



American Short Line and Regional Railroad Association

April 12, 2023

Dear Member:

The American Short Line and Regional Railroad Association (ASLRRA) represents the nation's 600 small business Class II and III freight railroads (also known as short line railroads or short lines).

We are concerned about several rail-focused bills that have recently been introduced in both houses of Congress. These bills ostensibly respond to the February derailment of a Norfolk Southern freight train in East Palestine, Ohio. While this event warrants consideration of relevant safety practices and procedures at our nation's railroads, many provisions in these measures are **not responsive** to the derailment, **not relevant** for safety, and **unrealistic** for short lines to implement. If enacted, they could cause severe, unintended safety consequences throughout the freight network both by **shifting freight from rail to less safe trucking options on the highway** and by **redirecting finite short line resources** away from more productive safety investments into regulatory compliance activities with no safety benefits.

As you review any rail legislation, please consider the following:

SHORT LINE RAILROADS ARE A SAFE, RELIABLE WAY TO MOVE FREIGHT.

Freight rail in general is an extraordinarily safe way to move freight. When compared to trucks, the only viable alternative, railroads are much safer for moving hazmat. Railroads have approximately 10% of the hazmat accidents trucks have despite roughly equal hazmat ton-mileage. The rail hazmat accident rate is down 78% since 2000. Society should want hazmat to move by rail, and, in fact, law obligates railroads to accept hazmat shipments through the **common carrier obligation**. Thus, Congress should be prudent with legislation.

And short line railroads, by their nature, present a particularly low risk. Short lines – true to the name – generally move relatively short distances: the average length of haul for Class II and III railroads is 38.5 miles, not hundreds or thousands of miles. On these routes, most short lines typically operate trains at speeds slow enough that in the event of an already rare derailment, a tank car is highly unlikely to be punctured and cause the release of hazardous materials. These statements are supported by FRA data. According to that data, in the previous five years (2018 through 2022) and reviewing the millions of cars of hazmat moved on the entire U.S. freight rail network, only 112 cars carrying hazardous materials experienced a release due to a derailment, and **just 6 of those 112 cars were on a short line**. Simply put, these operations do not present a safety hazard that requires new prescriptive rules.

SHORT LINES ENGAGE IN SMART, RESPONSIBLE BUSINESS PRACTICES AND ARE TIGHTLY CONNECTED TO THEIR LOCAL COMMUNITIES.

Short lines are small, entrepreneurial businesses, with most employing fewer than 30 people, running an average of 79 total route miles and earning an average of \$7.7 million in revenue per year. Short lines have very finite resources that they must steward carefully – they cannot afford to spend money on equipment and

processes that are unrelated to safety or improved operations, such as an **unnecessary crew member on a train, wayside detectors that don't protect them from the risks they face**, or a **new type of mechanical inspector** to do work already being done safely by existing team members.

And short lines are customer-focused businesses dedicated to the success of their local shippers and integral to the fabric of countless local communities. When they are not moving freight and servicing customers, short line personnel are at the local grocery store, at the PTA meeting, on the ballfield, and in their houses of worship. Because short line personnel live and work in the communities they serve, safety is more than a business decision – it is a steadfast personal obligation. Short lines don't need the threat of **onerous new fines** or a huge set of prescriptive new laws to push them to be safe – they already live and breathe safety every day.

THE RAIL INDUSTRY IS ALREADY HIGHLY REGULATED AND MUCH MORE REGULATION IS IN THE QUEUE.

The rail industry was the first in the nation to experience federal regulatory oversight with the passage of the Interstate Commerce Act in 1887; for nearly a century and a half since, we have been among the most heavily regulated sectors of the economy, including under the current administration, which is already engaged in a myriad of rulemakings. The Federal Railroad Administration (FRA) section of the Code of Federal Regulations alone clocks in at well over 1,000 pages of regulations – double columned and in small font. There are regulations on Track Safety Standards (Part 213), Railroad Workplace Safety (Part 214), Railroad Freight Car Safety Standards (Part 215), Railroad Operating Rules (Part 217) and Practices (Part 218), and the list goes on and on. And the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Transportation Security Administration (TSA) also both have extensive rules related directly to the transportation of hazardous materials and to rail security.

Further, the FRA is now in the midst of a **broad campaign of new regulatory activity**, including new rules on Emergency Escape Breathing Apparatus, Train Crew Staffing, Dispatcher Certification, Signal Employee Certification, Training, Qualification, and Oversight for Safety-Related Railroad Employees. FRA is also engaged in extensive activity through its Rail Safety Advisory Committee (RSAC) to explore future regulations, which includes efforts on track safety standards, roadway worker protection, use of electronic devices, Confidential Close Call Reporting (C3RS), practices to maximize alertness and reduce fatigue, critical incident stress plans/Part 272 amendments, wayside defect detectors, high hazard flammable trains, and ECP brakes.

