

Federal Railroad Administration
Overview, Highlights and Summary of the
Rail Safety Improvement Act of 2008 (the Act)
(Public Law No. 110-432, Division A, enacted Oct. 16, 2008, 122 Stat. 4848-4906)
Prepared March 10, 2009

[NOTE: This document provides a general overview of the major provisions of the Rail Safety Improvement Act of 2008, herein referred to as “the Act.” The Federal Railroad Administration (FRA) of the U.S. Department of Transportation (DOT) intends to issue updates periodically to aid interested individuals and organizations in understanding, anticipating, and planning for actions, decisions, activities, and initiatives required by the Act. Anyone requiring an official, legal interpretation of any portion of the Act may formally request one in writing from the FRA Office of Chief Counsel. Also, note that, with some exceptions, DOT is operating on a continuing resolution (at fiscal year 2008 spending levels), and appropriations have not yet been provided to carry out some of the mandates to DOT in the Act.]

I. Major provisions of the Act, except for mandates to DOT or, specifically, FRA (listed in section II of this document)

- A. Require implementation of positive train control (PTC) systems by certain railroads on certain lines. *(Section (Sec.) 104)*
1. The Act requires each Class I railroad carrier and each “entity providing regularly scheduled intercity or commuter rail passenger transportation[.]” no later than April 16, 2010, to develop and submit to the Secretary of Transportation (Secretary) for approval a plan for implementing a positive train control (PTC) system by December 31, 2015. The railroad must carry out its approved plan.
 2. Such PTC system must be installed for governing operations (a) on its main line over which intercity rail passenger or commuter rail passenger service is regularly provided, (b) on its main line over which hazardous materials that are poisonous or toxic by inhalation (PIH/TIH materials) are transported, and (c) on such other tracks as the Secretary designates by regulation or order.
 3. As a general rule, “main line” means a segment or route of railroad tracks over which 5 million or more gross tons of freight railroad traffic is transported annually. For intercity rail passenger or commuter rail passenger transportation routes or segments over which limited or no freight railroad operations occur, the Secretary must define the term “main line” by regulation. The Secretary may designate additional tracks as main line by regulation as appropriate.
 4. The term “positive train control system” means a system designed to prevent collisions between trains, overspeed derailments (derailments caused when a train exceeds speed limits), incursions into established work zone limits (i.e., for roadway workers maintaining track), and the movement of a train through an improperly positioned switch.
- B. Authorize appropriations for safety grants to be administered by DOT; however, appropriations have not yet been provided to DOT for this purpose. *(Sec. 105, 206, 207, and 418)*

C. Extensively amend the hours of service (HS) laws (title 49, United States Code (U.S.C.), chapter 211). (*Sec. 108(a)-(e), (g)*)

1. *Regarding employees of contractors and subcontractors to railroads.* Effective July 16, 2009, Sec. 108(a) and (g) of the Act amends the definition of “signal employee” in the HS laws to delete “employed by a railroad carrier” so as to cover employees of contractors and subcontractors to railroads who perform the functions of signal employees (installing, repairing, or maintaining signal systems). (Employees of contractors and subcontractors to railroads who perform the functions of train employees or dispatching service employees were already covered by the HS laws and continue to be covered.)
2. *Regarding train employees, except train employees providing commuter or intercity passenger rail transportation.* Effective July 16, 2009, Sec. 108(b) and (g) amends the existing HS laws to establish the following provisions with respect to all train employees except for train employees providing commuter rail passenger transportation or intercity rail passenger transportation, who are covered under Section 108(d) and (e):
 - a. Limit train employees to 276 hours per calendar month of time either on duty, awaiting or in deadhead transportation to final release, or in any other mandatory service for the carrier.
 - b. Retain the existing maximum of 12 consecutive hours on duty.
 - c. Increase the minimum off-duty period from 8 consecutive hours to 10 consecutive hours during the prior 24 hours.
 - d. Impose very complicated limits, which the Secretary may waive if statutory conditions are met, involving requirements, subject to exceptions and conditions, for either 48 or 72 consecutive hours off duty at the home terminal, during which period the employee is unavailable for any service for any railroad, after the employee has initiated an on-duty period for six or seven consecutive days.
 - e. Prohibit a railroad from allowing a train employee to exceed 40 hours per calendar month in time awaiting or in deadhead transportation from duty to the final release after 12 consecutive hours on duty, during the calendar months through October 15, 2009, unless the train carrying the employee is directly delayed by a casualty, accident, derailment, Act of God, major equipment failure that prevents the train from advancing, or cause unknown and unforeseeable to the railroad or its officer or agent in charge of the employee when the employee left a terminal. The 40-hour limit per calendar month becomes a 30-hour limit per calendar month effective October 16, 2009.
 - f. Require that if the sum of the time waiting for deadhead transportation or in deadhead transportation to the point of final release plus the time on duty that

