

BEFORE THE
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DOCKET NO. OMB-2025-0003

REQUEST FOR INFORMATION: DEREGULATION

COMMENTS OF
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

The American Short Line and Regional Railroad Association (“ASLRRA”), on behalf of itself and its member railroads, submits the following comments in response to the Office of Management and Budget (“OMB”)’s April 11, 2025, *Request for Information (“RFI”): Deregulation*, seeking public input in assisting OMB with identifying existing regulations, guidance, paperwork requirements, and other regulatory obligations that should be modified or rescinded.¹ These comments propose deregulatory changes for the Federal Railroad Administration (“FRA”), the Environmental Protection Agency (“EPA”), and the Transportation Security Administration (“TSA”). By repealing burdensome regulations, completing deregulatory actions, engaging in transformational regulatory change at FRA, repealing a burdensome regulation at EPA, and ensuring a cost-effective transition from directives to regulation at TSA, OMB can begin to actualize meaningful regulatory burden reduction.

¹ 90 Fed. Reg. 15,481 (Apr. 11, 2025). ASLRRA also filed substantially similar comments in response to the Department of Transportation’s RFI, *Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs*, 90 Fed. Reg. 14,593 (Apr. 3, 2025).

WHO WE ARE

ASLRRA represents over 600 Class II and Class III American small business freight railroads and hundreds of railroad industry suppliers. Class II and Class III railroads, which are commonly referred to as short line railroads, are the “first-mile, last-mile” of the freight rail network. Short line freight railroads have existed in the U.S. since the 1800’s, but the number of them grew tremendously in the 1980’s and 1990’s as the large Class I freight railroads shed their light-density lines. Without short lines stepping up to take these lines, thousands of communities across the U.S., particularly in small town and rural America, would not have access to the national rail network. Short lines operate nearly 50,000 miles of track, or approximately 30% of the national freight rail network; connecting manufacturers, businesses and farmers in communities and small towns to larger markets, urban centers, and ports. Short lines operate in 49 states, and in some instances such as Rhode Island and Alaska, we account for the state’s entire freight rail network. As an industry, short lines support 478,820 jobs, \$26.1 billion in labor income, as well as \$56.2 billion in value-add to the economy, playing a particularly significant role in the agricultural, manufacturing, and energy industries.

In addition to the support of critical American industries, jobs and safety benefits, freight rail also lessens highway congestion and the need for taxpayer-funded highway maintenance and expensive new highways by significantly reducing the number of heavy trucks on the nation’s beleaguered road network. One train can carry the freight of several hundred trucks. Short lines are an integral part of their local communities, maintaining strong relationships with customers, local government, and economic development agencies. Short lines are usually privately held, locally managed, and often locally owned small businesses.

Short line railroads are American-based businesses that employ Americans and serve other small, medium, and large American businesses. Short line freight railroads also promote economic development, attracting new businesses requiring rail service along their lines and keeping existing businesses viable, serving customers and communities that would otherwise be cut off from the national freight rail network. But short lines can only thrive if our mostly small business entrepreneurs are given flexibility and discretion to run their railroads in a manner that is safe, customer-focused, and cost-effective.

FEDERAL RAILROAD ADMINISTRATION

REPEAL BURDENSOME REGULATIONS

The final rules on both Signal Employee Certification and Dispatcher Certification are not justified with negative cost-benefits ratios of 8:1 and 3:1 respectively, nor are they congressionally mandated or consistent with *Executive Order 14192 – Unleashing Prosperity Through Deregulation*.² The rules also require a railroad to certify contractors, which is unworkable with existing regulations, including the drug and alcohol regulations at Part 219. On March 14, 2025, FRA issued a letter in this matter, stating that FRA intends to initiate a rulemaking to extend the rule’s compliance deadlines by one year. Both of these rules should be formally repealed.

