February 10, 2020

Statement of Interest

The American Short Line and Regional Railroad Association (ASLRRRA) appreciates the opportunity to provide our comments to the Request for Information (RFI) on the National Freight Strategic Plan. ASLRRRA is a non-profit trade association representing approximately 600 Class II and Class III railroads in the United States, Canada and Mexico as well as hundreds of suppliers and contractors to the short line and regional railroad industry. Short line railroads operate 50,000 miles of track in 49 states, or approximately 38% of the national railroad network, touching in origination or termination one out of every four cars moving on the national railroad system. Short lines serve customers as first mile/last mile providers, largely in rural America, who otherwise would be cut off from the national railroad network. Our members have a direct interest in DOT’s National Freight Strategic Plan, and our comments will address the questions in the RFI that are the most relevant to their operations.
Comments

1. What are the three most important challenges facing the U.S. freight transportation system?

Short lines railroads have unique challenges. Many of our member railroads inherited track that suffered from years of deferred maintenance by their previous owners and thus require a significant portion of current revenues to be reinvested into rehabilitating this infrastructure. On average, short lines reinvest anywhere from 25 to 35 percent of their annual revenue to maintain and improve their infrastructure, making them one of the most capital-intensive industries in the country. On average, they also move less profitable shipments from smaller freight customers, which further constrains their ability to earn revenue. Since the passage of the Staggers Act of 1980, it has been the policy of the federal government to help preserve these light density branch lines rather than letting them be abandoned. This public policy has preserved competitive transportation service and jobs in large areas of the country.

The three most important challenges facing the short line and regional railroad industry are:

- **Regulatory burden**: Many small business railroads are not able to comply with costly “one size fits all” regulations meant for larger class one railroads. The Small Business Regulatory Enforcement and Fairness Act (SBREFA) is often not adhered to by federal agencies regulating railroad businesses, which impacts the safe movement of freight.

- **Safety**: The railroad industry considers safety its number one priority. Short lines work to improve safety every day in a variety of means, including by focusing on safety culture
through the Short Line Safety Institute, investing in track maintenance and improvements, working with local authorities on grade crossings, supporting Operation Lifesaver in its efforts to educate the public to avoid grade crossing and trespassing accidents, and the implementation of Positive Train Control (PTC). However, it is important to recognize that short line railroads are small businesses with unique financial and operating challenges. As such they have limited capacity to meet complex and costly regulatory requirements. The resources they do have are better invested in infrastructure improvements that are the proven path to enhancing rail safety.

- Modal Equity: The current underpayment by road users, especially commercial trucking, has required a transfer of approximately $144 billion in General Funds to the HTF over the past ten years. Consequently, the rail sector is perennially placed at a competitive disadvantage. DOT should support policies that promote equity among freight service providers across all modes of transportation.

4. What industry freight-specific knowledge is critical to understanding supply chains and how economic trends impact freight logistics and cargo movements? How can such data and/or knowledge be procured or shared amongst public and private sector partners? Are there technological innovations, such as Blockchain and the Internet of Things (IoT), that DOT should know about?

A significant issue facing small railroads is ensuring that our customers have the tools and resources available to monitor their shipments across the national freight network. As technology in the transportation space has progressed, consumers and businesses expect to be able to track their shipment across the country and have a reliable estimate of when it will arrive at its

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1 The Short Line Safety Institute is a federally-funded, non-profit organization that conducts on-site assessments of safety culture and provides safety education and training for managers and employees of short line and regional railroads (shortlinesafety.org). Operation Lifesaver is a non-profit public safety education and awareness organization dedicated to reducing collisions, fatalities and injuries at highway-rail crossings and trespassing on or near railroad tracks (oli.org).
destination. Small railroads are working with their larger Class I railroad partners and vendors serving the rail industry to help develop information systems to allow improved sharing of data critical to improving customer service and safety, while protecting confidential business information and maintaining necessary cybersecurity protections. A key example of that today is our effort, with the support of the Pipelines and Hazardous Materials Safety Administration (PHMSA), Railinc, and Wabtec, to incorporate specific information on hazardous materials in cars travelling on small railroads into the AskRail mobile app. AskRail provides emergency responders at the scene of a rail accident immediate access to information on which railcars are carrying which type of hazardous materials, and allows them to take appropriate precautions needed to keep them and the surrounding public safe.

