■ 24. Delayed indefinitely, amend § 2.1043 by revising paragraphs (b)(2)(i)(C) and (b)(3)(i)(C) to read as follows:

§ 2.1043 Changes in certificated equipment.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) An affirmative or negative statement as to whether the applicant is identified on the Covered List, established pursuant to § 1.50002 of this chapter;

* * * * *

(3) * * *

(i) * * *

(C) An affirmative or negative statement as to whether the applicant is identified on the Covered List, established pursuant to § 1.50002 of this chapter;

* * * * *

PART 15—RADIO FREQUENCY DEVICES

■ 25. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 26. Amend § 15.103 by revising paragraph (j) to read as follows:

§ 15.103 Exempted devices.

* * * * *

(j) Notwithstanding other provisions of this section, the rules in this chapter governing certification apply to any equipment produced by any entity identified on the Covered List, as established pursuant to § 1.50002 of this chapter.

[FR Doc. 2025–14970 Filed 8–6–25; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 227

[Docket No. FRA–2009–0044]

RIN 2130–AD01

Emergency Escape Breathing Apparatus Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; extension of compliance dates.

SUMMARY: This document extends the compliance dates in the emergency escape breathing apparatus final rule published on January 26, 2024. FRA is extending the compliance dates in response to concerns raised in a joint petition for reconsideration, as well as FRA's own investigation into the feasibility of these dates.

DATES: This final rule is effective August 7, 2025.

FOR FURTHER INFORMATION CONTACT: Michael Watson, Occupational Safety and Health Manager, Office of Railroad Safety, telephone: 202–527–2908, email: *michael.watson@dot.gov;* or Brian Roberts, Attorney-Adviser, Office of the Chief Counsel, telephone: 202–306–4333, email: *brian.roberts@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

As mandated by section 413 of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, 122 Stat. 4848, 4889 (Oct. 16, 2008) (codified at 49 U.S.C. 20166),[1] FRA published a final rule on January 26, 2024, establishing emergency escape breathing apparatus (EEBA) standards in 49 CFR part 227, subpart C (2024 Final Rule).[2] The 2024 Final Rule, which became effective on March 26, 2024, requires freight railroads to provide covered employees with an appropriate atmosphere-supplying EEBA when occupying a locomotive cab of a train transporting a hazardous material that would pose an inhalation hazard if released during an accident. Railroad employees covered under the final rule include train employees, their supervisors, deadheading employees, and any other employee designated by the railroad who is in the cab of a locomotive. In addition, the final rule requires railroads to develop and adhere to inventory, storage, maintenance, and employee training requirements related to their EEBAs.

The 2024 Final Rule established two compliance dates: one for Class I and II railroads, and another, later compliance date for Class III railroads. Specifically, Class I and II railroads were required to comply with the rule's requirements within 12 months of the rule's March 26, 2024, effective date (*i.e.,* March 26, 2025), while Class III railroads had 18 months from the same effective date to comply (*i.e.,* September 26, 2025).

On March 15, 2024, FRA received a timely filed, joint petition for reconsideration of the rule from the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA).[3] The petition asked FRA to delay each compliance date for an additional 12 months, citing the production limitations of the few EEBA manufacturers who can make EEBAs that comply with the final rule's requirements and other, related factors. FRA sent questions to AAR seeking additional information on the issues raised in the joint petition, which AAR responded to via email on July 29, 2024.[4] In evaluating the joint petition, FRA also spoke with several EEBA manufacturers, including Ocenco (a manufacturer of the railroads' preferred model of EEBAs), and their distributors. These manufacturers and distributors expressed concerns to FRA about being able to provide the requested numbers of EEBAs by the 2024 Final Rule's compliance dates, citing, among other things, the need to supply EEBAs to the U.S. military and other governments.[5]

