

National Transportation Safety Board

Office of the Chair

Washington, DC 20594



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US Department of Transportation
Docket Management System
West Building, Ground Floor, Room W12-140
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1200 New Jersey Ave., SE
Washington, DC 20590-0001

Attention: Docket No. FRA–2009-0044 Notice 2

Dear Sir or Madam:

The National Transportation Safety Board (NTSB) has reviewed the Federal Railroad Administration’s (FRA) supplemental notice of proposed rulemaking (SNPRM), titled “Emergency Escape Breathing Apparatus Standards,” published at 88 *Federal Register* 17302 on March 22, 2023. The SNPRM proposes to amend Subpart C of Title 49 *Code of Federal Regulations* Part 227 to require that railroads provide an appropriate atmosphere-supplying emergency escape breathing apparatus (EEBA) to every train crewmember and certain other employees while they are occupying a locomotive cab of a freight train transporting a hazardous material that would pose a poison inhalation hazard (PIH) in the event of release during an accident.¹ The SNPRM also proposes that railroads transporting PIH materials establish and carry out programs to instruct employees in the use of EEBA’s.

In January 2005, the NTSB investigated a train derailment and subsequent release of chlorine gas, a PIH, in Graniteville, South Carolina.² The accident led to the deaths of a train crewmember working in the locomotive cab and of eight nearby residents. During the investigation, the NTSB found that had the train crewmember been wearing an appropriate, fully functioning EEBA when walking away from the derailment and PIH release, he may not have succumbed to the effects of chlorine gas inhalation. As a result of the investigation, we made the following safety recommendation to the FRA:

¹ PIH materials are defined in Title 49 *Code of Federal Regulations* 171.8.

² For more information, see *Collision of Norfolk Southern Freight Train 192 With Standing Norfolk Southern Local Train P22 With Subsequent Hazardous Materials Release at Graniteville, South Carolina, January 6, 2005*. [NTSB/RAR-05/04](https://www.ntsb.gov/investigationreports/NTSB/RAR-05/04). Washington, DC: NTSB.

Determine the most effective methods of providing emergency escape breathing apparatus for all crewmembers on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of unintentional release, and then require railroads to provide these breathing apparatus to their crewmembers along with appropriate training. (R-05-17)

Section 413 of the Rail Safety Improvement Act of 2008 (RSIA 2008) mandated that the Secretary of Transportation adopt regulations requiring railroads to provide EEBA for the train crews in the locomotive cabs of any freight train transporting a hazardous material in commerce that would present an inhalation hazard in the event of a release. On October 5, 2010, the FRA issued a notice of proposed rulemaking (NPRM) titled "Emergency Escape Breathing Apparatus Standards," published at 75 *Federal Register* 61386, to require railroads to provide EEBA equipment for train crews transporting PIH material. On December 30, 2016, the FRA issued a guidance document, *Guidance for Developing an Atmosphere Supplying Emergency Escape Breathing Apparatus Program*, rather than a final rule.³

On September 12, 2017, we acknowledged the FRA's issuance of the guidance; however, we disagreed with the agency's decision not to issue the regulation recommended in safety recommendation R-05-17 and required by RSIA 2008. Subsequently, we classified safety recommendation R-05-17 as Closed-Unacceptable Action.

The subject SNPRM's background discussion notes that the FRA made the decision to issue guidance instead of a rulemaking in response to an agency cost-benefit analysis and the comments received for the October 2010 NPRM. Also in the background discussion, the FRA notes that it intended for railroads to use the guidance document to develop EEBA programs to protect railroad employees involved in transporting PIH materials. The NTSB is pleased to see the FRA publish the SNPRM and commends the agency for reinitiating a rulemaking leading toward the establishment of a requirement for railroads to provide EEBA to their crewmembers along with appropriate training. We continue to believe that train crews transporting PIH material need this equipment and training. Accordingly, we fully support the requirements proposed in the SNPRM.

Thank you for the opportunity to comment on this notice.

³ For more information, see [Federal Railroad Administration Guidance For Developing An Atmosphere-Supplying Emergency Escape Breathing Apparatus Program](#). 2016. Washington, DC: FRA.

Sincerely,

[Original Signed]

Jennifer Homendy
Chair