

BEFORE THE
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

DOCKET NO. PHMSA-2016-0015 (HM-263):
HAZARDOUS MATERIALS: FAST ACT REQUIREMENTS FOR REAL-TIME TRAIN
CONSIST INFORMATION

COMMENTS OF
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

The American Short Line and Regional Railroad Association (ASLRRA), on behalf of itself and its member railroads, submits the following comments in response to the Pipeline and Hazardous Materials Safety Administration (PHMSA)'s Notice of Proposed Rulemaking (NPRM) in Docket No. PHMSA-2016-0015 (HM-263): *Hazardous Materials: FAST Act Requirements for Real-Time Train Consist Information*.¹ The NPRM proposes to add new requirements for railroads to generate and maintain real-time consist information and to provide the required information to emergency response personnel.

Statement of Interest

ASLRRA is a small non-profit trade association representing approximately 500 short line and regional railroad (short line) members in legislative and regulatory matters. Short lines operate about 50,000 miles of track, or approximately 30% of the national freight network, employing approximately 18,000 people, and connect manufacturers, businesses and farmers in rural communities and small towns to larger markets, urban centers, and ports. The majority of

¹ 88 Fed. Reg. 41,541 (June 27, 2023).

short line railroads are considered small businesses.² ASLRRA's member railroads would be directly affected by the proposed changes because they would be required to develop and implement new protocols and procedures regarding the generation, maintenance, and production of real-time train consist information if the NPRM is promulgated as proposed.

Summary of Argument

PHMSA should revise the NPRM to exclude short line railroads, as envisioned in the Advanced Notice of Proposed Rulemaking (ANPRM) previously issued in this matter.³ The statutory mandate only applies to Class I railroads and the cited National Safety Transportation Board (NTSB) recommendation did not stem from an accident involving short lines and did not propose electronic notification. The NPRM failed to properly analyze the impact of its proposals under the Regulatory Flexibility Act (RFA) and does not provide any relief for small businesses. An exclusion is also merited because short line railroads present a lower risk profile than larger railroads, and they already proactively address response efforts directed at hazardous materials incidents – this NPRM is addressing a problem that does not appear to exist on short line railroads. Finally, while some short line railroads can participate in AskRail®, a proposed solution to the NPRM's requirements, not all are able to do so.

I. The NPRM Exceeds the Statutory Mandate and the NTSB Recommendation

In the NPRM, PHMSA proposes amendments to its Hazardous Materials Regulations to require all railroads to generate in electronic form, maintain, and provide to first responders, emergency response officials, and law enforcement personnel, certain information regarding hazardous materials in rail transportation to enhance emergency response and investigative

² See 13 C.F.R. § 121.201 and North American Industry Classification System code 482112, "Short Line Railroad."

³ 82 Fed. Reg. 6,451 (Jan. 19, 2017).

efforts. While PHMSA states that the NPRM responds to the mandate in section 7302 of The Fixing America's Surface Transportation Act (FAST Act, Pub. L., 114-94), as amended by the Investment Infrastructure and Jobs Act (IIJA, Pub. L. 117-58),⁴ the NPRM far exceeds the statutory mandate, as section 7302 only mandates a rule to require Class I railroads transporting hazardous materials to generate accurate, real-time, electronic train consist information that must be provided "to State and local first responders, emergency response officials, and law enforcement personnel that are involved in the response to or investigation of an accident, incident, or public health or safety emergency involving the rail transportation of hazardous materials." It was clearly Congressional intent to limit this rule to Class I railroads, as there are many other instances in the FAST Act and IIJA that refer to "all railroads" or mention Class II and III railroads specifically, while Section 7302 of the FAST Act refers specifically to Class I railroads in ten separate instances. Instead, in the NPRM, PHMSA proposes to require Class II and Class III railroads to also compile, update and forward accurate, real-time train consist information in electronic form."⁵

Further, the NPRM justifies the inclusion of all railroads that transport hazardous materials by citing a National Transportation Safety Board (NTSB) recommendation. However, the NTSB recommendation cited, R-07-04, stems from a collision of two Class I freight trains near Anding, Mississippi on July 10, 2005.⁶ Not only did the accident creating the basis for the report not involve short line railroads, NTSB also did not recommend that railroads create expensive electronic systems to fulfill its recommendation. In R-07-04, the NTSB recommends

⁴ Codified at 49 U.S.C. 20103 note.

⁵ 88 Fed. Reg. at 41,544.

