



U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
WASHINGTON, D. C.

49 CFR Part 227
Docket No. FRA-2009-0044
Emergency Escape Breathing Apparatus Standards
Notice of Proposed Rule Making

COMMENTS OF
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
AND UNITED TRANSPORTATION UNION

Docket Clerk
DOT Central Docket Management Facility
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, Southeast
Washington, DC 20590

Re: Docket No. FRA-2009-0044

Dear Docket Clerk:

These comments are submitted by the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (“BLET”), which is the duly designated and recognized collective bargaining representative for the craft or class of locomotive engineer employed on all Class I railroads, and the United Transportation Union (“UTU”), which is the duly designated and recognized collective bargaining representative for the various train service crafts and classes, hostlers, remote control operators, and yardmasters employed on all Class I railroads. Thus, UTU and BLET are the duly designated and recognized collective bargaining representatives for all represented train employees on all Class I railroads. BLET and UTU also represent operating and other employees on numerous Class II and Class III railroads. Consequently, the Notice of Proposed Rule Making (NPRM) on Emergency Escape Breathing Apparatus standards (EEBA) has a significant impact upon our members.

We commend the FRA staff for thoroughly researching the safety issues involved with the application of the EEBA provisions set forth in the Rail Safety Improvement Act of 2008 (RSIA). FRA requested and received input from BLET and UTU representatives and conducted research prior to publication of the NPRM. BLET and UTU also provided an overview to FRA that is not discussed in this NPRM concerning the urgency of the implementation of this rule and the availability of these safety devices.

Emergency Escape Breathing Apparatus and 49 CFR 218 “Safety Devices”

Labor fully supports FRA’s decision to reject the railroads “request” to consider the EEBA a safety device as that term is defined by 49 CFR Part 218. As FRA is aware, including EEBA as safety devices within the meaning of Part 218 could trigger certification revocation consequences for individuals who are charged with tampering with the device or its storage facility. The purpose of including revocation consequences in the Locomotive Engineer and proposed Conductor certification regulations for tampering with Part 218 locomotive mounted safety devices is to discourage employees from tampering with them by creating severe consequences for disabling the devices. Unlike EEBA, those devices are designed as redundant safety features for the movement of trains where vandalism could cause an accident. By rejecting the railroads’ “request,” FRA appropriately implements the legislative mandate. Rather than helping prevent an accident, the purpose of EEBA is to facilitate escape from a life threatening emergency situation after an accident has occurred. A damaged or disabled EEBA will not, itself,

cause an accident and is, therefore, properly excluded from revocation consequences. Tampering or disabling an EEBA is not something the labor organizations condone and we believe that FRA has sufficiently addressed the matter in §227.213(b).

We are not surprised that the railroads “requested” FRA to treat EEBA as safety devices within the meaning of 49 CFR Part 218. It was nothing more than a transparent attempt to punish the employees for successfully persuading Congress to require this overdue and reasonable protection in the Rail Safety Improvement Act (RSIA). It is disappointing but we have come to accept the fact that the railroads will attempt to create additional certification consequences for their employees at every opportunity. The railroads recognize the distinct advantage they enjoy with the lopsided dispute resolution process contained in Part 240 and eventually in Part 242. They know they can avoid responsibility by characterizing their discipline as a revocation event and blaming FRA. In any event, we agree that it is absurd to treat EEBA as safety devices.

Criteria for requiring availability of EEBA in the locomotive cab

Section 413 of the RSIA requires the Secretary to prescribe regulations that require railroads to provide emergency escape breathing apparatus to employees in the locomotive cabs of freight trains carrying hazardous materials that pose a hazard in the event of release. We read the law as establishing the minimum requirements the Secretary must prescribe and the Secretary may implement rules that exceed these minimum requirements of law for legitimate safety purposes.

The two cases cited by FRA in the preamble of the NPRM make it clear that persons not necessarily assigned to the train carrying the hazardous material may be in immediate danger to their life or health when hazardous materials are unexpectedly released into the atmosphere. Several citizens were killed by the release of hazardous materials after those cited train accidents. Obviously, it would be unreasonable and beyond the scope of FRA’s authority to require railroads to provide EEBA to every citizen along the railroad’s right of way where hazardous materials are transported. However, train employees are constantly exposed to this danger and we believe it is appropriate for FRA to prescribe regulations that protect these exposed employees from inhalation hazards.