exceeds 12 consecutive hours , the train employee must be given additional time off equal to the number of hours by which the sum exceeds 12 hours.

- g. Restrict railroad's communication with its train employees except in case of emergency situation (as defined by the Secretary) during the following time off duty: the minimum off-duty period of 10 consecutive hours, periods of statutory interim release, and periods of additional rest required that are equal to the hours by which the combined on-duty time, time awaiting deadhead from duty to final release, and time in deadhead from duty to final release exceeds 12 hours. The Secretary may waive this requirement for commuter or intercity passenger railroad train employees under certain conditions.
3. *Regarding signal employees.* Effective July 16, 2009, Sec. 108(c) of the Act amends the HS requirements regarding signal employees in several ways so as to:
- a. Retain the existing maximum of 12 consecutive hours on duty.
 - b. Increase the minimum off-duty period from 8 consecutive hours to 10 consecutive hours during the prior 24-hour period.
 - c. Eliminate language stating that last hour of a signal employee's return from final trouble call is time off duty.
 - d. Prohibit allowing a signal employee to go or continue on duty under the emergency authority of 49 U.S.C. 21104(c) in order to conduct routine repair, routine maintenance, or routine inspection of a signal system.
 - e. Prohibit railroad communication with signal employees during the employee's minimum 10 consecutive hours off duty, except in an emergency situation (as defined by the Secretary).
 - f. Provide that hours of service, duty hours, and rest periods of signal employees are governed exclusively by 49 U.S.C. chapter 211 and that signal employees operating motor vehicles are not subject to other hours of service, duty, or rest rules besides FRA's.
4. *Regarding train employees providing commuter or intercity passenger rail transportation.* Effective October 16, 2008, Sec. 108(e) of the Act amends the HS laws to grant the Secretary authority to issue hours of service rules and orders applicable to train employees of commuter and intercity passenger railroads, by October 16, 2011, that may differ from the requirements of 49 U.S.C. chapter 211. (See II.A.3. of this document.) Also, effective October 16, 2008, Sec. 108(d) of the Act provides that train employees of commuter and intercity passenger railroads continue to be governed by the HS laws as they existed on October 15, 2008, rather than the law as amended October 16, 2008, until the sooner of either:

- a. the effective date of regulations promulgated by the Secretary providing hours of service requirements for these employees; or
- b. October 16, 2011.

If no new HS regulations for these train employees have gone into effect by October 16, 2011, then the provisions of the Act applicable to other train employees would be extended to train employees providing commuter or intercity rail passenger transportation effective on October 16, 2011.

5. *Miscellaneous.* Effective October 16, 2008, Section 108(e) of the Act also authorizes the Secretary to issue regulations to establish hours of service requirements that, for example,--

- a. Reduce maximum hours of duty or increase the minimum consecutive hours of required rest of train, signal, or dispatching service employees;
- b. Limit time waiting for, or in deadhead transportation, to final release that is considered limbo time; and
- c. Require other changes to railroad operating and scheduling practices to affect employee fatigue and railroad safety.

