



January 5, 2022



Supreme Court to Hear Arguments on OSHA's COVID Emergency Rule

The Supreme Court will hear oral arguments on Jan. 7 concerning the Sixth Circuit's decision to dissolve the Fifth Circuit Court's national stay of the Occupational Safety and Health Administration's (OSHA) emergency rule requiring COVID vaccinations or tests for companies with 100 or more employees.

OSHA has [extended the date](#) for enforcement of the emergency rule pending the Supreme Court's hearing. Susan Warshaw Ebner, partner at ASLRRRA member firm Stinson LLP, wrote a [blog post](#) explaining this latest step in the litigation process and what it means for government contractors subject to these requirements.

ASLRRRA's legal team is also monitoring these developments and their implications for Association members. Please contact ASLRRRA's [Sarah Yurasko](#) with any questions.

U.S. District Court Again Rules that Crew Size Law is Preempted by Federal Law

In December, the U.S. District Court for the Northern District of Illinois Eastern Division ruled in favor of The Indiana Rail Road Company, the Association of American Railroads (AAR) and ASLRRRA, saying that an Illinois crew size law is preempted by federal law.

Background:

On Sept. 30, 2019, The Indiana Rail Road Company, AAR and ASLRRRA filed a complaint for declaratory and injunctive relief against the Illinois Commerce Commission in the U.S. District Court for the Northern District of Illinois Eastern Division. The complaint alleged that the Illinois crew size law (which went into effect Jan. 1, 2020, but enforcement of which has been voluntarily stayed by the State during the litigation) is preempted by several federal laws, including the Federal Railroad Safety Act.

On Sept. 30, 2020, the court granted the Railroads' motion for summary judgment and held that the Illinois crew size law was preempted under the Federal Railroad Safety Act. The District Court did not "reach" the Railroads' other preemption arguments (3R Act and ICCTA) in this 2020 decision because it had already decided based on FRSA. Illinois then appealed the decision to the 7th Circuit.

Then, in February 2021, the 9th Circuit decided to vacate the vacate FRA's May 2019 decision that preempted state crew size laws, and thus the 7th Circuit case was terminated, the September 2020 District Court decision was vacated and the District Court considered the Railroads' other arguments (ICCTA and 3R Act preemption as well as a state law argument). Briefing was completed on Aug. 23, 2021.

Update:

On Dec. 21, 2021, the District Court [once again held](#) that the Illinois crew size law is preempted by federal law. This time, the federal law deemed the 3R Act relevant. The 3R Act applies to Maine, New

Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan, Illinois and the District of Columbia (and some "portions of contiguous States"). The court did not address the remaining preemption argument (the ICC Termination Act). ASLRRRA expects that Illinois will again appeal to the 7th Circuit, although the pendency of a federal crew-size NPRM could lead the court to hold the appeal in abeyance or otherwise affect the timing.

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FRA Announces 2022 Minimum Random Testing Rates

The Federal Railroad Administration (FRA) issued a [notification of determination](#) announcing its minimum annual random drug and random alcohol testing rates for covered service and maintenance-of-way (MOW) employees for 2022. The notification took effect Dec. 29.

Of note, the minimum annual drug testing rate for MOW employees was lowered to 25 percent, which is the same rate as that for covered service, or hours-of-service, employees. The alcohol testing rate for MOW employees did not change.

Both drug and alcohol rates for hours-of-service employees will not change in 2022, remaining at 25 and 10 percent, respectively.

FHWA Allocates Emergency Relief Money for Fiscal Year 2022, Some Rail Repairs Eligible for Funding

The Federal Highway Administration (FHWA) announced allocations of fiscal year 2022 Emergency Relief (ER) funds for [federal-aid highways](#) and [federally-owned roads](#). This funding can also apply to certain rail-related repairs.

The \$1.39 billion in funds will help 42 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands make repairs to roads and bridges damaged by storms, floods, wildfires and other events. The funding is allocated by federally declared disasters by state. Repair work on or replacement of railroad-highway crossing warning devices damaged by the disaster are eligible purposes, if the repair exceeds what would be performed in normal heavy maintenance. Railroad force account work is an eligible category of spending for these funds.

Should a short line have performed emergency crossing repairs at a federal road or highway in one of these identified disaster areas, and not yet inquired about reimbursement, these funds available to the

state could be of interest. More generally this program is something for railroads to be aware of as a potential resource should a future serious natural disaster damage a crossing on an eligible road. More information is available at the [program homepage](#).

Maritime Administration's Port Improvement Grant Awardees Include Rail Projects

The U.S. Department of Transportation (DOT) [announced the recipients](#) of grant funding through the Maritime Administration's [Port Infrastructure Development Program](#) (PIDP). Twenty-five projects in 19 states and one territory will receive over \$241 million to improve port facilities.

These grants can be used to help fund rail projects that "improve the safety, efficiency, or reliability of the movement of goods into, out of, around, or within a port." ASLRRA encourages its members serving ports, including coastal seaports, Great Lakes ports and inland river ports, to discuss PIDP funding opportunities with their port partners.

