

BEFORE THE  
FEDERAL RAILROAD ADMINISTRATION

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DOCKET NOS.

FRA-2024-0032:  
TRACK GEOMETRY MEASUREMENT SYSTEM (TGMS) INSPECTIONS

FRA-2023-0064:  
POSITIVE TRAIN CONTROL SYSTEMS

and

FRA-2024-0033:  
FRA'S PROCEDURES FOR WAIVERS AND SAFETY-RELATED PROCEEDINGS

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PETITION FOR EXTENSION OF THE PUBLIC COMMENT PERIODS FROM  
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

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The American Short Line and Regional Railroad Association (ASLRRA), on behalf of itself and its member railroads, petitions the Federal Railroad Administration (FRA) for a 60-day extension of the time to submit comments in response to the Notice of Proposed Rulemaking (NPRM) in Docket Nos. FRA-2024-0032: Track Geometry Measurement System (TGMS) Inspections<sup>1</sup>; FRA-2023-0064: Positive Train Control Systems<sup>2</sup>; and FRA-2024-0033: FRA'S Procedures for Waivers and Safety-Related Proceedings.<sup>3</sup> Within four business days, FRA issued all three NPRMs, each of which has only a 60-day comment period.

ASLRRA is a small non-profit trade association representing the interests of about 600 short line and regional railroads. Short lines operate nearly 50,000 route miles in the United

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<sup>1</sup> 89 Fed. Reg. 84,845 (Oct. 24, 2024).

<sup>2</sup> 89 Fed. Reg. 85,462 (Oct. 28, 2024).

<sup>3</sup> 89 Fed. Reg. 85,895 (Oct. 29, 2024).

States, or approximately 30% of the national freight network, touching in origin or destination one out of every five cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network. Both in legislative matters before Congress and in regulatory matters before state and federal agencies, ASLRRA advocates for enlightened public policies which promote a strong regional and short line rail component for the national transportation infrastructure. Most short line railroads are considered small businesses.<sup>4</sup>

FRA has traditionally used the Railroad Safety Advisory Committee (RSAC) to “develop new regulatory standards, through a collaborative process, with all segments of the rail community working together to fashion mutually satisfactory solutions on safety regulatory issues.”<sup>5</sup> ASLRRA has been a long-time avid participant and supporter of the RSAC process, sharing FRA’s stated belief that that the rail community working together provides the best solutions on safety regulatory issues. When FRA utilizes the RSAC to provide advice when formulating new regulations, “[e]nhanced communication enables all concerned stakeholders to become more directly involved in improving our Nation’s rail safety through a collaborative rulemaking process.” RSAC and groups established under the authority of RSAC will seek agreement on the facts and data underlying any safety problem, identify cost-effective solutions based on the agreed-upon facts, and identify options where necessary to implement those solutions. RSAC-developed regulations have greater buy-in and are more readily understood.<sup>6</sup>

Further, FRA states in its Policy Statement Concerning Small Entities that it is “FRA’s policy to maintain frequent and open communications with the national representatives of the

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<sup>4</sup> See 13 C.F.R. § 121.201 and North American Industry Classification System code 482112, “Short Line Railroad.”

<sup>5</sup> See “RSAC History,” *available at*: [rsac.fra.dot.gov](https://rsac.fra.dot.gov). Last accessed on November 7, 2024. RSAC is governed pursuant to the Federal Advisory Committee Act of 1972.

<sup>6</sup> “RSAC Training,” FRA, Dec. 1, 2021. *Available at*: [rsac.fra.dot.gov](https://rsac.fra.dot.gov).

primary small entity associations and to consult with these organizations before embarking on new policies that many impact the interests of small businesses.”<sup>7</sup> Additionally, the policy states that RSAC has been established to advise the agency on the development and revision of railroad safety policies and consists of a wide range of industry representatives, including organizations that represent the interests of small businesses. FRA assures that this “reflects FRA’s policy that small business interests must be heard and considered in the development of new standards to ensure that FRA does not impose unnecessary economic burdens on small businesses, and to create more effective standards.”<sup>8</sup>

