

BEFORE THE
FEDERAL RAILROAD ADMINISTRATION

DOCKET NO. FRA-2025-0077:
PROSECUTORIAL DISCRETION OF ENFORCEMENT ATTORNEYS

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 supplemental comments in response to the Federal Railroad Administration (“FRA”)’s July 1, 2025, Notice of Proposed Rulemaking (“NPRM”), which the agency explains would clarify that FRA’s Office of Chief Counsel has discretion to decline or dismiss a violation, such as a technical violation where challenged conduct does not raise a practical safety issue.¹

ASLRRA is a non-profit trade association representing the interests of the nation’s approximately 600 Class II and Class III (short line) railroads. Short lines operate 47,500 miles of track, or approximately 29% of the national freight network, and employ approximately 18,000 people, thereby playing a vital role in the railroad industry’s strong safety record. The overwhelming majority of short line railroads are considered small businesses by both the Small Business Administration (“SBA”) and FRA’s Policy Statement Concerning Small Entities.²

¹ 90 Fed. Reg. 28,610 (July 1, 2025).

² See 13 C.F.R. § 121.201 and North American Industry Classification System code 482112, “Short Line Railroad,” and 49 C.F.R. Part 209, Appendix C.

These small businesses succeed in a competitive environment because of their flexibility, cost control, and customer-driven service.

ASLRRA supports this proposed change to the federal regulations. While ASLRRA is glad to see that FRA intends to clarify that its Office of Chief Counsel can decline or dismiss a violation, ASLRRA requests that the agency add in its revision a reference to its Small Entity Enforcement Policy, found in FRA's Policy Statement Concerning Small Entities at Appendix C to 49 C.F.R. Part 209 ("Small Entities Policy Statement"). The policy states that "FRA is committed to obtaining compliance and enhancing safety with reasoned, fair methods that do not inflict undue hardship on small entities." This should include discretion on the part of the Office of Chief Counsel on whether to decline or dismiss a violation. In its proposed text, FRA should include a reference to its Small Entities Policy Statement and clarify that the agency will consider the hardship on a small entity when it negotiates civil penalties with smaller railroads.

This proposed change is a great first step to the improvement of FRA's enforcement process, which has degraded over the last several years. In 2019, FRA removed its civil penalties schedules from the Code of Federal Regulations and now only publishes them on the agency's website.³ Additionally, in 2023, without any opportunity for public feedback, FRA published a "Notice of Updated Civil Penalty Schedules and Guidelines (4910-06-P)." The updated civil penalty schedule doubled its guideline penalties, inconsistent with inflation. These updated amounts were coupled with aggressive enforcement action against small railroads in recent years, conflicting with FRA's Small Entities Policy Statement.

ASLRRA supports FRA's proposed change to clarify that FRA's Office of Chief Counsel has discretion to decline or dismiss a violation and appreciates that the agency provided an

³ 84 Fed. Reg. 23,730 (May 23, 2019).

opportunity for public comment.⁴ Additionally, ASLRRA encourages FRA to continue to improve its enforcement process by reviewing its civil penalty amounts, especially in light of the hardship they pose to small business railroads.

Respectfully submitted,



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⁴ ASLRRA advocated that FRA should notify the public of any changes and provide an opportunity for public feedback on significant changes in its enforcement policy in its comments to the 2019 action. This NPRM does just that. Document No. FRA-2016-0090-0002. Available at www.regulations.gov.