In this round of funding, PIDP grants will benefit four rail-related projects. The Port of Long Beach in California received \$52.3 million for its Pier B Early Rail Enhancements Project. ASLRRA member Pacific Harbor Line serves the port and is the primary user of the current Pier B rail facility.

Approximately \$4.1 million will go to construct a new rail storage yard at Port Bienville in Mississippi, served by ASLRRA member Port Bienville Short Line Railroad, while in Aberdeen, Mississippi, \$4 million will be used to build a new rail spur at the Aberdeen Port. Additionally, a project to replace existing tracks in Morehead City, North Carolina received \$1.7 million.

STB Schedules Public Hearing on Proposed Switching Regulations

Stakeholders wanting to discuss the Surface Transportation Board's (STB) proposed reciprocal switching regulations will have their opportunity at a [public hearing scheduled for March 15 and 16](#) at the STB's Washington, D.C. headquarters.

The STB's hearing will concern a previous notice of proposed rulemaking (NPRM) that recommended new regulations allowing the board to require rail carriers to establish switching arrangements in certain cases.

Those wishing to speak must file a notice of intent to participate by Jan. 27, while written comments must be submitted by Feb. 14. Follow the link above for more information.



Letter from Representatives Questions Effort to Repeal LNG Rule

Republican members of the U.S. House of Representatives [sent a letter](#) to the acting administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Tristan Brown, concerning a proposal by the Biden administration to suspend regulations allowing transportation of liquefied natural gas (LNG) by freight rail.

Twenty representatives, led by House Transportation and Infrastructure Committee Ranking Member Sam Graves (R-Mo.) and Rail, Pipelines, and Hazardous Materials Subcommittee Ranking Member Rick Crawford (R-Ark.), questioned PHMSA's Nov. 8, 2021

notice of proposed rulemaking that would rescind a final rule issued in July 2020 authorizing shipment of LNG in specialized tank cars.

ASLRRRA is supportive of the letter and the members' efforts opposing the rollback. The letter focuses on the safety of shipping LNG by rail, as well as the mode's superior efficiency and sustainability. It also encourages the use of LNG as a better energy alternative.

As the letter writers note, "As our country faces significant supply chain issues and rising energy prices, we should be incentivizing critical infrastructure that can provide additional capacity to the Nation's ability to safely transport energy and ease some of these challenges. Yet, the rollback of this rule once again places additional regulatory burdens to stifle key transportation infrastructure."

Senate Returns to Legislative Business This Week with House Slated to Return Next Week

With negotiations on their Build Back Better (BBB) bill sputtering to a near halt over the Christmas recess, Senate Democratic leaders are vowing to restart discussions on the legislation as the Senate heads back into session this week.

The agenda for the next few weeks is still coming together, but BBB will remain a key topic. The agenda is also likely to be dominated by considerable debate about parliamentary issues, like changes to Senate rules governing the filibuster. The agenda in the House of Representatives is a bit murkier, but a clearer picture should emerge next week when the House returns from its winter break and House leaders publicly discuss their top priorities for the coming weeks.

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ASLRRRA New Members

Know a company that would benefit from joining and participating in ASLRRRA? Please contact ASLRRRA's Vice President of Membership and Business Development Kathy Keeney via [email](#) or on (202) 585-3439.

ASLRRRA Welcomes Two New Supplier Members



[Intramotev](#), based in St. Louis, Missouri, is a supplier developing autonomous zero-emission railcars for use in short-haul freight transportation. The company's goal is to enable short lines to compete with trucks by providing a low-cost, high-utilization transportation solution with zero vehicle emissions. Our primary contact is COO [Alex Peiffer](#), who can also be reached on (419) 619-2983. Many thanks to Casey Cathcart and Alex Lang for suggesting that they join ASLRRRA.



[Mississippi Valley Equipment Company \(MVE\)](#), based in St. Louis, Missouri, has been serving the construction industry since 1933. It is the parent company of the MKT product line and offers a complete rental fleet. It is a one-stop shop for pile-driving and drilling equipment including vibratory and diesel hammers, augers, lead systems and accessories. Our primary contact is Territory Manager [Bob Clapsaddle](#), who can also be reached on (314) 869-8600.

ASLRRRA Announcements

Doug Golden Donation to Fund More Training Scholarships in 2022

Former ASLRRRA board member and retired Carolina Coastal Railway President Doug Golden announced he will make another donation to ASLRRRA's Short Line Education Fund to support scholarships for industry-specific training in track, bridge and signal inspection and maintenance and/or locomotive and freight car inspection and maintenance.

In 2021 ASLRRRA awarded four \$1,200 scholarships to short line employees to help pay for training, travel and lodging costs. This year, ASLRRRA hopes to award at least ten scholarships to eligible recipients. Eligible recipients include employees of short line and regional railroads, defined as small railroads earning \$10 million or less in annual revenues.

ASLRRRA is in the process of developing, but does not currently offer, courses on scholarship-eligible topics. Some organizations that offer applicable railroad industry training include the [University of Tennessee Center for Transportation Research](#) and the [American Railway Engineering and Maintenance-Of-Way Association \(AREMA\)](#), among others.