Inexplicably, FRA did not consult with the RSAC on any of the three NPRMs prior to their publication.<sup>9</sup> When FRA has deployed the resources and expertise present in RSAC, ASLRRRA and its small business railroads have had the opportunity to participate in the data-collection process and understand the potential impact of any proposed regulatory action. In this type of scenario, when ASLRRRA has been engaged in the process with fellow industry stakeholders and FRA staff, ASLRRRA and its members are able to respond to a 60-day notice for public comments without issue. However, when FRA does not consult with RSAC, it is a tremendous challenge for ASLRRRA, a small business itself, to respond to technical proposed rules that require extensive consultation with its potentially impacted small business member railroads within a 60-day comment period, not to mention for three such proposed rules, during a period that covers the federal holidays of Veterans Day, Thanksgiving, and Christmas, in addition to other holidays important to many Americans, including Diwali, Hanukkah and Kwanzaa.

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<sup>7</sup> See 49 CFR Part 209 Appendix C – FRA’s Policy Statement Concerning Small Entities.

<sup>8</sup> *Id.*

<sup>9</sup> RSAC currently has eight active Working Groups discussing ten tasks.

Each of the three NPRMs requires review and consideration made virtually impossible given the compressed time period and volume of rules proposed by FRA.

On October 24, 2024, FRA issued an NPRM proposing to revise its regulations governing the minimum safety requirements for railroad track. The proposed changes would require all Class I and Class II railroads, as well as intercity passenger railroads and commuter railroads, to operate a qualifying Track Geometry Measurement System (TGMS) at specified frequencies on all Class 1 through 5 mainline and controlled siding track that transports: annual tonnage greater than 10 million gross tons; regularly scheduled passenger rail service; or trains containing hazardous materials.<sup>10</sup> ASLRRRA member railroads include Class II railroads which stand to be impacted by the NPRM's proposed requirements. While FRA claims that "every Class I and II railroad uses some form of TGMS to measure track geometry," ASLRRRA needs time to consult with its members to ascertain the potential impact of the proposed rule.

On October 28, 2024, FRA issued an NPRM proposing to amend certain regulations governing positive train control (PTC) systems. This NPRM proposes to establish strict parameters and operating restrictions under which railroads may continue to operate safely in certain necessary scenarios when PTC technology is temporarily not governing rail operations.<sup>11</sup> FRA met with ASLRRRA representatives to solicit feedback on the objectives of the NPRM.<sup>12</sup> While FRA states that six Class II or Class III short line or terminal railroads are directly subject to the PTC statutory mandate, many others are impacted by agreements with host railroads that require them to equip their equipment and train their employees on PTC technology. ASLRRRA

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<sup>10</sup> 89 Fed. Reg. 84,845.

<sup>11</sup> 89 Fed. Reg. 85,462.

<sup>12</sup> Id. at 85,465.

needs sufficient time to review the proposed rule and its impact on its member railroads that are directly and indirectly subject to the PTC mandate.

On October 29, 2024, FRA issued an NPRM proposed to update FRA’s procedures for waivers and safety-related proceedings to define the two components of the statutory waiver and suspension standard “in the public interest” and “consistent with public safety.” FRA also proposes to require petitions for relief to include evidence of meaningful consultation with appropriate stakeholders. Additionally, FRA proposes to make minor updates to agency rules of practice.<sup>13</sup> While seemingly an innocuous update to FRA’s administrative procedures, issued without consultation with ASLRRA or other small entity representatives, this NPRM has the potential to severely negatively impact small business railroads’ ability to engage in the agency’s waiver process. ASLRRA needs time to consult with its member railroads on the feasibility of the process changes proposed in the NPRM for small businesses.

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FRA has not provided sufficient time for our meaningful engagement to provide the perspective and feedback from small business railroads. ASLRRA urges FRA to provide an additional 60 days for public comment in each of the three dockets.

Respectfully submitted,



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November 13, 2024

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<sup>13</sup> 89 Fed. Reg. 85,895.