

Comments of the Transportation Departments of  
Idaho, Montana, North Dakota, South Dakota, and Wyoming  
to the  
Federal Railroad Administration  
in  
Docket No. FRA-2022-0006  
Corridor Identification and Development Program; Request for Information  
March 8, 2022

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Introduction and Key Points

The transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming (“we” or “our”) submit these joint comments in response to the notice in this docket published by the Federal Railroad Administration (FRA) at 87 Federal Register 6938 (February 7, 2022).

Section 22308 of the bipartisan infrastructure law, Pub. L. 117-58 (November 15, 2021), establishing 49 USC 25101, directs USDOT to establish a Corridor Identification and Development Program (the Program) in accord with the terms of that section. In this docket FRA (for USDOT) has invited comments on issues pertaining to the establishment of the Program.

We are state departments of transportation, with wide responsibilities for transportation within our respective states and, importantly for purposes of an intercity rail passenger corridor program, entities with a broad perspective on transportation issues – not only statewide but regional and national. Moreover, in relatively rural, low population density states, where there are few population centers generating influential transportation stakeholders, the perspective of the state DOT on transportation issues is generally of particular importance.

We note at the outset that there is limited passenger rail service in our states. Three of the five departments have limited Amtrak service; two do not have any rail passenger service.

We appreciate that FRA may well receive comments in this docket that reflect the perspective of those interested in improvement to rail corridors between our nation’s largest metropolitan areas. We suggest, however, that to advance a truly national program, FRA must adopt a program structure that is welcoming to new participants and regions, particularly as this new program is principally one of developing plans that could be funded by other programs. To do otherwise would, perhaps unintentionally, send a negative signal to potential new participants in rail passenger transportation.

Accordingly, as set forth more fully below, the key point of these comments is for FRA to adopt a program structure that sets a minimal threshold for acceptance into the program for submissions from rural states, currently with limited or no passenger rail service, that include the State DOT as an applicant. That way, the applicant(s) from such states would have shown broader than local interest and should have the opportunity to benefit from working with FRA to develop service plans and receive guidance or technical assistance.

## Additional comments

Per FRA's request in the Federal Register notice, comments are organized around 16 numbered questions posed by FRA, though FRA also invited comments on relevant matters in addition to the 16 questions (see our comments on page one of this filing). We respond below to some of the 16 questions.

2. Q. What are the appropriate roles for FRA and other parties in the preparation of service development plans (SDPs) under 49 USC 25101(d), or in other Program activities?

A. In the consultative process that is part of the preparation of SDPs and other actions, the statute calls for FRA consultation with, among others, the state. That FRA contact should be with the state DOT except to the extent the state DOT advises otherwise. FRA should not go past the lead state transportation agency to pick other state agencies for communication. State DOTs certainly cooperate well with other state agencies in terms of gathering information and otherwise, so FRA should not hesitate to make clear that it will use the state DOT as the point of contact with a state except to the extent the state DOT advises otherwise.

In addition, as to preparation of an SDP or other actions after a corridor application is accepted into the Program, FRA consultations should be at a pace that not only enables FRA to undertake such consultations as it deems appropriate, but which allows the state DOT to do so as well with stakeholders in the state.

3. Q. Where permissible, should SDPs under the Program have the option to be prepared as longer-range planning documents, so that the implementation of the new or improved service (through the implementation of the projects included in the "corridor project inventory," and advancement of such projects into the project pipeline) may be sequenced or phased over time?

A. Yes, and FRA should defer to the wishes of the state and applicants as to whether to exercise that option.

4. Q. Where permissible, should SDPs under the Program develop and narrow alternatives for implementing a new or improved service through the use of a planning process undertaken in advance of environmental review under the National Environmental Policy Act (NEPA) (e.g., in a manner similar to that applicable to highway and transit projects under appendix A to 23 CFR part 450—Linking the Transportation Planning and NEPA Processes)?

A. Yes, and FRA should defer to the wishes of the state and applicants as to whether to exercise that option.

5. Q. How should public involvement and environmental considerations be incorporated into the preparation of SDPs under the Program, and how might that vary depending on whether or not SDPs develop and narrow alternatives (as described in Question #4)?