We suggest the proposed rule be amended to clarify that every train employee who is required to operate a freight train that may pass, follow or operate on tracks adjacent to other trains that are carrying hazardous materials or residue in their manifest, must be provided with quick access to an emergency escape breathing apparatus. This includes but is not limited to employees in local freight and transfer service. Many local freight assignments operate over significant distances and handle hazardous material on freight trains. 49 CFR Part 229 defines transfer service as a “[*freight train that travels between a point of origin and a point of final destination not exceeding 20 miles and that is not performing switching service.*]” (Emphasis added). Clearly, the crewmembers in local freight and transfer service perform their duties in the locomotive cabs of freight trains and are included in the EEBA provisions of the RSIA.

Also, FRA proposed the possibility of an exception for remote control locomotives (RCL) operations. A remote control operator (RCO) frequently is in the locomotive cab of his or her freight train. Safety Advisory 2001-1 partially restricted the RCO from riding on freight cars, but

there is no restriction preventing a RCO from riding on locomotives. The RCO may operate at speeds up to 20 mph and simultaneously must be able to stop the movement within half the range of vision. RCOs routinely utilize this option and ride on the locomotive. Railroads are continually attempting to push the RCL envelope and move freight onto mainline tracks through the use of RCL operations. A remote control assignment making a transfer movement of railroad cars containing asphyxiates must be treated the same as all other mainline movements that contain hazardous materials.

FRA's original guidelines for "non-incidental main line movements" for RCL operations were outlined in a September 9, 2005 letter to the presidents of the Association of American Railroads (AAR) and American Short Line and Regional Railroad Association (ASLRRRA). Those guidelines limited the "train" length to 1000 feet (approximately 20 cars) at a speed not exceeding 15 mph. FRA has not yet implemented regulations for RCL, and the railroads have pushed the envelope on "non-incidental main line movements" even further, characterizing such movements as "main track terminal operations" and increased the train length to 3000 feet (not including locomotives) that should not exceed 50 car. It was inevitable that the railroads would try to exploit this technology because of its claims of enhanced productivity. FRA recognized that in Safety Advisory 2001-1 which states;

FRA's first priority in assessing RCL operations is to ensure that these operations pose no threat to railroad workers or the general public. Because this technology is not widely used in railroad operations, FRA has limited data on which to base an objective safety analysis and must therefore proceed prudently. It is clear that the potential for serious injury exists, as it does in all aspects of railroad operations. RCL operations have been in existence in this country for many years; however, this technology has largely been confined to in-plant rail operations. As these operations expand, some of the traditional ways of conducting rail movements will be significantly modified. Under such circumstances, safety risk factors may change. It is FRA's task to ensure that this transition takes place safely.

66 Fed. Reg. 10341 (Feb 14, 2001)

An absolute exemption for all RCL operators is imprudent at best. Labor agrees with FRA's conclusion that moving a train that contains asphyxiants through the use of RCL (whether it's called a non-incidental main line movement or a main track terminal operation) poses no less of an inhalation hazard to the crewmembers than a traditional operation. But we contend that the prudent course is to make the rule clear. The rule should require that an RCO crewmember who does ride on the locomotive of a freight train moving asphyxiants be provided an EEBA. Accordingly, we recommend that proposed §227.201(a)(i) be amended as follows:

(i) Except as specified in paragraph (b) of this section, a railroad is required to provide an EEBA to each of the following of its employees while the employee is located in the cab of any ~~a~~ locomotive of an in-service freight train moving a car with an asphyxiant or PIH material including a residue of an asphyxiant or a PIH material or; an in-service freight train that will encounter another freight train

transporting an asphyxiant or a PIH material, including a residue of an asphyxiant or a PIH material:

The law requires that “crewmembers in locomotive cabs” must be provided with convenient access to EEBA’s. FRA has appropriately included deadheading employees as well. Section 227.201(a)(2) prohibits railroads from using locomotives in freight trains unless all the train employees have access to EEBA’s. Employees deadheading on trains are likely to be riding in the trailing units of a train’s consist, where there is no risk that their presence may distract the operating crew. Labor supports FRA’s intention and urges FRA to amend the language slightly so that it is clear that an employee in “any” locomotive cab of the train must have access to an EEBA. Labor suggests the following change to the rule text:

(2) Except as specified in paragraph (b) of this section, a railroad shall not use a locomotive to transport an asphyxiant or a PIH material, including a residue of an asphyxiant or a PIH material, ~~in an in-service~~ on a freight train unless each of the employees identified in paragraph (a)(1)(i) of this section while in the cab of any ~~the~~ locomotive of the train has access to an EEBA that satisfies the EEBA-selection criteria in § 227.203 and that has been inspected and is in working order pursuant to the requirements in § 227.207.