With the March 26, 2025, EEBA compliance deadline for Class I and II railroads quickly approaching, FRA issued an interim response to the joint petition on January 29, 2025.[6] FRA's interim response recognized that railroads may not be able to meet the compliance dates in the 2024 Final Rule, and in the spirit of the Presidential Memorandum issued on January 20, 2025, titled ''Regulatory Freeze Pending Review,'' [7] FRA announced it would exercise its enforcement discretion for 60 days from each compliance date in the rule. The interim response explained this would also allow FRA time to determine how to respond to the joint petition and a separate petition for reconsideration from ASLRRA, which asked FRA to create a *de minimis* exception to the EEBA final rule.[8] On May 27, 2025, FRA announced in a follow-up response to the joint petitioners that FRA would exercise its enforcement discretion for an additional 60 days from each compliance date in the Final Rule to allow FRA time to complete its response.[9]

[1] The Secretary of Transportation delegated the authority to conduct the EEBA rulemaking and implement its requirements to the Federal Railroad Administrator. 49 CFR 1.89(b).

[2] 89 FR 5113. The notice of proposed rulemaking was published on October 5, 2010 (75 FR 61386) and supplemental notice of proposed rulemaking was published on March 22, 2023 (88 FR 17302).

[3] FRA–2009–0044–0025, available at *www.regulations.gov.*

[4] Communication with AAR Regarding Final Rule. FRA–2009–0044–0028.

[5] Communication with Ocenco and Other Companies Regarding Final Rule. FRA–2009–0044–0028.

[6] FRA–2009–0044–0029.

[7] 90 FR 8249 (Jan. 28, 2025).

[8] FRA–2009–0044–0025.

[9] FRA–2009–0044–0030 and FRA–2009–0044–0031.

As the March 26, 2025, compliance date for Class I and II railroads has passed, and the September 26, 2025, date for Class III railroads approaches, FRA is granting the joint petition's request to extend the compliance dates in the 2024 Final Rule by 12 months. FRA is not aware of a change since issuance of its January 29, 2025 initial, interim response that would otherwise alleviate the railroads' compliance difficulties.

Specifically, railroads face various factors outside of their control that prevent them from purchasing enough EEBAs from manufacturers to comply with the 2024 Final Rule's requirements. For example, as the rule establishes specific criteria EEBAs must meet, FRA understands that railroads only have approximately four manufacturers with which they can contract to supply compliant EEBAs: 3M, Dräger, Ocenco, and Semmco. As stated in the joint petition, the major manufacturers of EEBAs have indicated to railroads that they would need significant lead time to ramp up production to provide sufficient EEBAs for railroads to comply with the rule's requirements.[10] In fact, one EEBA manufacturer told a Class I railroad that it would take approximately 12 months to deliver the quantity of EEBAs necessary for that railroad alone to comply with the final rule's requirements.[11] The joint petition added that Class II and III railroads could expect even longer delays in receiving compliant devices given their smaller market power and EEBA manufacturers' likeliness to prioritize larger orders from Class I railroads over these smaller railroads.[12]

FRA received the same message as the railroads in conversations with EEBA manufacturers: providing railroads with a sufficient number of EEBA in order to comply with the 2024 Final Rule's requirements was unachievable.[13] Drager, Ocenco, and Semmco each stated that they could not meet the railroads' EEBA manufacturing demands within the rule's compliance deadlines.

Market forces also hinder the railroads' ability to purchase sufficient EEBAs to comply with the rule's requirements. Railroads are not the only entities looking to purchase EEBAs. The U.S. military and foreign governments, as well as other companies and organizations, are also in the market to purchase these devices. This broader, competing demand to obtain EEBAs only exacerbates the ''first come, first served'' dilemma collectively facing railroads seeking to comply with the rule, as indicated in the joint petition.[14] Further, it is unreasonable to assume that EEBA manufacturers, and their component manufacturers, which are not subject to the rule's same regulatory pressures, would be willing to devote all of their resources—physical plants and workforces—to supplying railroads with EEBAs that meet the rule's requirements.