The final rule establishing Emergency Escape Breathing Apparatus standards (“EEBAs”) was issued with up to a \$107 million cost to the industry with no quantifiable benefits, inconsistent with the policies for sound cost-benefit analysis delineated in *DOT Order 2100.7, Ensuring Reliance Upon Sound Economic Analysis in Department of Transportation Policies*,

² 89 Fed. Reg. 44,830 (May 21, 2024) and 89 Fed. Reg. 44,766 (May 21, 2024).

Programs, and Activities, and should be repealed.³ Additionally, suppliers of the EEBA have told industry representatives that they are unable to fill the orders for the EEBA before the first compliance deadline of March 2025 for Class I and Class II railroads. ASLRRA received an interim response to its two petitions for reconsideration on January 29, 2025. The letter states that FRA will exercise enforcement discretion for 60 days from each of the compliance dates to allow FRA time to determine how to respond to the petitions. This rule should be stayed until the new administration is able to review the interim response or until EEBA suppliers are able to fill the orders of the devices, or the rule should be modified to exclude short lines.

The Train Crew Size final rule, which mandates a minimum number and location of crew members, is currently being litigated by ASLRRA and the Association of American Railroads (“AAR”).⁴ It should be repealed and modified to reduce the burden on short line railroads, or at the very least, stayed pending the outcome of the litigation.

COMPLETE DEREGULATORY ACTIONS

FRA should issue two final rules that would improve efficiency and safety of the freight rail network and that would provide clarity to current challenging regulatory requirements, alleviating unnecessary regulatory burden and reducing existing costs, consistent with the direction in EO 14192. In response to ASLRRA’s 2019 petition for rulemaking, on October 3, 2022, FRA issued an NPRM on *Training, Qualification, and Oversight for Safety-Related Railroad Employees* to codify agency guidance and clarify existing training requirements.⁵ FRA should finalize this rule, incorporating ASLRRA’s comments that individual companies, within

³ 89 Fed. Reg. 5113 (Jan. 26, 2024).

⁴ 89 Fed. Reg. 25,052 (Apr. 9, 2025).

⁵ 87 Fed. Reg. 59,749 (Oct. 3, 2022).

their Part 243 training programs, provide the methodology by which they propose to assess an employee's knowledge and skills to perform assigned tasks. In response to AAR's 2019 petition for rulemaking, FRA issued an NPRM on January 15, 2021, on *Amendments to Brake System Safety Standards Governing Operations Using an Electronic Air Brake Slip System ("eABS")*.⁶ FRA should issue the final rule, as the NPRM's proposals would not only increase the efficiency of railroad operations, but would also advance railroad safety, reduce injury exposure to railroad employees, and result in significant economic and societal benefits.

TRANSFORMATIONAL REGULATORY CHANGE

While changes to the specific regulatory actions in the sections above would provide meaningful regulatory relief to short line railroads, in accordance with EO 14192, there is another, transformational regulatory approach that DOT should consider – the Risk Reduction Program Congressional mandate, which provides the foundation for regulatory reform and innovation.

In 2008, Congress directed the Secretary of Transportation to issue a regulation requiring certain railroads to develop a Risk Reduction Program (RRP).⁷ Pursuant to the statute, each railroad's RRP must systematically evaluate safety risks on the railroad's system and create a plan to manage those risks to reduce the consequences and rates of railroad accidents, incidents, injuries, and fatalities.⁸ In its RRP, a railroad is to conduct a risk-based hazard analysis to identify and analyze factors that affect railroad safety, including: operating rules and practices, infrastructure, equipment, employee staffing levels and schedules, management structure, and

⁶ 86 Fed. Reg. 3957 (Jan. 15, 2021).

⁷ Rail Safety Improvement Act of 2008, Public Law 110-432, 122 Stat. 4854 (Oct. 16, 2008); codified at 49 U.S.C. § 20156.