Section 413 of the RSIA requires the Secretary to prescribe regulations that require railroads to provide an emergency escape breathing apparatus to employees in the locomotive cabs of freight trains carrying hazardous materials that pose a hazard in the event of release. §227.201(b)(1) of the NPRM would create an exception to the EEBA requirement for asphyxiants or PIH materials that are transported in intermodal containers. A review of Section 413 of the RSIA does not support the conclusion that Congress intended such an exception. The requirement in the law is to provide the apparatus if a release would create an inhalation hazard. The law does not authorize the Secretary to measure the risk of release as a means of creating exceptions to the rule. Instead, it affirmatively requires the Secretary to prescribe rules that protect employees when sufficient quantities of the hazardous materials are being transported. Regardless of what type of rail car is being used, if a release poses an inhalation hazard, then EEBA’s are required by the clear language of the statute. It is either dangerous if it is released or it isn’t; the container the material is released from is irrelevant. If hazardous materials or asphyxiants transported in an intermodal container are released in sufficient quantities the danger to the employees is no less than the danger posed when the same material is released from any other type container in a freight train. Railroad train accidents involve tremendous forces and can create sufficient force to puncture an intermodal container causing the release of sufficient quantities of asphyxiants or PIH material that are being transported in any container; therefore, EEBA’s are required by the law when there are transported by freight trains regardless of their container.

Once a railroad has an adequate supply of EEBA’s available, as required by this rule, it will be of little burden to the railroads to provide all employees who are transporting asphyxiants with EEBA’s. We see no reasonable basis for the exception proposed in §227.201(b)(1) and urge FRA to remove it from the final rule.

Criteria for selecting EEBA's

Labor agrees with FRA and endorses the decision that the EEBA have a minimum of 15 minutes of useful life in the worst case scenario. Any reduction in the length of time the EEBA is effective increases the likelihood of casualty or fatality resulting from the release and inhalation of an asphyxiant or PIH material. The human response to an emergency situation is unpredictable. Whenever the use of an EEBA is required it will undoubtedly be in an emergency and very stressful situation. Two things that employees involved in a release of PIH materials may do could negatively impact the usable length of time for EEBA. First, FRA identified the “phenomenon” of over-breathing as a consideration in determining the amount of time the EEBA must function in order to satisfy the requirements of this rule. Second, the time it takes an employee to don the apparatus reduces the length of effective breathing time of the apparatus. Appropriate training should help address these issues and we will discuss that aspect in more detail below. However, even the best trained employee may panic and either forget or fumble around while donning the apparatus when they become aware of the danger confronting them.

To address these issues, we urge FRA to adopt a rule that minimizes those very predictable problems as much as reasonably possible. FRA should amend the proposed rule to clarify that the apparatus “[] must have at least a 15-minute approval rating, meaning that the device must function for at least 15 minutes during 3-mph treadmill tests and 30 minutes for stationary tests.” See 75 Fed. Reg. 61392. Further, the rule should require railroads to deploy the easiest type of device to put on. Labor urges FRA to specifically identify hooded type devices instead of full-face masks because, as FRA acknowledged in the preamble, they are universally fitting, and adequately compensate for eyewear, facial hair and differing facial features. A hooded type apparatus is the easiest to wear and the fastest employees to put on by themselves and/or assist another employee who may be injured or disoriented. We propose that §227.203(d) be amended for clarity as follows:

- (1) Breathing time. Each EEBA must be fully charged and contain a minimum breathing capacity ~~of~~ [rated for 15 minutes during a 3-mph treadmill test and 30 minutes for stationary tests](#) at the time of the pre-trip inspection required under § 27.207(a)(1).

Storage facilities for EEBA's

FRA offered several suggestions the railroads may utilize to provide an EEBA to covered employees to satisfy the requirement of the RSIA. Labor contends that the only reasonable approach is to require the EEBA to be permanently stored in a storage facility that is permanently mounted in each locomotive cab. As stated above, employees on freight trains that travel in the same corridor on adjacent tracks or follow those freight trains that are transporting asphyxiants or PIH material are in danger of an inhalation hazard if the material is released. A requirement to have the EEBA permanently mounted in the locomotive cabs will maximize availability of the EEBA's and provide protection to employees working on freight trains that are

not directly transporting asphyxiants or PIH material. Labor contends that this is a legitimate safety concern and an appropriate place to exceed the minimum requirements of the law.