⁶ NTSB, NTSB/RAR-07/01, "Collision of Two CN Freight Trains near Anding, Mississippi on July 10, 2005" at 48 (Mar. 2007) (NTSB Report), available at: <https://www.nts.gov/investigations/AccidentReports/Reports/RAR0701.pdf>.

that PHMSA “require that railroads immediately provide to emergency responders accurate, real-time information regarding the identify and location of all hazardous materials on a train.” Short line railroads today have procedures in place to provide accurate, real-time information regarding the identity and location of all hazardous materials on a train. These railroads maintain close ties with the communities in which they operate, often providing response information over the phone directly to first responders in the event of an incident. A mandate that small business railroads create an electronic train consist system exceeds the statutory mandate, does not logically flow from the NTSB accident, and exceeds the NTSB recommendation language.

II. Short Line Railroads Present a Low Risk Profile

Not only do Class II and Class III railroads operate safely, but they also present a different risk profile than that of Class I railroads. Overall, short line railroads operate fewer complex operations, shorter trains, and at lower speeds than the majority of Class I operations. Short line railroad average speed is significantly lower than Class I railroad average speed for several reasons, including that short line railroads operate on lower track classes which mandate lower maximum speeds and that short lines typically have much shorter distances to cover. Additionally, because short lines travel shorter distances overall, they have less exposure to an accidental release of product.

Since the passage of the FAST Act in 2015, Class II and III railroads have demonstrated that the intent of Congress to limit its real-time train consist data mandate to Class I railroads was justified. Based on data submitted to PHMSA via form F 5800 between 2015 and 2022, there were 3,476 incidents involving the release of hazardous materials among Class I railroads, with each incident resulting in an average damage amount of \$306,000. During the same period, there were only 425 such incidents on Class II and III railroads, with the average damage from

each incident being about \$31,000, or approximately 10% of the damages incurred by the typical Class I incident.

U.S. Class I Railroads (2015-2022)			
<i>Type of Hazardous Material Release</i>	<i>Number of Incidents</i>	<i>Average Quantity Released per Incident</i>	<i>Average of Total Damages per Incident (USD)</i>
Gas	264	29.06 Cubic Feet	\$36,700
Liquid	3,016	1,445 Gallons	\$343,000
Solid	162	6,164 Pounds	\$58,900
Other/Unclassified	34		\$23,400
Class I Totals	3,476		\$304,000
U.S. Class II and III Railroads (2015-2022)			
Gas	90	1.39 Cubic Feet	\$200
Liquid	325	286 Gallons	\$39,600
Solid	4	379 Pounds	\$250
Other/Unclassified	6		\$17,700
Class II & III Totals	425		\$30,600

Table 1 - Summary of Rail Hazardous Material Releases (2015-2022)⁷

Breaking down that data even further clearly demonstrates the much smaller scale of the typical Class II or III release. Table 1 (see above) highlights the number of hazardous material releases since the year Congress passed the FAST Act, as well as the average quantity of hazardous material released by type (gas, liquid, or solid) and the average damages incurred by the incident. Across all types of releases, the average Class I incident resulted in a quantity of material released that is at least five times higher than those seen on a Class II or III railroad. A similar trend can be seen in the figures for total damage cost per incident. In the aggregate, Class I incidents between 2015-2022 have resulted in \$1.06 billion of damages while Class II and III incidents have resulted in \$1.30 million, which is a vanishingly small 1.23% of the Class I total.

⁷ PHMSA, Hazmat Incident Database, https://portal.phmsa.dot.gov/analytics/saw.dll?Portalpages&PortalPath=%2Fshared%2FPublic%20Website%20Page%2F_portal%2FHazmat%20Incident%20Report%20Search

As PHMSA has explained in another regulatory context, high speeds can increase the probability of an accident.⁸ High speed can not only influence the probability of an accident, as it may prevent a brake application from stopping a train before an incident, speed also increases the kinetic energy of a train, resulting in a greater possibility of tank cars, for example, being punctured in the event of a derailment. In the *Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains* rulemaking, PHMSA noted that, based upon their calculations, if an accident occurred at 40 mph instead of 50 mph, for example, it would result in a 36% reduction of the severity of the accident. The overwhelming majority of short line operations take place at 25mph or less. PHMSA also concluded that slower speeds may also allow a locomotive engineer to identify a safety problem ahead and stop the train before an accident occurs.⁹ Therefore, given the significantly lower average speeds of short line railroads, their operations present a lower probability of an accident occurring as well as a lesser severity for those accidents that do unfortunately occur. This is reflected in the data noted above.

