously improve the safety of our operations. They will 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.
- **Implement 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 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.
- **Guidance documents should 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.