⁸ 49 U.S.C. § 20156(a)(1)(A).

employee training.⁹ Further, Congress mandated that each railroad's RRP include a technology implementation plan and a fatigue management plan.¹⁰

The RRP statutory mandate is an alternative, comprehensive approach to managing railroad safety. By systematically and comprehensively evaluating all safety risks to the railroad, a railroad will reduce risk and improve safety, including through the use of new technology not yet contemplated or allowed by existing regulations. Following this risk-based and analytical approach renders the prescriptive regulations currently in the Code of Federal Regulations as redundant, costly, and completely unnecessary. In short, such a risk-based approach provides an alternative, safety-enhancing and cost-efficient means for railroads to comply with FRA safety requirements.

FRA issued comprehensive regulations mandating RRP for certain railroads on February 18, 2020.¹¹ Industry comments filed in connection with that rulemaking encouraged FRA to build on the RRP approach as an alternative means to compliance with FRA safety regulations, allowing risk-based analysis to supplant prescription regulatory programs.¹² In those comments, the rail industry proposed changes to the existing RRP regulations that would provide a railroad with a pathway of proposing the basis and timeline for implementing technology or processes that would provide a superior mitigation of hazards and the identified resulting risks, in lieu of specifically-identified federal railroad safety standard requirements. Subsequently, FRA approval of an RRP plan would operate an exemption or waiver of the identified regulations.¹³

⁹ 49 U.S.C. § 20156(c).

¹⁰ 49 U.S.C. § 20156(d)(2).

¹¹ 85 Fed. Reg. 9262 (Feb. 18, 2020).

¹² See Supplemental Comments of the Association of American Railroads, Docket No. FRA-2009-0038 (Oct. 31, 2018).

¹³ *Id.* at 4.

While ASLRRA has outstanding concerns regarding some nuances of the current RRP regulations, overall, ASLRRA is supportive of the RRP, especially in light of the industry comments, as an alternative to the existing prescriptive and costly federal regulations, and encourages FRA to consider such an approach.¹⁴ ASLRRA and its member railroads would enthusiastically participate in a working group managed by FRA to further develop this idea.

This proposed transformational change would also address the numerous instances in FRA safety regulations where the agency has taken a performance-based directive in a Congressional mandate and expanded it to a very prescriptive end product. While there are numerous examples here that could be cited, short line railroads are particularly impacted by the Training, Qualification, and Oversight for Safety-Related Railroad Employees rule at 49 C.F.R. Part 243. This rule takes the statutory mandate from the Rail Safety Improvement Act of 2008, codified at 49 U.S.C. § 20162 to establish minimum training standards for safety-related railroad employees and expands it into cumbersome, unwieldy regulations that places extremely prescriptive and unnecessary burdens on small businesses.¹⁵ These types of regulations do not improve safety and serve merely to add burden to, and require additional resources from, FRA. FRA can reduce unnecessary regulatory burden on the rail industry and itself by deploying the RRP rule as an alternative to the prescriptive regulations that exceed statutory mandate.

¹⁴ See ASLRRA's joint comments with the National Railroad Construction and Maintenance Association at Docket No. FRA-2021-0035-0004.

¹⁵ An example would be the regulatory requirement for three-year refresher training at 49 C.F.R. § 243.201(e), which is not required in the statute nor proven to serve a safety purpose.

ENVIRONMENTAL PROTECTION AGENCY

REPEAL BURDENSOME REGULATION

EPA's final rule on *Additions to List of Categorical Non-Waste Fuels*, 81 Fed. Reg. 6687 (Feb. 8, 2016) ("Final Rule"), determined that creosote-treated railroad ties were a non-waste fuel, but only when combusted in units designed to burn specific fossil fuels involved in fulfilling a contaminant comparison requirement EPA had previously adopted. Restrictions that limit the burning of certain railroad ties or other non-waste, non-hazardous secondary materials for energy recovery run counter to the policy behind EPA's expansion of the categorical non-hazardous secondary materials list to include materials beneficially and economically reused as fuels. EPA has supported the burning of railroad ties in cogeneration facilities by clarifying that such use does not constitute solid waste disposal. Yet, the final rule incorporated restrictions based on the contaminant comparison test, that impose prohibitive costs with no corresponding benefit. These restrictions may lead to millions of railroad ties being disposed in landfills, resulting in unnecessary burdens and costs, as well as increased greenhouse gas emissions (e.g., methane).