Further development of these information systems is critical for small railroads to continue to provide efficient and economical service to critical industries. However, despite considerable efforts within the rail industry to improve these systems, small railroads still face a number of challenges. DOT could play an important role in monitoring how freight flows across modes and help support investment in systems that enable small railroads to improve access to empty cars, provide them with accurate estimated time of arrivals to streamline operations and other factors to improve their efficiency and customer service. These technological advances could come in many forms, including technologies like Blockchain and IoT, but making sure small railroads have access to timely and cost-effective information about the freight that will eventually touch their tracks will be key for them to continue to serve critical industries across America.

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2 For more information, see Askrail.us.
6. **What approach should the federal government use to invest in the multimodal freight system?** How would this approach apply to each transportation mode, for freight in general, for specific industries, or for freight assets owned by the private sector (i.e., rail pipelines, maritime)? What are best practices for identifying projects that involve both public and private sector assets and for encouraging communication between the public and private sector to complete those projects?

The short line railroad industry supports funding for grant programs such as the Infrastructure for Rebuilding America (INFRA) grant program and the state freight formula grant program, that enable the public sector, including state and local governments, to partner with short line railroads to advance projects of mutual interest, including projects to help lessen road and port congestion, enhance safety, and improve the quality of life for communities. INFRA and the state freight formula program should continue to be authorized at increasing levels, these programs should also be made fully multimodal with no artificial cap on how much can go to non-highway projects, as long as the program isn’t being 100% funded by highway users. At the very least, non-highway caps should be increased to be in proportion to any amount of the overall surface transportation or infrastructure bill that isn’t funded by highway user fees.

The Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant program successfully provides a consolidated solution to fund capital project development and implementation to support infrastructure safety and improvements for both intercity passenger and freight railroads. Congress authorized this grant program to invest in a wide range of projects to improve railroad safety, efficiency, and reliability, including grade crossing enhancements, bridge rehabilitation, rail line relocations and improvements, PTC implementation and deployment, and capacity improvements. This program focuses on benefit-cost analysis and creates a level playing field where short line projects are competitive. We suggest that CRISI
eligibilities should include all manner of technology and digital infrastructure projects intended to improve railroad safety, performance and reliability, including PTC maintenance for eligible applicants.

It is also crucial for short lines that as other eligibilities are considered for rail programs that there remains a program in which short lines have a chance to successfully compete. To the extent that new eligibilities for commuter rail are considered, we would suggest that the Federal-State Partnership for State of Good Repair program would be a more natural fit. If commuter rail does become an eligible CRISI applicant, we’d suggest that steps be taken to preserve the viability of short line applications, such as reserving at least 50% of the program for Class II and III applicants or reserving at least 50% of the program for rural projects or reserving at least 50% of the program for smaller projects.

Giving increasing preference to grant requests with “over-matching”, or a higher non-federal share than required, may appear logical but can lead to missing otherwise important short line projects that from a financial standpoint cannot provide an overmatch of non-federal funding. We support a pre-determined non-federal share requirement and as long as a project meets the requirement, there is no further consideration of the amount of non-federal match.

The Railroad Rehabilitation & Improvement Financing (RRIF) loan authorization of $35 billion is viewed by many as a potential solution to short line railroad rehabilitation. That has not been the case. Since its inception in 1998, the RRIF loan program has provided only a very small
piece of the needed support for short line rehabilitation projects. It should thus not be assumed that this large loan authorization provides meaningful assistance for the short line industry.