Individuals can apply for scholarships by completing an [online application](#), and scholarships will be awarded to qualified candidates on a rolling basis until all funds are distributed. Questions may be directed to ASLRRRA's accounting manager, [Julie Duriga](#).

Join ASLRRRA's Member Discount Program as a Preferred Provider

The money you save using Preferred Providers from [ASLRRRA's Member Discount Program](#) could pay your annual dues and then some! ASLRRRA's Member Discount Program leverages the buying power of all association members to secure discounted pricing on essential business products and services. ASLRRRA members – regardless of size or individual purchasing power – receive exclusive access to programs tailored specifically for the short line railroad industry with discounted pricing, special offers, and guaranteed exceptional service. Whether you operate five miles of track or fifty, you can save thousands of dollars a year on products and services you already use.

Member Discount Program offerings currently include personal protective equipment plus safety eyewear and shoe programs from ORR Safety; tie inspection services from Loram Technologies; grant writing services from Bergmann, GTS and HDR; PTC products and services from GTS and Ayers Electronic Systems; and employee health insurance from HUB International. Visit www.aslrra.org/discounts for details and to learn more about ASLRRRA's Member Discount Program Preferred Providers.

Interested in becoming a Preferred Provider? ASLRRRA is seeking to add new products and services to its Member Discount Program offerings, and we would like to hear from you! The program is open exclusively to ASLRRRA associate members who are committed to providing exceptional service along with volume discounts to short line railroads. Preferred Providers benefit from a broad range of marketing/promotional activities, including visibility on [ASLRRRA's website](#) and in print and electronic communications. Interested companies may contact [Sabrina Waiss](#) for more information on becoming a Preferred Provider.

ASLRRRA Out and About

ASLRRRA Comments on DOT Framework are Focus of *Railway Age* Article

Railway Age magazine recently highlighted [comments submitted](#) by ASLRRRA on the U.S. Department of Transportation's draft strategic framework.

The [online article](#) highlights some of the answers provided by ASLRRRA President Chuck Baker to questions like how the DOT can achieve its strategic goals and objectives and measure progress toward meeting those goals.

Save the date!

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ASLRRA Webinars – Live or On-Demand

Reach New Year's Goals with Education Any Time

For those whose New Year's resolutions include expanding knowledge of important railroad industry issues, ASLRRA's On-Demand Webinar library can help meet those goals.

On-demand webinars cover a wide variety of industry hot topics. They include the popular railroad retirement and unemployment information series, which features a discussion of COVID-19-related issues. There are also tips for social media engagement and crisis communications; webinars about the Environmental Protection Agency's SmartWay program; explanations of legal and regulatory issues; and much more.

ASLRRA members can view recordings at any time for free, while non-members can purchase a subscription to access our library. Go to aslrta.org/webinars and log in to see what is available.

[Click here](#) for a calendar of ASLRRA events.

Industry Events and Announcements

AskRail App Lets First Responders Access Critical HazMat Information

In an effort to further promote rail safety, the Short Line Safety Institute recently highlighted the [AskRail app](#), which identifies the materials being carried in a rail car for first responders addressing a rail incident or accident.

The app is available to qualified emergency responders who have completed certain rail emergency training programs. Users can conduct railcar ID searches to determine whether a car is carrying hazardous materials, view the contents of an entire train and find emergency contact information for all Class I railroads, Amtrak and available short lines.

Short lines can provide information to AskRail for reference in case of an emergency. Railroads using Wabtec's Transportation Management System (TMS) only need to grant permission to include necessary data. Wabtec customers can contact railconnect.support@wabtec.com or call 1-800-285-6545, Option 1 for more information. Railroads needing help integrating information directly should contact support@askrail.us or e-mail jrgelnar@aslrra.org.

Short Line Safety Institute Safety Tip Focuses on Coupling Cars

The Short Line Safety Institute has released a new Safety Tip concerning [coupling or moving rail cars or engines](#).

The tip explains that by following the General Code of Operating Rules (GCOR) rule 7.4, employees can mitigate several of the risks involved with coupling and moving cars and engines. One part of the rule that SLSI says is often disregarded requires the stretching of couplings to ensure they are made.

This safety tip is one of many available on the SLSI [website](#). There are also specific hazardous materials tips, the most recent of which identifies the difference between general service and pressure service tank cars.

Beyond safety tips, the SLSI website offers a wealth of resources to railroads at no cost, including [informational videos](#), [sample forms and templates](#) and information about [training opportunities](#) and [safety assessments](#).

Railroad Retirement Board Announces New Director of Retirement and Survivor Benefits

Letitia Carthans is the Railroad Retirement Board's [new director of retirement and survivor benefits](#). She succeeds Valerie Allen, who retired.

As director, Carthans will administer payment of benefits to retirees, spouses and survivors, overseeing 65 claims examiners. She was previously deputy director of this department, a role she held since 2015. Carthans first joined the Railroad Retirement Board in 1988 as an initial retirement claims examiner.

[Click here](#) for a calendar of industry events.

Views & News is published by American Short Line and Regional Railroad Association. Please contact [Amy Krouse](#), editor, with questions or comments.