In addition to these supply limitations, which are outside of the control of the railroad industry, railroads are constrained from complying with other requirements of the rule. For example, each railroad must, at a minimum: (1) ''establish and comply with a written program for inspection, maintenance, and replacement of EEBAs;'' [15] (2) ''adopt and comply with its written program of instruction on EEBAs for all its employees,'' including instructing its employees on ''[t]he capabilities and limitations of the EEBA'' and ''[h]ow to inspect, put on, remove, and use the EEBA, and how to check the seals of the EEBA;'' [16] and (3) ''adopt and comply with a comprehensive, written, general program to implement'' the rule.[17] As a prerequisite to fulfilling these requirements in any practical manner for an individual railroad, let alone for railroads that operate over multi-state networks and interchange their equipment,[18] procurement of the EEBA devices is a necessity.

The RSIA, the governing statutory framework for the 2024 Final Rule, does not establish compliance deadlines for FRA's EEBA requirements. In setting the compliance dates in the 2024 Final Rule, FRA recognized ''it will take time to procure EEBAs, instruct employees on their use, and outfit locomotives with the appropriate equipment to carry the devices.'' [19] FRA underestimated this time.

In consideration of the foregoing, FRA delays each of the compliance dates in the 2024 Final Rule, found in 49 CFR 227.217(a), (b), and (c), by 12 months so that railroads will have adequate time to procure and receive compliant EEBAs from manufacturers, and then fully implement the rule's requirements once the EEBAs are in the railroads' possession. However, this delay does not affect the ability of any railroad to comply with the rule's requirements in advance of any compliance date.

Finally, this action should not be construed as a response to ASLRRA's separate petition for reconsideration, which asked FRA to create a *de minimis* exception to the 2024 Final Rule's requirements for certain Class II and Class III train operations for failing to comply with the rule when they would not otherwise be required to do so.[20] This action provides immediate relief from the rule's requirements for all railroads and does not preclude FRA from granting additional relief. A full response to ASLRRA's separate petition will be forthcoming.

II. Section-by-Section Analysis

Subpart C—Emergency Escape Breathing Apparatus Standards

Section 227.217 Compliance Dates

The compliance dates in this section are delayed by 12 months so all railroads will have an additional year to procure sufficient EEBAs to comply with the 2024 Final Rule's requirements, including establishing and complying with a written program for the inspection, inventory, maintenance, and replacement of the devices, and training employees how to use EEBAs properly. Specifically, paragraphs (a) and (b) now will provide Class I and II railroads with a new compliance date of no later than 12 months from March 26, 2025, *i.e.,* March 26, 2026, and paragraph (c) will now provide Class III railroads with a new compliance date of no later than 18 months from March 26, 2025, *i.e.,* September 26, 2026.

III. Public Proceedings

[10] AAR/ASLRRA Pet. at 1–2.

[11] *Id.* at 2.

[12] *Id.*

[13] Communication with Ocenco and Other Companies Regarding Final Rule, FRA–2009–0044–0028.

[14] AAR/ASLRRA Pet. at 2.

[15] 49 CFR 227.207(a).

[16] 49 CFR 227.209(a), (b)(2) and (4).

[17] 49 CFR 227.211(a).

[18] AAR/ASLRRA Pet. at 3.

[19] 89 FR at 5125.

[20] ASLRRA Pet. at 3.