Notwithstanding its relatively limited utility, there are ways to improve the program and the short line railroad industry offers the following recommendations for DOT:

- Provide subsidies for RRIF loan credit risk premiums;
- Provide assistance for advisory fees associated with RRIF loan applications;
- Extend RRIF loan terms to match true railroad asset lifespans (e.g., 50 years);
- Facilitate earlier identification of credit risk premium ranges so that an applicant knows if it’s worth pursuing the process;
- Ensure that RRIF loans are considered local matching funds for other federal programs provided that they are repaid with local funds, as is the rule under Transportation Infrastructure Finance and Innovation Act (TIFIA); and
- Allow short line holding companies to be applicants.

As technology evolves, short line railroads see an opportunity for the federal government to promote the development and deployment of technology that will help drive down implementation costs so that all railroads, even the smallest, can participate in the benefits. Short lines view safety as a top priority and would like to see the federal government help ensure that next generation technologies with a proven safety benefit are both effective for, and economically available to, short lines. We suggest that DOT convene a working group consisting of a cross section of experts on safety and operations to recommend the Federal Railroad Administration (FRA) pilot projects that could find new ways for FRA to work cooperatively
with smaller railroads to simplify federal regulations while enhancing compliance and maintaining safety. This study and/or pilot project could be done as a partnership between the FRA, technology companies, university research centers with technology expertise, and multiple short line railroads. Short line railroads have a tremendous safety record and are always looking for additional ways to enhance safety in a cost-effective manner.

In general, the current regulatory approach is largely prescriptive and does not easily allow for the incorporation of the best technologies to improve safety and performance. Safety and efficiency improvements should be encouraged by DOT and the FRA.

7. What barriers (such as regulatory, technological, institutional, statutory) are critical to freight efficiency that DOT should better understand?

A regulatory barrier of serious concern to the short line industry is FRA’s Part 243 Training Rule. This rule imposes a major financial burden on small business railroads by establishing a one size fits all training requirement. Implementing the rule as written would have a negative impact on the movement of freight by rail, as many small businesses would not be able to afford to meet the training requirement. Suspending or cancelling freight movements due to this rule would shift commodities to the trucking industry.

Congress has mandated through the Regulatory Flexibility Act (RFA) that agencies evaluate how their regulations will specifically affect small businesses and Congress has mandated through SBREFA that small businesses be provided with regulatory consideration. In response to Executive Orders 13771 and 13777, which commit this administration to regulatory reform and burden reduction, on March 30, 2017, the Small Business Administration Office of Advocacy sent a memorandum to federal agencies recommending that they consider small entity interests in implementing E.O. 13771 and in subsequent deregulatory actions. We filed a petition for rulemaking along with a petition for delay of implementation while our request is being considered. In December 2019 we were granted a delay which we appreciate. We understand that our request to move to a performance-based training standard is being considered by the FRA.

8. How would you define a bottleneck in your industry?
The short line industry has two issues that we would consider bottlenecks: infrastructure built without access to rail services and the barriers to small railroads to upgrade their existing infrastructure.

The first bottleneck challenge involves geographical areas without access to rail. Many ports have access to rail for intermodal connections, but most airports do not have any access, the infrastructure simply does not exist and is rarely considered in construction. DOT should encourage airports to plan for rail connectivity in their construction and long-term infrastructure plans. Major shippers and industrial complexes that build new facilities and ignore the importance of rail access also creates a freight bottleneck. Building new rail lines to facilities that were built far from existing rail lines is expensive and we ask DOT to encourage new industrial construction to consider building their facilities near rail as a viable option for moving commodities.

A second type of bottleneck would be short lines’ inability to afford upgrading to the Class One network standard of 286,000 lb rail cars. Currently, 25% of the short line network is unable to support a 286k lb rail car, making it difficult to compete in certain corridors. These rail lines may lose some business to the trucking industry, which shifts more freight movement onto our nation’s highways where motorists are put at risk of contact with dangerous commodities such as toxic-by-inhalation and other hazardous materials. The recently extended 45G tax credit helps small railroads invest more in their infrastructure, but this is a very expensive upgrade for smaller railroads. One solution would be to further extend or make permanent the 45G short line rehabilitation tax credit.
9. What else should DOT consider or do to improve freight transportation in the U.S.?

