

December 14, 2023

Good morning, Mr. Chairman and members of the Committee. My name is Calvin Reed, and I am the Secretary of Transportation.

I am here to provide testimony on KAR 36-43-1, which is a regulation requiring railroads operating in the state of Kansas to have at least two crew members in the lead locomotive except for during switching operations, brake testing, and safety inspections. A copy of the regulation is included in your materials.

The regulation became effective November 3, 2023. KDOT is allowing a grace period of until April 1, 2024, before considering whether a railroad is out of compliance with the regulation.

As required by K.S.A. § 77-421, KDOT commenced the minimum 60-day public comment period for this regulation on May 18, 2023, by giving notice of its intended action in the Kansas Register. An email address was provided for submission of comments and other written testimony. KDOT held a public hearing on the proposed regulation on July 17, 2023.

In total, KDOT received 314 comments on the proposed regulation. The entirety of the written testimony KDOT received is available online at [KAR36-43-1CommentsAndTestimony.pdf \(ksdot.gov\)](https://www.ksdot.gov/KAR36-43-1CommentsAndTestimony.pdf).

Testimony and comments submitted in opposition to the regulation were all from industry stakeholders and generally claimed the regulation lacks safety justification, it would be preempted by federal law, and that it would be prohibitive to advancements in the industry.

KDOT received 298 written comments in support of the proposed regulation. One-hundred ninety of the 298 proponent comments were from Kansans and generally focused on:

- The potential for improved safety of crew members in derailments, fatigue, medical emergencies, and other situations.
- The potential for improved health of crew members related to their mental health.
- Absent the regulation there is heightened potential for slowed reaction times to technological and other errors.

Some stakeholders raised concerns about implementation costs in written testimony and during the public hearing. As a result, KDOT extended the public comment period to August 2, 2023, to enable stakeholders to substantiate their alleged implementation costs. KDOT did not receive substantiation of alleged implementation costs.

According to the Federal Railroad Administration, there were 75 train incidents in Kansas with reportable damage totaling \$10.6 million in 2022. According to Operation Lifesaver, Inc., Kansas had 39 collisions, five deaths, and 14 injuries due to train collisions in 2022.

KDOT's primary purpose in adopting this regulation is to mitigate the negative consequences of train derailments and crashes.

KDOT developed and adopted this regulation under the assumption that train derailments and crashes will continue to occur, regardless of crew size. The question is what happens when, not if, an incident occurs, and how does having a second human crew member assist in mitigating the impact of these incidents. According to the EIS provided with the regulation, approximately 6% of train movements in Kansas currently have less than two person crews.

A second human crew member provides the following to mitigate safety concerns:

- A redundant and immediate source of information for first responders about train contents, which could impact public information necessary to facilitate evacuations, determine resource needs for response, and inform first response strategies.
- The ability to more quickly separate a train to reduce damage to persons and property.

In short, KDOT's purpose for this regulation is public safety. KDOT's mission is "To provide a safe, reliable, innovative statewide transportation system that works for all Kansans..." This mission includes safety impacts of rail transportation infrastructure in the state and the safety and well-being of the citizens that live, work, and play near railroad infrastructure. KAR 36-43-1 was proposed with the safety of all Kansans in mind.

KDOT understands the railroad industry is important to our economic vitality. We continue to support the industry and look forward to continuing this vital partnership to keep Kansas moving safely.

Thank you and I am available for questions at the chairman's discretion.