Employees already are required to carry many items to properly perform their duties and address the circumstances of their job. For example, an employee who is working on a road freight assignment must carry their timetable, rulebooks and other publications, as well as work tools including lanterns and radios. In addition, road freight assignments require the employee to bring sufficient food for the trip. If the employee will be released and take rest at an away from home terminal (AFHT), he/she must also take at least one change of clothes and items for personal hygiene. Employees with sleep apnea will have to also carry their CPAP device so they can acquire restorative sleep at the AFHT. The luggage the employees are already required to lug around is substantial and adding an additional device to carry and maintain is unwarranted, especially when other reasonable options exist. Moreover, having the employees carry all of these required items to perform their duties while walking through yards and other locations is itself becoming a safety concern. Only permanently mounting EEBA's in locomotive cabs will not exacerbate this growing safety concern.

The other three options will eventually result in the employee ensuring the functionality of the EEBA. History and experience lead to the inescapable conclusion that railroads will likely view an employee who arrives for duty with an EEBA that is in need of repair or replacement as purposely delaying service or deliberately disabling or damaging the apparatus. It is inevitable that the railroads will harass, intimidate and discipline employees who request a delay or postpone the departure of trains to replace or repair EEBA's. These concerns are validated by the railroads' request to consider the EEBA's a Part 218 safety device, so that the railroads could impose revocation consequences for the employees who identify defects in the EEBA assigned to them.

If an employee is required to assume custody of the devices, FRA will certainly get dragged into investigating the individual events and circumstances surrounding an employee's request to have their EEBA repaired or replaced. Labor urges FRA to avoid all of these problems by requiring the EEBA to be permanently stored in the locomotive cab. We suggest amending the proposed rule as follows:

§ 227.205 Storage facilities for EEBA's.

(a) A railroad may not use a locomotive if it is either part of an in-service freight train or will encounter an in-service freight train transporting an asphyxiant or a PIH material, including a residue of an asphyxiant or a PIH material, and the locomotive cab is occupied by an employee identified in § 227.201(a)(1)(i)(A)–(D) (subject employee), unless the locomotive cab has appropriate storage facilities to hold the number of EEBA's required to be provided.

(b) The EEBA must be permanently stored in a storage facility that must – ~~for each required EEBA must~~–

(1) Be permanently mounted in each locomotive cab;

- (12) Prevent deformation of the face piece and exhalation valve, where applicable;
- (23) Protect the EEBA from incidental damage, contamination, dust, sunlight, extreme temperatures, excessive moisture, and damaging chemicals;
- (34) Provide each subject employee located in the locomotive cab with ready access to the EEBA during an emergency; and
- (45) Provide a means for each subject employee to locate the EEBA under adverse conditions such as darkness or disorientation

Railroad's program for inspection, maintenance, and replacement of EEBA's

As discussed above, we urge FRA to amend the rules so that it is clear the EEBA's required by this rule must be fully charged with an approval rating of 15 minutes during a 3-mph treadmill test. We also propose that a quick check inspection should be afforded to employees. The EEBA should have an external gauge that can be easily viewed and understood by all employees, similar to the gauge that is provided on a household fire extinguisher. The gauge should have a needle that indicates the length of time the device will operate. This quick inspection will provide the employee with a reasonable assurance that the EEBA is charged and will operate for the required length of time. If FRA declines to require the gauge, some quantification of the functionality is still appropriate and will help ensure that a test of the device has actually occurred. We request that the inspection procedures be amended to include documentation of the length of time the device will function under a 3 mph treadmill test at the time the test is conducted. We suggest amending the proposed rule as follows:

(b) Inspection procedures and records.

(1) A railroad's procedures for pre-trip and periodic inspections of EEBA's shall require that the following information about each pre-trip and periodic inspection be accurately recorded on a tag or label that is attached to the storage facility for the EEBA or kept with the EEBA or in inspection reports stored as paper or electronic files:

- (i) The name of the railroad performing the inspection;
- (ii) The date that the inspection was performed;
- (iii) The name and signature of the individual who made the inspection;
- (iv) The findings of the inspection including;
 - (A) The projected length of time in minutes the apparatus would function during a 3-mph treadmill test;
- (v) The required remedial action; and
- (vi) A serial number or other means of identifying the inspected EEBA.

