

BEFORE THE
FEDERAL RAILROAD ADMINISTRATION

PETITION FOR A WAIVER FROM
49 C.F.R. § 271.13: DETERMINATION OF INADEQUATE SAFETY PERFORMANCE

SUBMITTED BY
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

The American Short Line and Regional Railroad Association (“ASLRRRA”), on behalf of all Class II and Class III railroads, requests a waiver from provisions in the Federal Railroad Administration (“FRA”)’s Risk Reduction Program (“RRP”) Rule’s requirements at § 271.13: Determination of inadequate safety performance.¹

I. Fatalities and Accidents/Incidents Unrelated to Railroad Operations

Promulgated in February 2020, the RRP rule requires each Class I freight railroad and each freight railroad determined by FRA to have inadequate safety performance to develop and implement a RRP, which is a comprehensive, system-oriented approach to safety that determines a railroad operation’s level of risk by identifying and analyzing applicable hazards and involves developing plans to mitigate or eliminate that risk. In order to determine whether a railroad has inadequate safety performance, FRA's methodology consists of a two-phase annual analysis, comprised of a quantitative analysis and qualitative assessment pursuant to § 271.13. In the quantitative analysis portion, the preliminary selection calculates the following values:

¹ ASLRRRA is a non-profit trade association representing the interests of approximately 600 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate nearly 50,000 miles of track in 49 states, or approximately 30% of the national freight network, touching in origin or destination one out of every five cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network.

(A) A railroad's number of worker on duty fatalities during the 3-year period, calculated using “Worker on Duty-Railroad Employee (Class A),” “Worker on Duty-Contractor (Class F),” and “Worker on Duty-Volunteer (Class H)” information reported on FRA Form 6180.55 pursuant to FRA's accident/incident reporting regulations in part 225 of this chapter; and

(B) The sum total of a railroad's number of worker on duty injuries/illnesses during the 3-year period (calculated using “Worker on Duty-Railroad Employee (Class A),” “Worker on Duty-Contractor (Class F),” and “Worker on Duty-Volunteer (Class H)” information reported on FRA Form 6180.55 pursuant to FRA's accident/incident reporting regulations in part 225 of this chapter) added to the number of rail equipment accidents/incidents during the 3-year period (calculated using information reported on FRA Forms 6180.54 and 6180.55 pursuant to FRA's accident/incident reporting regulations in part 225 of this chapter).

ASLRRA is concerned that a strict approach of totaling a railroad’s on-duty fatalities and its workers’ on-duty injuries/illnesses could result in incidents included in the analysis that have no relation to railroad operations. For example, a railroad employee could have a medical issue that resulted in an on-duty injury or illness unrelated to his or her job duties at the railroad. ASLRRA requests that FRA limit its quantitative analysis of fatalities and injuries/illnesses to only those that pertain directly to railroad operations.² Such an approach is consistent with the stated goal of the RRP rule, which is to improve rail safety.³ Further, the relief requested will

² In this request, ASLRRA makes no request for relief regarding the requirements to report these fatalities, accidents and incidents pursuant to 49 C.F.R. Part 225.

³ See 85 Fed. Reg. 9,262 (Feb. 18, 2020).

allow a short line railroad in this situation to spend its limited funds on infrastructure and other improvements as opposed to drafting and complying with a plan that but for an unrelated incident would not be mandatory.

Limiting the quantitative analysis to only those incidents that pertain directly to railroad operations will improve railroad safety as it will focus the efforts of determining inadequate safety performance to concerns that directly relate to rail safety. Further, both the small business railroads considered in the inadequate safety performance analysis and the FRA have limited resources. This approach will improve railroad safety as it will steer the focus and enforcement of the RRP rule to those railroads with incidents directly related to railroad safety, thus furthering the mission of the RRP rule.

Additionally, during the qualitative assessment phase, some small business railroads will receive an initial written notice that FRA is conducting a qualitative assessment of the railroad because the quantitative analysis identified the railroad as possibly having inadequate safety performance pursuant to 49 C.F.R. § 271.13(c)(1). ASLRRA requests that these short line railroads be permitted to choose to voluntarily comply with the RRP rule as prior to receiving final notification under § 271.13(d) that their railroads have inadequate safety performance. Receiving a designation of “inadequate safety performance” can be likened to a scarlet letter of shame which can cause real financial harm to a small business in terms of its relationship with its vendors and customers.

As a condition of the relief provided to a railroad by having the ability to voluntarily comply with the RRP rule, ASLRRA proposes that railroads notified by FRA of a potential inadequate safety performance determination comply with the provisions at § 271.13(e)(1), which state that the railroad must develop and implement an RRP meeting the requirements of

Part 271 and submit an RRP plan meeting the filing and timing requirements in § 271.301. However, as an additional safety measure, instead of providing the RRP plan within 180 days, as stipulated by § 271.301, a railroad in this situation could provide the RRP plan within 120 days. A railroad that is proactively choosing to comply with the RRP rule instead of waiting for a determination of inadequate safety performance from FRA can use its best efforts to provide the plan more expeditiously than a railroad that chooses instead to wait for a determination. Further, a railroad given the choice to voluntarily comply with the RRP rule could follow § 271.13(e)(2) and comply with the requirements of Part 271 for a minimum of five years from the date FRA approves the railroad's RRP plan under subpart D of this part. As further safety measure, these railroads would also comply with § 217.13(g)'s procedure that necessitates petitioning FRA to discontinue compliance with the RRP rule.

By permitting railroads who receive an initial potential determination of inadequate safety performance from FRA to choose to voluntarily comply with Part 271 instead of waiting for a final determination letter, as ASLRRA has proposed in this petition, safety will be improved as those railroads will submit an RRP plan sooner than otherwise required by the regulation, comply with the rule for a minimum of five years, and petition FRA to discontinue compliance with the rule.

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ASLRRA appreciates FRA's consideration for the requests made in this petition. The relief requested will help small business railroads and FRA focus their efforts on issues that are germane to rail safety and will eliminate the stigma of an inadequate safety performance determination in exchange for a more expeditious compliance with the requirements of the RRP rule.

Respectfully submitted,

A handwritten signature in black ink that reads "Sarah Yurasko". The signature is written in a cursive style with a large, looped initial "S".

Sarah Yurasko
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