

BEFORE THE
FEDERAL RAILROAD ADMINISTRATION

DOCKET NO. FRA-2009-0044:
EMERGENCY ESCAPE BREATHING APPARATUS STANDARDS

PETITION FOR RECONSIDERATION OF
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

Pursuant to 49 C.F.R. § 211.29, the American Short Line and Regional Railroad Association (“ASLRRA”), on behalf of itself and its member railroads, petitions the Federal Railroad Administration (“FRA”) for reconsideration of the Emergency Escape Breathing Apparatus Standards (“EEBA”) final rule.¹

The final rule requires that railroads provide an appropriate atmosphere-supplying emergency escape breathing apparatus to every train crew member and certain other employees while they are occupying a locomotive cab of a freight train transporting a hazardous material that would pose an inhalation hazard in the event of release during an accident. 49 C.F.R. § 227.1. The substantive requirements of the rule do not differentiate between small or large railroads. In public comments, ASLRRA asked FRA to provide a “*de minimis*” exception for railroad operations, similar to what FRA provided for PTC operations to exempt Class II and

¹ ASLRRA is a non-profit trade association representing the interests of approximately 600 short line and regional railroad members in legislative and regulatory matters. Short lines operate 47,500 miles of track in the United States, or approximately 29% 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. 89 Fed. Reg. 5,113 (Jan. 26, 2024). ASLRRA is also submitting a joint petition with the Association of American Railroads.

Class III railroads from the requirements to provide EEBAAs. In the final rule, FRA declined to carve out an exemption for Class II and Class III railroads, sharing that the agency is constrained by section 413 of the RSIA as Congress did not carve out an exemption for Class II and Class III railroads from the statutory requirements.²

The rule applies to “any railroad that operates a freight train that transports a PIH material, including a residue of such a PIH material.” 49 C.F.R. § 227.3(c). A very strict reading of the rule would mean that any train with a railcar containing a PIH or residue of a PIH would obligate the operating railroad to comply with all of the requirements of the rule. This reading does not distinguish between planned and unplanned rail operations. Specifically, the final rule neglects to consider a situation where a car containing a PIH material or residue of a PIH material is inadvertently rerouted to a railroad that does not typically handle PIH material.

Due to the interconnected nature of the rail network, railroads are able to reroute traffic onto other lines or other railroads because of a natural disaster or unanticipated infrastructure repair. While this is not a regular occurrence, it helps maintain resiliency in the supply chain. In addition, railroads also run into situations where a railcar is incorrectly placed at interchange. In both of these instances, a railroad or a crew that does not normally handle PIH and is not required to comply with the EEBA rule could be faced with an unexpected car of PIH in the train consist.

² 89 Fed. Reg. at 5,121.

ASLRRA urges FRA to address this shortcoming by creating a *de minimis* exception to avoid penalizing railroads for failing to comply with the EEBA final rule when they would not otherwise be required to do so.

Respectfully submitted,

A handwritten signature in black ink that reads "Sarah Yurasko". The signature is written in a cursive, flowing style.

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