

Rail Safety is No Paper Chase

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The Rail Safety Improvement Act of 2008 signed into law in October is without a doubt the most comprehensive rail safety reform legislation in the past three decades.

In addition to the widely reported implementation of positive train control and substantial revisions to hours of service, the safety act calls for 30 new freight and passenger railroad safety rules, plans and reporting/audit requirements; 20 Federal Railroad Administration plans and reports to Congress; and more than a dozen new pilot programs, model state statutes and safety studies.

Many of the new requirements undoubtedly will improve railroad safety. Class I freight railroads, Amtrak and commuter railroads will have to develop a PTC implementation plan (due in 18 months) governing operations on main lines carrying either poison- or toxic-by-inhalation hazardous materials or passengers and the implementation of the PTC plans by Dec. 31, 2015.

Before the plan deadline, the FRA is to issue regulations to implement the plan requirements and flesh out the details of the PTC mandate. PTC will be rolled out on most of the rest of the general railroad system by Dec. 31, 2018. Despite the high cost, no one can seriously question the safety benefits of a national, interoperable PTC system.

The law also calls upon the FRA to issue regulations within the next four years requiring Class I freight railroads, Amtrak and commuter railroads to develop railroad safety risk reduction programs. Those programs must systematically evaluate railroad safety risks and manage those risks in order to reduce the number and rate of railroad accidents and incidents.

The programs must include an analysis of operating rules and practices, infrastructure, equipment, employee levels and schedules, safety culture, management structure and employee training. The programs must include a 10-year technology implementation plan covering a railroad's development, adoption, implementation, maintenance and use of current or new technologies to reduce safety risks identified in the risk reduction program. Railroads will be required to periodically update their technology implementation plans.

The risk reduction programs also must include a fatigue management plan, which must account for varying railroad operating environments, address employee education and training on physiological and human factors that cause fatigue, and evaluate opportunities for treatment of fatigue-related medical conditions.

The safety act requires FRA to establish minimum training standards for each class and craft of safety-related railroad employee, which includes any employee subject to the Hours of Service Act, other operating personnel, maintenance of way workers, railroad hazmat workers and personnel who inspect, repair or maintain rolling stock. This training requirement applies to contractor and subcontractor employees as well.

The law also mandates certification of train conductors, patterned on the existing locomotive engineer certification rules. In addition, the FRA will study and report to Congress regarding the need for certification of car repair and maintenance employees, on-board service workers (in addition to conductors), rail welders, dispatchers, signal repair and maintenance employees and any other craft or class of employees that the FRA deems appropriate. If the FRA concludes that certification of any or all of these additional crafts or classes of employees is needed, it is to move forward with the certification at the same time as it issues the report to Congress.

These new mandates - the safety risk reduction program, the additional employee training standards and plans and the certification of train conductors and possibly other crafts or classes of employees - certainly offer the potential to improve railroad safety, and everyone wants the highest possible degree of railroad safety. However, if these new requirements are allowed to develop into burdensome paperwork, recordkeeping and reporting exercises, or if they impose new limits on the duties of railroad workers in ways that go beyond existing collective bargaining agreements and do not pertain to safety, they will have failed their express purpose.

Over the next four years, as the FRA rolls out proposed rules to implement these planning, training and certification mandates, railroad management and labor, railroad policy makers and regulators, elected officials, passenger interest groups and freight shippers must be vigilant and work in good faith to guard against creation of requirements that add inefficiencies and do not contribute to safety.

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