D. Protect certain safety risk analyses undertaken by railroads from public disclosure by the Secretary under the Freedom of Information Act (FOIA) or otherwise in order to encourage railroads to prepare analyses that are complete and in-depth. (*Sec. 109*)

E. In the area of highway-rail crossing safety—

- 1. Require that railroads and States report information on grade crossing physical and operating characteristics to DOT's National Crossing Inventory. (*Sec. 204*)
- 2. Require FRA to audit each Class I railroad at least every two years and all others at least once every 5 years to ensure that all grade crossing collisions and fatalities are properly reported. (*Sec. 209*)
- 3. Foster introduction of new technology to provide advance warning to highway users at highway-rail grade crossings. (If the Secretary approves such a new technology, the Secretary's determination preempts any State law concerning the adequacy of the technology in providing the warning.) (*Sec. 210*)

F. Authorize additional FRA staffing for rail safety oversight purposes: a total of 200 new employees by the end of fiscal year 2013. (*Sec. 301*)

G. Increase the ordinary maximum and aggravated maximum civil penalties per violation for rail safety violations to \$25,000 and \$100,000, respectively. (*Sec. 302*)

- H. Expand the Secretary's authority to issue emergency orders pertaining to emergency situations involving a risk of significant harm to the environment. *(Sec. 304)*
- I. Expand the Secretary's disqualification authority to cover individuals who are deemed by FRA, after notice and an opportunity for hearing, to be unfit for safety-sensitive service in the railroad industry because of a violation of the Hazardous Materials Regulations related to transporting hazardous material by rail. *(Sec. 305)*
- J. Permit officers, employees, or agents authorized by the Secretary to monitor and record railroad radio communications over dedicated frequencies with or without making their presence known and to record and use the intercepted communication for the purpose of accident prevention and investigation, with exceptions (e.g., tape recording of monitored radio communication itself may not be admitted into evidence except in felony prosecution or to impeach certain evidence, but there is no exclusion of other evidence obtained solely because of the monitoring). *(Sec. 306)*
- K. Clarify the Secretary's authority to issue temporary waivers of rail safety regulations related to emergencies. *(Sec. 308)*
- L. Allow the Secretary to give unified treatment to families of railroad carriers providing integrated railroad operations upon petition. *(Sec. 407)*
- M. Restrict non-Federal post-employment alcohol and drug testing of covered service employees by requiring scientifically recognized methods of testing, etc., enforced under the Railway Labor Act. *(Sec. 412)*
- N. Require railroads to maintain certain information on certain tunnels that carry PIH materials and, on request, brief the government of the local jurisdiction in which the tunnel is located. *(Sec. 414)*
- O. Impose requirements related to safety inspections of railcars in Mexico. *(Sec. 416)*
- P. Broaden the whistleblower provision at 49 U.S. C. 20109, which is enforced by U.S. Department of Labor. *(Sec. 419)*
 - 1. Prohibit railroads, etc., from denying, delaying, or interfering with the medical or first aid treatment of employees injured during the course of employment and from disciplining or threatening to discipline such workers for requesting such treatment.
 - 2. Require that, if the injured worker requests transportation to a hospital, the railroad shall promptly arrange to have the injured worker transported to the nearest hospital where the worker can get safe and appropriate medical care.
 - 3. Bar discipline or threat of discipline of an employee for obeying a treating physician's order or treatment plan, except that a railroad's refusal to permit an

employee to return to work following medical treatment is not a violation of the section if the refusal is pursuant to FRA standards of medical fitness for duty or if there are no pertinent FRA standards, a railroad's medical standards for fitness for duty.

- Q. Direct the National Transportation Safety Board (NTSB) to establish a program to help victims of a rail passenger accident that involves Amtrak or certain high-speed rail passenger carriers and results in a major loss of life. (*Sec. 501-502*)
- R. Provide clarification of Federal jurisdiction over solid waste rail transfer facilities. (*Title VI*)

II. Major provisions of the Act mandating that DOT or FRA prescribe regulations or guidance, conduct studies, and issue reports to Congress or the public and model State laws

- A. Proceedings to prescribe rules (rulemakings) or guidance
 - 1. To require that Class I railroads, intercity passenger and commuter railroads, and railroads with "inadequate safety performance (as determined by the Secretary)" develop a safety risk reduction program (*Sec. 103*)
 - 2. To specify the essential functionalities of mandated PTC systems, define related statutory terms, and identify additional lines for implementation (*Sec. 104*)
 - 3. To update existing hours of service recordkeeping regulations and prescribe substantive hours of service regulations for train employees in intercity passenger or commuter service (*Sec. 108(d) and (f)*)
 - 4. To address the results of the study conducted under Sec. 109 of the Act regarding protection of railroads' safety risk analyses from discovery or admission in certain judicial proceedings (*Sec. 109*)
 - 5. On pedestrian safety at or near rail passenger stations (guidance) (*Sec. 201*)
 - 6. To require State-specific action plans from certain States to improve safety at highway-rail grade crossings (*Sec. 202*)
 - 7. To require toll-free telephone emergency notification numbers for reporting problems at public and private highway-rail grade crossings (*Sec. 205*)
 - 8. To require training standards and plans for categories of railroad employees (*Sec. 401*)
 - 9. To require the certification of conductors (*Sec. 402(d)*)