III. Short Line Railroads Proactively Address Hazardous Material Incident Response

The rail industry keeps safety at the forefront, and the short line community strives to implement initiatives targeted to improve communication and coordination between the railroad and first responders. For example, through an Assistance for Local Emergency Response Training (ALERT) grant from PHMSA, the Short Line Safety Institute (SLSI) provides no-cost hazardous materials training directly to first responders. This training covers many topics, including safety on railroad property, safety considerations at the scene of a rail incident, rail cars, placards and markings, and understanding train documentation. The best opportunity for a

⁸ See, e.g., 80 Fed. Reg. 26,644 (May 8, 2015) at 26,683.

⁹ Id.

safe, well-coordinated incident response and community protection is “ensuring that local first responders can rapidly and effectively respond to a hazardous materials incident with railroad personnel.”¹⁰ SLSI instructors stress that a key aspect for an effective hazardous materials incident response is proper and timely communication.¹¹

Many Class III railroads shared with ASLRRA that they maintain close relationships with the emergency responders in the communities in which they operate. This makes logical sense when considering the limited and defined geographic scopes of short line railroad operations and that short lines generally consider themselves to be active and constructive members of their local communities. Most short line operations have only a small handful of emergency responder organizations covering their operational territory. These railroads report that they have successful protocols in place that involve railroad personnel directly calling local responders in the event of an incident. The railroad will then provide the emergency response professionals with all of the necessary information to respond to the incident. Implementation of an electronic system would be expensive, redundant, and less efficient than the existing method of direct human interaction in these instances. We are unaware of any instances of a hazardous material release on a short line railroad where the relevant emergency responder agency was hampered by a lack of information or communication with the short line railroad – this NPRM is addressing a problem that does not appear to exist on short line railroads and in short line railroad communities.

IV. Only Some Short Line Railroads Can Participate in AskRail®

¹⁰ “ALERT Program provides hazardous materials incident response training to first responders.” *Shortlinesafety.org*, March 13, 2023, <https://www.shortlinesafety.org/news/short-line-safety-institute-holds-first-alert-program-at-new-orleans-and-gulf-coast-railway/>.

¹¹ *Id.*

The Class I railroads already support a system that fulfills this statutory mandate: the AskRail® app, which can be downloaded to a smartphone. AskRail® was created and is maintained by Railinc, a subsidiary of the Association of American Railroads (AAR) on behalf of the Class I railroads. The app has been made available to dispatch centers, fusion centers, 911 call centers, CHEMTREC, and key communication centers used by emergency responders, making AskRail® available to virtually every emergency responder in the country if they so desire to possess this information.¹² ASLRRRA does not support the NPRM extending to short line railroads but does incorporate by reference AAR’s comments in this rulemaking relating to AskRail®.

Utilizing PHMSA grant funding, ASLRRRA partnered with Railinc and Wabtec to create a data pipeline that allows for train consist data to be communicated from Wabtec’s RailConnect transportation management system (TMS) to Railinc for inclusion in AskRail®. Based on recent communications with Railinc, one short line holding company (Genesee & Wyoming) and a small number of independent short lines have enabled the transmission of consist data for inclusion in AskRail®, resulting in approximately 100 Class IIs and IIIs currently participating. Per information provided to ASLRRRA from Wabtec, about half of their short line customers presently utilize their product in a manner that generates train consist data that could readily be included in Railinc. The remainder of Wabtec’s TMS short line clients, estimated to be 210 Class II and III railroads, would need to invest resources to modify current processes and retrain staff to correctly generate train consist data for AskRail®.

Further, approximately 200 Class II and III railroads do not utilize Wabtec’s TMS solution. Those railroads use products from competing vendors or have developed their own

¹² CHEMTREC is a public service hotline for emergency responders that operates as “the world’s premier call center for hazmat emergency response coordination.” <https://www.chemtrec.com/about-chemtrec>.

internal systems and processes for managing rail car and train consist data. Not all of these systems are capable of defining train consist data, and none of them are currently capable of sending consist data to Railinc for inclusion in AskRail®. Significant investment would be required to modify non-Wabtec TMS systems to produce train consist data and to connect to Railinc in order for that data from these 200 Class II and III railroads to flow into AskRail®.

Between operational changes required to produce train consist data in Wabtec's TMS platform, and the number of short lines utilizing non-Wabtec TMS systems, ASLRRA estimates approximately 410 (or 66%) of Class II and III railroads would require costly operational and technological changes to provide train consist data to Railinc for inclusion in AskRail®.