Instruction on EEBA's

The RSIA mandated that appropriate training for the use of the EEBA be included in the rule. Labor agrees that proper training and preparation are necessary for the EEBA to be an effective

means of protection for employees who find themselves in the midst of a release of hazardous materials. Although the RSIA does not require testing, labor agrees that it is appropriate that the employees should be proficient in the use of the EEBA. However, we remain cautious and are concerned that some railroad will establish unachievable, unnecessary or excessive performance requirements that, if not satisfied, will be used to hold employees out of service. We request FRA amend proposed §227.209 to clarify the rule as follows:

(b) Subject matter. The railroad's program of instruction shall provide ~~require that~~ the subject employees training ~~demonstrate knowledge~~ of at least the following:

- (1) Why the EEBA is necessary and how improper fit, usage, or maintenance can compromise the protective effect of the EEBA.
- (2) The capabilities and limitations of the EEBA, particularly the limited time for use.
- (3) How to use the EEBA effectively in emergency situations, including situations in which the EEBA malfunctions.
- ~~(4) How to inspect, put on, remove, and use the EEBA, and how to check the seals of the EEBA.~~
- ~~(5)~~ Procedures for maintenance and storage of the EEBA that must be followed.
- ~~(6)~~ The EEBA-selection criteria in § 227.203.
- ~~(7)~~ The requirements of this subpart related to the responsibilities of employees and the rights of employees to have access to records.
- ~~(8)~~ The hazardous materials classified as asphyxiants and PIH materials.

(c) The subject employees must be proficient in, how to inspect, put on, remove and use the EEBA and how to check the seals of the EEBA.

~~(e)~~ Dates of initial instruction and intervals for periodic instruction.

- (1) The instruction shall be provided for current subject employees on an initial basis no later than 30 days prior to the date of compliance identified in § 227.217 or for new subject employees, before assignment to jobs where the deployment of EEBA's on a locomotive is required.
- (2) Initial instruction shall be supplemented with periodic instruction at least once every three years.

~~(e)~~ Records of instruction. A railroad shall maintain a record of employees provided instruction in compliance with this section and retain these records for three years.

Compliance dates.

Loss of situational awareness contributed to the Macdona, TX, and the Graniteville, SC, accidents. The loss of the employees' situational awareness was created by the fatigue associated with unlimited limbo time, totally unscheduled and unpredictable work schedules, and railroad availability policies that are intended to force safety critical operating employees to work even when they are sick or fatigued.

The RSIA limited the amount of limbo time that a railroad can force an employee to work after performing safety critical service for twelve continuous hours to a maximum of 30 hours per calendar month, unless the railroad can use the possibility of certain exceptions specified in the law as an excuse to exceed the 30 hour limit. The RSIA did not improve the unscheduled and unpredictable work schedules of safety critical employees working in unassigned road service. The opposite has occurred. Railroads have increased enforcement of their availability policies in a blatant attempt to improve productivity by requiring their employees to work additional hours with less time off duty.

Since the underlying contributing factors in those two accidents still exist, BLET and UTU strongly encourage FRA to shorten the proposed implementation schedule for the EEBA provisions to no more than 90 days following the date of publication of the final rule because we believe these devices will be a necessary safety overlay for the totally unpredictable work schedules that are common place in the industry today. Without regular start times or at least a 10 hour call for road service employees, we expect the benefit of using of these EEBA safety devices to far exceed the projections.

The RSIA was signed into law more than two years ago and the railroads continue to offer delaying tactics on every provision contained in it, including Positive Train Control, the application of main line switch monitors in Dark Territory, Critical Incident programs, and the implementation and utilization of EEBA devices. There is no logical reason to delay the implementation of readily available EEBA devices for another two years as AAR has demanded. Accordingly, we urge FRA to amend proposed § 227.217 as follows:

§ 227.217 Compliance dates.

- (a) Class I railroads subject to this subpart are required to comply with this subpart beginning no later than ~~24~~ 3 months from the effective date of the final rule.
- (b) Class II railroads subject to this subpart are required to comply with this subpart beginning no later than ~~30~~ 9 months from the effective date of the final rule.
- (c) Class III railroads subject to this subpart and any other railroads subject to this subpart are required to comply with this subpart beginning no later than ~~36~~ 12 months from the effective date of the final rule.

Cost benefit analysis.