When there are natural disasters like floods, hurricanes, tornados, etc., there are specific statutory disaster relief programs at the Federal Highway Administration (FHWA) for highways and at the Federal Transit Administration (FTA) for commuter railroads, subways, and other public transportation. However, there is currently no corresponding disaster aid program at FRA for short line railroads. This leads to challenges in disaster recovery. For example, short line railroads were impacted in 2019 by the severe flooding in the Midwest and the polar vortex that swept through large portions of the country and were left with few federal funding opportunities to help rebuild and maintain their infrastructure under such extreme conditions. In the past 20 years, Congress has twice made small one-time special disaster aid appropriations for Class II and III railroads, but there is no statutory authorized program or structure. Congress allocated $20m for this purpose in the 2009 appropriations process and was successfully used throughout the country, but the program has not been funded since. Class II and III railroads are eligible for CRISI grants, but CRISI is not set up for immediate disaster response. The Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA) can provide disaster loans, but not grants for critical Class II and III railroad infrastructure like bridges and track. DOT should support a surface transportation reauthorization bill or proposals to be sent to Congress with an authorized disaster relief program for Class II and III railroads. We encourage DOT and FRA to review a proposal and draft legislation prepared by ASLRRA for such an authorized program. The draft text can be found in appendix A.
Respectfully submitted,

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Appendix A

DRAFT of Short Line Railroad Disaster Relief Program

PURPOSE: Provide an authorization for general fund appropriations for FRA-administered natural disaster relief impacting Class II and III short line railroads. FHWA and FTA have permanent statutory programs for disaster relief, but FRA does not.

SECTION ____. SHORT LINE RAILROAD EMERGENCY RELIEF PROGRAM

(a) DEFINITIONS. In this section the following definitions shall apply:
(1) The term “emergency” means a natural disaster affecting a wide area (such as a flood, hurricane, tornado, tidal wave, earthquake, severe storm, landslide, avalanche, or forest fire) or a catastrophic failure from any external cause, as a result of which –
(A) The Governor of a State has declared an emergency and the Secretary has concurred; or
(B) The President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(2) The term “short line railroad” means a Class II railroad or a Class III railroad as such terms are defined by the Surface Transportation Board.

(b) GENERAL AUTHORITY. The Secretary may make grants and enter into contracts and other agreements with a railroad directly or with a unit of local government (including agreements with any department, agency, or instrumentality of the Government) for capital projects to protect, repair, reconstruct, or replace equipment, infrastructure, and facilities that the Secretary determines is in danger of suffering serious damage, or has suffered serious damage, as a result of an emergency. Grants may be provided on a reimbursable basis or advance funding basis, at the option of the Secretary.

(c) COORDINATION OF EMERGENCY FUNDS. Funds appropriated to carry out this section shall be in addition to any other funds available and shall not affect the ability of any other agency of the Government, a State agency, a local governmental entity or organization, or person to provide any other funds otherwise authorized by law.

(d) GRANT REQUIREMENTS. (1) A grant awarded under this section that is made to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. (2) The Secretary may retain up to one-half of 1 percent of the funds appropriated under this section to fund the costs of project management oversight by the Administrator of the Federal Railroad Administration. (3) The provisions of section 24312 of title 49, United States Code, shall apply to grantees assisted under this section.
(e) GOVERNMENT SHARE OF COSTS. A grant, contract, or other agreement for a capital project under this section shall be for not more than 80 percent of the project cost, as determined by the Secretary. The Non-Federal share of the project cost shall be provided in cash, equipment, or supplies. The Secretary may waive, in whole or in part, the non-Federal share.

(f) AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated to the Secretary for grants under this section such sums as may be necessary.