10. On establishing track inspection intervals, after study (*Sec. 403(c)*)
11. On concrete ties (*Sec. 403(d)*)
12. On development, use, and implementation of rail safety technology in dark territory (i.e., a line not equipped with wayside signal or train control system installed or operational) (either rule or guidance) (*Sec. 406*)
13. To require certain railroads to develop and submit for DOT approval their plans for providing for appropriate support services, etc., to be offered to employees affected by a “critical incident”; DOT to define “critical incident” (*Sec. 410*)
14. To extend applicability of FRA’s alcohol and drug regulations to maintenance-of-way employees (*Sec. 412*)
15. To require emergency-escape breathing apparatus for certain train crews (*Sec. 413*)
16. To require owners of railroad bridges to implement programs for inspection, maintenance, and management of those structures (*Sec. 417*)
17. On camp cars used as railroad employee sleeping quarters (*Sec. 420*)

B. Studies and reports to Congress or the public

1. Report to Congress on DOT’s long-term strategy for improving rail safety and annually report to Congress on progress in implementation of strategy (*Sec. 102*)
2. Report to Congress on the progress of railroads’ implementation of PTC (*Sec. 104*)
3. Report to Congress annually concerning DOT actions undertaken to implement unmet statutory safety mandates to DOT and to address open NTSB and DOT Inspector General safety recommendations (*Sec. 106*)
4. Conduct studies of at least two specified pilot projects involving examination and analysis of hours of service issues (*Sec. 108(e)*)
5. Conduct study to evaluate whether it is in the public interest to withhold from discovery or admission, in certain judicial proceedings for damages, the reports and data compiled to implement, etc., a required risk reduction program (*Sec. 109*)
6. Report to Congress on DOT study of any hours of service projects pursuant to approved, jointly submitted waiver petition (*Sec. 110*)
7. Evaluate and review current local, State, and Federal laws regarding trespassing on railroad property, vandalism affecting railroad safety, and violations of highway-rail grade crossing warning devices; develop and periodically revise model prevention strategies (*Sec. 208*)

8. Report to the public annually concerning the following activity during the prior fiscal year: rail safety and hazardous materials compliance inspections and audits by Federal or State inspectors; enforcement actions by the Secretary or FRA; locomotive engineer certification matters; effects of the inspection/enforcement program on rail safety; and certain changes in enforcement programs or policies. (*Sec. 303*)
9. Report to Congress on whether certification of certain crafts or classes of employees is necessary (*Sec. 402(b)*)
10. Report to Congress on the results of DOT research about track inspection intervals (*Sec. 403(a)-(b)*)
11. Conduct study of methods to improve or correct passenger station platform gaps (*Sec. 404*)
12. Report to Congress detailing the results of DOT research about use of personal electronic devices by safety-related railroad employees (*Sec. 405*)
13. Report to Congress on DOT research about the effects of repealing a provision exempting Consolidated Rail Corporation, etc., from certain labor-related laws (45 U.S.C. 797j) (*Sec. 408*)
14. Report to Congress on the results of DOT research about exposure of railroad employees and others to radiation (*Sec. 411*)
15. Report to Congress on DOT study on the expected safety effects of reducing inspection frequency of diesel-electric locomotives in limited service by railroad museums (*Sec. 415*)
16. Report to Congress on model plans and recommendations, to be developed through a task force to be established by DOT, to help railroads respond to passenger rail accidents (*Sec. 503*)
17. Report to Congress, jointly with the Secretary of Agriculture, on the results of DOT and U.S. Department of Agriculture research about the adequacy of transportation of domestically produced renewable fuels (*Sec. 701(c)*)

C. Model State laws

1. On highway users' sight distances at passively signed highway-rail grade crossings (*Sec. 203*)
2. On motorists' violations of grade crossing warning devices (*Sec. 208*)