PHMSA is also busy and engaged in rulemakings on FAST Act requirements for Real-Time Train Consist Information by Rail, Hazardous Materials: Advancing Safety of Highway, Rail, and Vessel Transportation, and Hazardous Materials: Improving the Safety of Transporting Liquefied Natural Gas.

From within this list of existing regulatory activity, several items have nonetheless been re-proposed as legislative initiatives in recent weeks, including proposals on mandatory crew size, C3RS, HHFTs, and wayside defect detectors. **We urge policymakers to avoid adding a layer of redundancy with proposals that are already underway and are being reviewed and considered through the administrative process.**

PENDING LEGISLATION WOULD BE COUNTERPRODUCTIVE AND CREATE NEW HAZARDS.

For short lines, the biggest risk of derailments does not come from the type of mechanical accidents that much of the currently proposed regulations appear to be aimed toward. Instead, the largest cause of short line derailments is simply worn-out track. Short lines are working furiously every day to address this concern and need to marshal every available resource to make the repairs and upgrades that are needed.

Rushing through new, unresponsive, irrelevant, and unrealistic mandates could ultimately require small business railroads to purchase unnecessary equipment to respond to non-existent risks (e.g., **wayside detectors** when they are not going fast enough to cause an overheated wheel bearing anyway) and hire

needless personnel (e.g. a **dedicated mechanical inspector** to do work that a conductor is doing or a **conductor to move from the ground to the cab of a locomotive**) – shifting limited resources away from proven safety practices like upgrading outdated rail and track. Small business short lines could shutter under the weight of costly, untested new mandates and **exorbitant and arbitrary new fines**. All of this could **shift hazardous materials to the highway** – a deadlier way to move goods and freight.

CONGRESS SHOULD BACK SAFETY EFFORTS WITH PROVEN RESULTS.

ASLRRA's members are eager to engage in discussions known to advance safety. For example, among the legislative proposals being considered, we encourage debate about reasonable changes to the definition of **High-Hazard Flammable Trains (HHFTs)**, although we note that is already happening via regulations. Similarly, we are not opposed to discussion about mandating the use of **wayside detectors** where truly warranted, although, again, we would note that is happening at the regulatory level and voluntarily on key routes by the large railroads, where they are most relevant. We welcome the **phase out of older tank cars**. Many short lines are already participating in **C3RS** and as an association we will be working through the RSAC process to ensure the system is as beneficial as possible.

In general, we urge Congress to ensure that the **National Transportation Safety Board's** final investigation of the February 3 derailment informs any policy discussion and that legislation does not move prematurely. And we **discourage Congress from imposing new, draconian fines**. Short lines have a long record of being good corporate citizens, and there is no justification for onerous punishments that threaten to bankrupt businesses for minor infractions. One major legislative proposal contemplates a stunning tenfold increase in fine amounts for short lines – a wholly unjustified approach.

Given that the largest risk of derailment on short lines is from problematic track and the best way to fix problematic track is simply to invest in it, we suggest that the most powerful action Congress could take on short line safety would be to support the **Consolidated Rail Infrastructure and Safety Improvements (CRISI)** Program. More resources overall for CRISI would be welcome and also Congress could simply focus the existing CRISI resources specifically on freight rail safety and ask USDOT to fund passenger rail activities out of the other available funding pools.

There are other policies Congress could help advance. The FRA already manages a successful **Automated Track Inspection Program (ATIP)**; we suggest that if Congress were to fund additional track geometry cars for the FRA to use that would be a productive investment in short line safety. The **Short Line Safety Institute (SLSI)** has been in place since 2015 and is a proven, successful model for improving short lines safety and building a safety culture. It has the trust of both the short line railroads and the FRA and is extraordinarily cost-effective and powerful – Congress could double funding for the SLSI from \$2.5 million to \$5 million per year and make a meaningful improvement to short line safety.

Finally, we welcome legislative proposals to increase **R&D on wayside detectors and tank car safety**. We would also suggest that Congress could support short lines looking to join the **AskRail** program and could support the expansion of the **RailPulse** program, which will look to add location, asset health, and eventually safety sensors to rail cars and which may eventually prove to be a more advanced way to monitor risks.

We appreciate your close attention to these matters and efforts to ensure a safe and sustainable rail network.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Baker', written in a cursive style.

Chuck Baker
President
American Short Line and Regional Railroad Association (ASLRRA)