ASLRRA supports continued work by its members, PHMSA, and other industry stakeholders to facilitate the inclusion of short line train consists into AskRail®. Given the breadth of adoption already achieved by AskRail® between the Class I railroads and key emergency responder communication centers and stakeholders, it is clearly a strong choice available for providing electronic train consist data to responders. However, given that a sizeable majority of Class II and III railroads would face significant hurdles to comply with a blanket mandate to produce and provide this data via any platform, ASLRRA recommends that PHMSA exempt Class II and III railroads from the proposed requirements to provide real-time train consist information. Instead, ASLRRA requests that PHMSA continue to support short line industry efforts to broaden the number of Class II and III railroads capable of providing train consist data for AskRail® and encourage more short lines to provide that data voluntarily.

V. **The NPRM Does Not Analyze the Impact to Small Businesses Under the Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires federal agencies to consider the impact of their rules on small entities, analyze alternatives that minimize those impacts, and make their analyses available for public comments.¹³ The NPRM also lacks other elements required by the RFA in that it does not distinguish between larger and small entities and does not propose a reasonable compliance schedule to meet the new requirements. The lack of a compliance date is also particularly burdensome on small businesses as they would need significant time to implement operational changes.¹⁴

The PRIA seriously underestimates the cost of compliance with the NPRM due to a series of erroneous assumptions.¹⁵ The PRIA states that only 41 small railroads would bear significant compliance costs and concluded that the proposed rule will not have a significant economic impact on a substantial number of small entities. However, ASLRRRA estimates that 365 Class I and Class II railroads would have to implement costly technological or operational changes to comply with the NPRM. Not only is the estimated number of small entities that would be impacted highly underestimated, the PRIA does not provide a realistic estimated cost of compliance, as \$18,000 will certainly not cover the cost of obtaining and implementing an electronic real-time consist system.

At a minimum, to meet the requirements of the proposed rule, all Class II and III railroads would be required to improve their technology and communications systems to allow for the update and transmission of train consist data at any location where that information might change, including customer sites and other points that may not have reliable data networks

¹³ 5 U.S.C. 601 et seq. and 67 Fed. Reg. 53,461 (Aug. 16, 2002).

¹⁴ 5 U.S.C. § 603(c)(1)-(2).

¹⁵ As Class II and III railroads were not included in the ANPRM the ASLRRRA did not have the opportunity to provide accurate cost information to PHMSA.

railroads can access. These updates will also incur additional training and compliance costs on Class II and III railroads to ensure that staff reliably generate and transmit train consist data. Additionally, even for those Class II and III railroads with PTC-equipped locomotives or otherwise having the capacity to remotely capture GPS data on train location, those systems will need to be further integrated with the system that transmits consist data to first responders as required. Even in the best-case scenario for a short line railroad, where a railroad is already transmitting train consist data to AskRail®, the need to implement and maintain new systems, ensure data connectivity over a far wider reach of their networks, and to further ensure appropriate training and compliance among their employees will far exceed the estimated cost of \$5,500 per year per railroad highlighted in the PRIA. Additional investment would be required for the overall rail industry to improve AskRail® to meet these new requirements, which would include potentially costly changes related to the incorporation and maintenance of location data for both railroads and first responder groups.

For Class II and III railroads not already in the position to provide train consist data to AskRail®, costs would increase in even more areas. Those railroads using Wabtec's RailConnect TMS system, but not utilizing its features to produce train consist data, would need to make significant changes to how they manage cars, incurring even more training and compliance costs. Other TMS solutions that include the ability to define train consist data would need to be integrated with AskRail®, a process that was accomplished only with PHMSA grant funding to connect RailConnect with AskRail®. Further development and maintenance costs would be incurred for other TMS solutions that do not currently generate train consist data. Railroads without the current ability to transmit reliable GPS data from their trains would be mandated to develop and integrate those systems with their TMS and/or AskRail® to meet the proposed rule's geolocation requirements. The monetary costs of the proposed rule are likely to

fall hardest on railroads with the least well-established technology systems, a group of railroads also likely to have the least capacity to implement such systems. ASLRRA expects railroads who need to make most or all of these changes to face significant, and immediate implementation costs, as well as ongoing maintenance costs well in excess of those estimated by PHMSA in this rulemaking.

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On behalf of short line railroads, ASLRRA appreciates the opportunity to provide these comments and advocates that PHMSA revise its proposed rule to limit the applicability to Class I railroads, in accordance with the statutory mandate and the relevant data.

Respectfully submitted,



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