The Administrative Procedure Act generally requires agencies to provide the public with notice of proposed rulemaking and an opportunity to comment prior to publication of a substantive rule. However, 5 U.S.C. 553(b)(B) authorizes agencies to dispense with notice and comment ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' FRA finds that providing notice and an opportunity to comment would be impracticable and contrary to the public interest. The compliance deadlines for Class I and II railroads have already passed, and the deadline for Class III railroads is approaching. Railroads face various factors outside of their control that prevent them from purchasing enough EEBAs from manufacturers to comply with the 2024 Final Rule's requirements by the existing regulatory deadlines, as discussed above.[21] Though FRA has exercised its forbearance through enforcement discretion in an interim and a follow-up response to railroad petitions for reconsideration,[22] amending the applicable regulation to delay the compliance dates is necessary to ensure certainty and an orderly implementation of the rule's requirements. If FRA does not delay the compliance dates, costs to the regulated community to obtain compliant EEBAs will escalate greatly, as railroads compete to purchase available EEBAs, and compliance by all railroads still will be impossible, given the currently insufficient supply of EEBAs. In addition, the quality of training employees on the proper use of EEBAs and meaningfully fulfilling other requirements of the 2024 Final Rule likely will suffer, as railroads rush to comply with the deadlines FRA now understands are unreasonable. For these reasons, providing notice and an opportunity to comment on the compliance date delay is impracticable and contrary to the public interest.

For the foregoing reasons, the good cause exception in 5 U.S.C. 553(d)(3) also applies to FRA's decision to make this final rule effective upon publication, rather than not less than 30 days before its effective date.

IV. Regulatory Impact and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FRA has evaluated this final rule in accordance with E.O. 12866, Regulatory Planning and Review (58 FR 51735, Oct. 4, 1993), and DOT Order 2100.6B, Policies and Procedures for Rulemaking (Mar. 10, 2025). The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866. This final rule extends the compliance dates for all railroads to comply with FRA's EEBA requirements by one year, which will provide railroads with additional time to procure EEBAs as well as to adopt and to comply with the other requirements in the 2024 Final Rule in an efficient and effective manner. FRA has analyzed the potential costs and benefits of this final rule's compliance date extension. The extension of time for compliance will grant some relief to the railroads and will not impose any additional burdens on regulated entities.

FRA estimates the 10-year costs of the 2024 final rule to be between $24.4 million to $84.2 million, discounted at 7 percent, after taking into account the extension provided in this final rule. By comparing those costs to the costs that were provided with the 2024 final rule, FRA calculates the extension in compliance date will result in an estimated 10-year cost savings of between $2.7 million to $7.7 million, discounted at 7 percent. Table 1 shows the revised total costs over the 10-year analysis period.

TABLE 1—TOTAL 10-YEAR COSTS

[2021 Dollars]

Category	10-Year cost ($)	Present value 7% ($)	Present value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
Option 1: Employee Assignment	$89,202,440	$72,578,026	$81,302,151	$10,333,478	$9,531,092
Option 2: Locomotive Assignment	103,516,340	84,169,015	94,319,301	11,983,774	11,057,099
Option 3: Equipment Pooling	31,575,340	24,406,067	28,105,629	3,474,875	3,294,837

FRA estimates the 10-year benefits of the 2024 final rule to be $36,926, discounted at 7 percent, after taking into account the extension provided by this final rule. This is a reduction of $6,184 compared to the benefits that were provided with the 2024 final rule, discounted at 7 percent. Table 2 shows the total revised benefits over the 10-year analysis period.

TABLE 2—TOTAL 10-YEAR BENEFITS

[2021 Dollars]

10-Year benefits ($)	Present value 7% ($)	Present value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
$56,640	$36,926	$46,846	$5,257	$5,492

Generally, extending the compliance dates for all railroads to comply with FRA's EEBA requirements by one year will result in a net cost savings. However, other factors such as market conditions, the possibility for manufacturers requiring deposits on large orders, and the possibility of railroads having already begun procuring EEBAs in anticipation of this final rule, could influence the extent of the cost savings.

[21] *See* Section I (Background), discussing the information gathered by FRA and the railroads demonstrating that the 2024 Final Rule's compliance dates are unachievable.

[22] FRA–2009–0044–0029, FRA–2009–0044–0030, and FRA–2009–0044–0031.