The NPRM understates the benefits of implementing this regulation. It does not accurately assess the cost associated with inhalation casualties. The NPRM states that,

The benefits associated with preventing the casualties identified by FRA as potentially preventable through the use of EEBA's would total close to \$13.5 million. The EEBA's would have to be used properly and quickly for them to be fully effective. Based on historical experience, the discounted costs of implementing the proposed rule would likely exceed the expected benefits, even

assuming 100 percent effectiveness of the EEBAs, not discounting the value of the benefits, or including indirect benefits. The number of fatalities or injury equivalents that would have to be prevented for the benefits to cover the costs would be many times greater than the railroad employee fatalities that actually occurred.

75 Fed Reg. 61398

The latest data that we are aware of is from the March 18, 2009 revision of the Department of Transportation's *Treatment of the Economic Value of a Statistical Life* for determining cost benefits analysis which estimates that the "Value of a Statistical Life" at \$5.8 million. In addition, the value of preventing injuries requires a subjective assignment of casualties to several categories of an "Abbreviated Injury Scale" the most severe being a critical injury. The cost associated with a critical injury is 76.25% of the cost of a statistical human life. FRA identified 660 inhalation casualties over the ten year period between 1997 through 2006. It is not clear how FRA has categorized those casualties, but the assignment of severity and the associated cost/benefit ratio is a subjective exercise. However, if only 2% (14) of the predictable inhalation casualties are deemed critical, the benefit is roughly equal to the \$73.9 million cost FRA has assigned to the implementation of open loop/circuit type EEBAs in compliance with the provision of this rule.

In addition, the preamble discussion of the NPRM implies FRA would not implement this rule if it were not for Congress and appears to be apologizing for implementing this rule because it might, in their analysis, cost the railroads money. We suggest the following edit to the preamble:

~~Although the costs associated with implementation of the proposed rule would likely exceed the benefits, FRA is constrained by the requirements of RSIA, which~~ The RSIA specifically mandates that the Secretary require railroads to: (1) Ensure that EEBAs affording suitable "head and neck coverage with respiratory protection" are provided "for all crewmembers" in a locomotive cab on a freight train "carrying hazardous materials that would pose an inhalation hazard in the event of release"; (2) provide a place for convenient storage of EEBAs in the locomotive that will allow "crewmembers to access such apparatus quickly"; (3) maintain EEBAs "in proper working condition"; and (4) provide crewmembers with appropriate instruction in the use of EEBAs.

See 75 Fed Reg. 61398

The families, friends and coworkers of the employees killed in the Macdona and Graniteville accidents are aware of this rule making and will likely see this comment. Although we do not believe it was deliberately intended to be insensitive, we urge FRA in the strongest possible terms to either remove it from the preamble entirely or edit it as we suggested above.

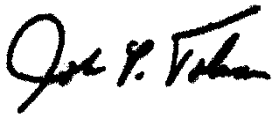
Ultimately, these devices are needed immediately. It has been more than two years now since the Rail Safety Improvement Act was passed. This rule is a safety regulation that is invaluable to the employees who work with the railroads' hazardous commodities daily. Its value should not be diminished by a subjective cost analysis.

Placards and Manifest accuracy

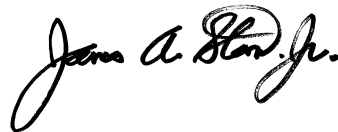
It defeats the intention of the Congress and the whole purpose of the EEBA's if employees are unaware that their freight train is transporting or will encounter trains that are transporting materials that could pose an inhalation hazard if released. Crewmembers must be made aware that the trains they are operating contain these materials. FRA noted in the preamble that “ [] *when a train crewmember observes a car placarded FLAMMABLE GAS, NON-FLAMMABLE GAS, POISON GAS, or POISON INHALATION HAZARD while the car is part of his or her train, the crewmember will know that EEBA's must be provided in the locomotive cab prior to the train beginning its movements.*” See 75 Fed. 61388. However, if employees do not know the freight trains they are operating are carrying hazardous materials, they cannot determine if EEBA's are necessary. Train manifests must be 100% accurate so that the employee will know to ensure they have EEBA on the train. The absence of clerical employees to verify the train manifest must not be allowed as an ongoing excuse to gamble with the lives of operating employees and the communities surrounding the track. The requirement for EEBA's in locomotive cabs must become a regular job briefing requirement for the operating crews, as well as the shop employees preparing who locomotive consists for service.

We would like to thank FRA for its thoughtful consideration of these comments and respectfully request the administration adopt the changes we have suggested to the proposed rule.

Sincerely yours,



John P. Tolman
Vice President and
National Legislative Representative



James A. Stem, Jr.
National Legislative Director
United Transportation Union