EPA should amend 40 C.F.R. Part 241 to remove unsupportable restrictions on Non-Hazardous Secondary Materials ("NHSM"). Specifically, EPA should (1) remove the mandatory "contaminant comparison" in the rule's legitimacy criteria at 40 C.F.R. § 241.3; (2) remove the associated "designed to burn" designation for boilers with respect to railroad ties treated with creosote and creosote-borate at 40 C.F.R. § 241.4; and (3) remove unsupported restrictions on the definition of "paper recycling residuals" at 40 C.F.R. § 241.2. These changes would result in cost-savings to the industry and a reduction of increased methane gas emissions.

TRANSPORTATION SECURITY ADMINISTRATION

ENSURE COST EFFECTIVE TRANSITION FROM DIRECTIVES TO REGULATION

Beginning in June 2022, TSA issued security directives requiring some Class II and III railroads to meet requirements related to reporting cyber security incidents, performing cyber vulnerability assessments, and develop ongoing cyber security implementation and incident response plans. The two series of directives (SD 1580-21-01 and 1580/82-2022-01)¹⁶ were issued by the TSA Administrator under authority which allows for such regulations when the Administrator determines that they must be issued immediately in order to protect transportation security without providing notice or opportunity for public comment. In parallel, TSA initiated a rulemaking process for *Enhancing Surface Cyber Risk Management*¹⁷ that proposes similar requirements on Class II and III railroads via a traditional rulemaking process.

While ASLRRA appreciates TSA's efforts to engage with industry during the creation and re-issuance of the existing security directive series, there was no formal cost benefit analysis produced as a part of that process, and so they filed comments relaying concerns that aspects of the proposed rule cover too broad a scope of railroads as well as being too prescriptive.¹⁸ OMB has the opportunity to ensure that this rulemaking process, structured as it is to replace existing directives functioning as regulation, avoids prescriptive requirements related to particular technology systems, is applied only to Class II and III railroads for which operational disruption

¹⁶ Transportation Security Administration, Security Directives and Emergency Amendments, <https://www.tsa.gov/sd-and-ea>, Accessed May 12, 2025.

¹⁷ Federal Register, *Enhancing Cyber Risk Management*, 2024-24704 (89 FR 88488). See <https://www.federalregister.gov/documents/2024/11/07/2024-24704/enhancing-surface-cyber-risk-management>.

¹⁸ Regulations.gov, Comments of the Association of American Railroads and American Short Line and Regional Railroad Association, TSA-2022-0001-0074, <https://www.regulations.gov/comment/TSA-2022-0001-0074>

could have significant national security implications, and allows Class II and III railroads to most efficiently target their limited security resources.

CONCLUSION AND ENDORSEMENT

ASLRRRA and its members applaud OMB's efforts in identifying existing regulations, guidance, paperwork requirements, and other regulatory obligations that can be modified or rescinded, consistent with federal law, to achieve meaningful burden reductions while continuing to meet existing statutory obligations and ensure the safety of transportation by rail. By repealing burdensome regulations, completing deregulatory actions, engaging in transformational regulatory change at FRA, repealing a burdensome regulation at EPA, and ensuring a cost-effective transition from directives to regulation at TSA, OMB can begin to actualize meaningful regulatory burden reduction. In addition to these comments, ASLRRRA would like to highlight the comments submitted by AAR in this docket, particularly the comments pertaining to the Pipeline and Hazardous Materials Safety Administration ("PHMSA").

Respectfully submitted,



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