B. E.O. 14192 (Unleashing Prosperity Through Deregulation)

E.O. 14192, Unleashing Prosperity Through Deregulation (90 FR 9065, Jan. 31, 2025), requires that for ''each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination.'' [23] Implementation guidance for E.O. 14192 issued by OMB (Memorandum M–25–20, March 26, 2025) defines two different types of E.O. 14192 actions: an E.O. 14192 deregulatory action, and an E.O. 14192 regulatory action.[24]

An E.O. 14192 deregulatory action is defined as ''an action that has been finalized and has total costs less than zero.'' This final rule is expected to have total costs less than zero, and therefore it would be considered an E.O. 14192 deregulatory action. The extension in compliance date is expected to result in an estimated 10-year cost savings of between $2.7 million to $7.7 million, discounted at 7 percent.

C. Regulatory Flexibility Act and E.O. 13272

The Regulatory Flexibility Act of 1980 ((RFA), 5 U.S.C. 601 *et seq.*) and E.O. 13272, Proper Consideration of Small Entities in Agency Rulemaking (67 FR 53461, Aug. 16, 2002), require an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice and comment rulemaking. FRA has determined that this rule is exempt from notice and comment rulemaking. Therefore, a regulatory flexibility analysis is not required for this rule.

D. Federalism Implications

This rule will not have a substantial effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with E.O. 13132, Federalism (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

E. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This final rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the U.S.

F. Paperwork Reduction Act

There are no new information requirements contained in this final rule and, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* an information collection submission to the Office of Management and Budget (OMB) is not required. The recordkeeping and reporting requirements already contained in this rule were approved by OMB on March 22, 2024. The information collection requirements of this rule thereby became effective when they were approved by OMB. The OMB approval number is OMB No. 2130–0620, and OMB approval expires on March 31, 2027.

G. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995 ((UMRA), Public Law 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of UMRA (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in such an expenditure, and thus preparation of such a statement is not required.

H. Environmental Assessment

FRA has analyzed this rule for the purposes of the National Environmental Policy Act of 1969 (NEPA). In accordance with 42 U.S.C. 4336 and DOT NEPA Order 5610.1D, FRA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4), ''[p]lanning and administrative activities not involving or leading directly to construction, such as: [p]romulgation of rules, regulations, and directives.'' This rulemaking is not anticipated to result in any environmental impacts, and there are no unusual or extraordinary circumstances present in connection with this rulemaking.

I. Energy Impact

E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' FRA has evaluated this rule in accordance with E.O. 13211 and determined that this rule is not a ''significant energy action'' within the meaning of E.O. 13211.

J. E.O. 13175 (Tribal Consultation)

FRA has evaluated this final rule in accordance with the principles and criteria contained in E.O. 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, Nov. 9, 2000). The final rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of E.O. 13175 do not apply, and a tribal summary impact statement is not required.

List of Subjects in 49 CFR Part 227

Hazardous materials transportation, Locomotive noise control, Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends part 227 of chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 227—OCCUPATIONAL SAFETY AND HEALTH IN THE LOCOMOTIVE CAB

■ 1. The authority citation for part 227 continues to read as follows:

[23] E.O. 14192, Unleashing Prosperity Through Deregulation (90 FR 9065, Feb. 6, 2025).

[24] OMB, Memorandum M–25–20, *Guidance Implementing Section 3 of Executive Order 14192, Titled ''Unleashing Prosperity Through Deregulation''* (Mar. 26, 2025).

Authority: 49 U.S.C. 20103, 20103 note, 20166, 20701–20703, 21301, 21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

■ 2. Revise § 227.127 to read 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 12 months from March 26, 2025.

(b) Class II railroads subject to this subpart are required to comply with this subpart beginning no later than 12 months from March 26, 2025.

(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 18 months from March 26, 2025.

Issued in Washington, DC.

Robert Andrew Feeley,

Acting Administrator.

[FR Doc. 2025–15022 Filed 8–6–25; 8:45 am]

BILLING CODE 4910–06–P