

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

DOCKET NO. DOT-OST-2025-0007:
ADMINISTRATIVE RULEMAKING, GUIDANCE, AND ENFORCEMENT PROCEDURES

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 Department of Transportation (“DOT”)’s Notice of Proposed Rulemaking to reinstate and expound upon procedural reforms for the Department’s rulemakings, guidance documents, and enforcement actions rescinded by a final rule published by the Department on April 2, 2021, “Administrative Rulemaking, Guidance, and Enforcement Procedures.”¹ ASLRRA appreciates the opportunity to comment and agrees with DOT’s assessment that the Department “produces its best work when it is informed by robust public input, the best available data, and sound law and economics.” ASLRRA proposes that DOT also include in its rule a requirement for the Department to incorporate a mechanism for the codification of longstanding waivers or regulatory exemptions, include civil penalty schedules in the list of agency guidance documents that require public

¹ 90 Fed. Reg. 20,956 (May 16, 2025).

notice and comment, and ensure that the Regulatory Flexibility Act provisions are strictly followed in any rulemaking.

Who We Are

ASLRRA represents over 600 Class II and Class III American small business 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, 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 governments, 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 American small, medium, and large 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.

Retrospective Review and Waivers

ASLRRA and its member railroads support the proposed provision at Section 302.16 of the NPRM that states, *inter alia*, that any person may petition the Department to perform a retrospective review of an existing rule. DOT should also add a provision that directs the Department to initiate a rulemaking proceeding for any waiver or regulatory exemption that has been in effect with satisfactory results for over five years to be incorporated into the regulations. For example, the Federal Railroad Administration (“FRA”) can point to waivers that were in effect for much longer than the five-year waiver period that the agency typically grants.² Without a process to systematically evaluate and determine that a long-standing waiver should be codified in regulation, the Department is hampered in its ability to keep pace with innovation. It

² See, e.g., FRA Docket No. FRA-1999-5104, which was in effect for 20 years before FRA promulgated a rule covering the practice permitted by the waiver.

can also lead to a plethora of waivers, which do not provide regulatory certainty to the public, as they contain expiration dates.³

Civil Penalties and the Clearance of Guidance Documents

ASLRRA and its member railroads support the proposed provision at Section 5.103 of the NPRM stating that no civil penalties will be sought in any DOT enforcement action except when and as supported by clear statutory authority and sufficient findings of fact. The proposed provision also states that the penalty should reflect mitigating factors, such as whether the violator is a small business. ASLRRA encourages DOT to also require the Department to notify the public and provide an opportunity for comment before changing penalty schedules. In 2019, FRA issued a direct final rule removing the FRA civil penalty schedules and guidelines from the Code of Federal Regulations and publishing them on the FRA website.⁴ While ASLRRA did not object to the publication of the civil penalty schedules on the FRA website instead of the Federal Register, the rail industry provided comments in 2019 that FRA should provide an opportunity for public feedback on significant proposed changes to the penalties schedules.⁵ However, on March 8, 2023, without any public engagement, FRA issued “Notification of Updated Civil Penalty Schedules and Guidelines (4910-06-P).” This notification doubled the baseline civil penalties, without any discussion as to how this broad sweeping change would affect small businesses, most of whom cannot afford such large increases, particularly in one fell swoop.

ASLRRA and its member railroads applaud DOT’s proposal to reinstate procedures regarding the review and clearance of guidance documents at Sections 5.27, 5.29, and 5.31 of the

³ See “Supplemental Comment of the Association of American Railroads,” FRA-2009-0038-0104, pg. 2 (“In September 2018, FRA shared with AAR and its member railroads that there were over 700 waivers in effect.”)

⁴ 84 Fed. Reg. 23,730 (May 23, 2019).

⁵ “Comment from the Association of American Railroads and the American Short Line and Regional Railroad Association,” Docket No. FRA-2016-0090-0001.

NPRM. In particular, the proposed requirement at Section 5.31(c) that the Department maintain and advertise on its website a means for the public to comment electronically on certain guidance documents, as appropriate, in the same manner as for rulemakings. ASLRRRA urges DOT to include civil penalty schedules as a type of agency guidance that is subject to notice-and-comment.

Regulatory Flexibility Analysis

Not surprisingly, small business railroads support the regulatory text at Section 5.13(f) stating that all rulemaking subject to the requirements of section 603-604 of the Regulatory Flexibility Act (RFA), and any amendments thereto, shall include a detailed statement setting forth the required analysis regarding the potential impact of the rule on small business entities. The RFA requires that an agency must conduct an initial regulatory flexibility analysis (IRFA) to capture the impact of a proposed rule on small entities. The IRFA must contain: (1) a description of why action by the agency is being considered; (2) a succinct statement of the objectives of and legal basis for the proposed rule; (3) a description of, and where feasible, an estimate of the number of small entities to which the proposed rule would apply; (4) a description of the projected compliance requirements of the rule; and (5) identification of all relevant federal rules which may duplicate, overlap, or conflict with the proposed rule.⁶ ASLRRRA encourages DOT to implement additional reviews on all rulemakings to ensure that the Department strictly follows these requirements. While the proposed special procedures for economically significant and high-impact rulemakings at Section 5.17 is a good start, even non-significant rules can

⁶ 5 U.S.C. § 603(b).

significantly impact a substantial number of small entities. DOT should elevate its procedures for rules that have a disproportionate impact on small entities.⁷

Conclusion

ASLRRA applauds DOT's efforts to reinstate and expound upon procedural reforms for the Department's rulemakings, guidance documents, and enforcement actions. ASLRRA proposes that DOT include in its final rule a requirement for the Department to incorporate a mechanism for the codification of longstanding waivers or regulatory exemptions, include civil penalty schedules in the list of agency guidance documents that require public notice and comment, and ensure that the Regulatory Flexibility Act provisions are strictly followed in any rulemaking.

Respectfully submitted,



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⁷ See, e.g., FRA's Notice of Proposed Rulemaking, "Train Crew Size Safety Requirements," at Docket No. FRA-2021-0032. This proposed rulemaking, while addressed to large railroads, would have disproportionately harmed hundreds of small business railroads. See ASLRRA's comments at FRA-2021-0032-13033.