A. Specific processes aside, a key point is that the approach taken must avoid duplicative processes and not have any planning level process be so detailed as to be an early version of NEPA review that would follow.

6. Q. 49 U.S.C. 25101(e) requires that FRA consult with certain stakeholders in the preparation of SDPs under the Program. What approaches could FRA take to ensure the consultation process is effective and meaningful?

A. As noted above, the process should allow sufficient time for the state, as the state transportation policy leader, to also consult with stakeholders.

7. Q. Should capital projects identified in the project pipeline be required to be ready for immediate implementation (i.e., final design and construction), and be supported by a completed environmental determination under NEPA, completed preliminary engineering, and (as applicable) agreements with the relevant host railroad(s)?

A. No. That would be a very high bar for inclusion in a report to Congress as passenger rail projects sometimes have a long time period between conceptualization and implementation. FRA should have a process that enables those developing a project to have some ability to be listed in a report as under development as a means of continuing momentum for the project without misleading as to the precise readiness of the project for final design and construction. See also answer to Q. 8.

8. Q. If a capital project must be ready for immediate implementation in order to be included in the project pipeline (see Question #7), should FRA establish a “pre-Pipeline” of projects that have been identified in the “corridor project inventories” included in the SDPs prepared under 49 U.S.C. 25101(d), and that are in the process of being readied for implementation (e.g., in the process of environmental review under NEPA, undergoing completion of preliminary engineering, etc.), but which are not ready for implementation?

A. Yes, but we suggest that such a pre-pipeline list also include projects accepted into the Program for development that are not as far advanced as indicated in the question (not yet undergoing preliminary engineering or environmental review). The pre-pipeline list could have 2 parts: one with projects in preliminary engineering or environmental review; and another for projects in the Program but in earlier development.

10. Q. What other Program activities should be undertaken with the support of funding provided under 49 U.S.C. 24911(k)?

A. We emphasize that planning activities should be broadly eligible. The Federal Register notice lists various types of planning activities as eligible and, to the extent those do not cover the circumstances of planning for service that would be in considerable part within a relatively rural state, then planning funds that would help address rural circumstances should also be eligible.

11. Q. Should FRA consider readiness factors not otherwise described in the statute when evaluating proposals submitted for the Program, and if so, what factors would be relevant in assessing readiness?

A. As noted at the outset, FRA should be sensitive to developing the program so that it has truly national reach, including by accepting into the Program applications from states

with limited or no current rail passenger service. This is particularly appropriate since acceptance into the program does not assure funding. For FRA to do otherwise could have the effect of sending a signal discouraging rural interest in passenger rail. Further, by opening the program to efforts to develop SDPs in rural areas, unforeseen benefits could emerge, in terms of potential rail connections with proposals from others.

14. Q. What other considerations may be appropriate in evaluating proposals for corridors to be developed under the Program?

A. As noted at the outset and in response to Q. 11, FRA should be sensitive to developing the program so that it has truly national reach, including by accepting into the Program applications from states with limited or no current rail passenger service. This is particularly appropriate since acceptance into the program does not assure funding. For FRA to do otherwise could have the effect of sending a signal discouraging rural interest in passenger rail. Further, by opening the program to efforts to develop SDPs in rural areas, unforeseen benefits could emerge, in terms of potential rail connections with proposals from others.

15. Q. In general, how selective should the Program be, particularly during the period directly following its establishment? Should all proposals that meet a minimum threshold be selected for development under the Program, or should only a limited number of top proposals be selected, and if so, why?

A. We do not see that the Programs should be selective, especially as acceptance into the program does not assure funding. Selectivity can occur later, when projects that are fully ready for construction compete for funding that almost certainly will be less than the demand for the funding from ready to go projects.

16. Q. What considerations are relevant for determining the selectivity of the Program?

A. See reply to Q. 15.

### Conclusion

The transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming believe that FRA has the opportunity to administer the Program in a way that is welcoming to enabling rural states to develop proposals and expand the reach of passenger rail. Since doing this does not commit FRA to funding projects, only working with state DOTs and other stakeholders in developing them for consideration for funding, FRA should be willing to accept into the Program proposals from rural areas that include State DOTs as applicants. We thank FRA for its consideration and ask that further action on the subject matter of this docket be in accord with these comments.

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