

**Written Statement of
Jo Strang,
Associate Administrator for Railroad Safety/Chief Safety Officer,
Federal Railroad Administration,
U.S. Department of Transportation
Before
the Subcommittee on Railroads, Pipelines, and Hazardous Materials,
Committee on Transportation and Infrastructure,
U.S. House of Representatives**

March 17, 2011

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Chairmen Mica and Shuster, Vice Chairman Reed, Ranking Members Rahall and Brown, and other Members of the Committee and Subcommittee, I am very pleased to be here today, on behalf of Secretary of Transportation LaHood and Administrator Szabo of the Federal Railroad Administration (FRA), to discuss FRA's role in carrying out the Rail Safety Improvement Act of 2008 (RSIA), especially the provisions in that Act regarding positive train control (PTC) and hours of service. My prepared testimony for this hearing is intended to supplement and update the written information on FRA's work to effectuate RSIA that the agency has supplied to Congress previously.

As background for the discussion of FRA's implementation of RSIA, I would like to report that the railroad industry's safety record is very positive for calendar year 2010, the last complete year for which preliminary data are available. The industry achieved all-time lows in two important indices of railroad safety: in the accident/incident rate per million train-miles and in the train accident rate per million train-miles. FRA is encouraged by the results, but will continue to work with industry to lower the rate and severity of railroad accidents.

Through delegations from the Secretary of Transportation (Secretary), the Federal railroad safety laws provide FRA with very broad authority over every aspect of railroad safety. In exercising that authority, the agency has issued and enforces a wide range of rail safety regulations and orders. FRA currently has active rulemaking projects on a number of important safety topics; some of those rulemakings pursuant to RSIA will be described later in this testimony. FRA also enforces the Federal railroad safety statutes as well as the Hazardous Materials Regulations, promulgated by the Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration, as they pertain to rail transportation. Please see FRA's Web site (<http://www.fra.dot.gov>) for additional background.

I. Overview of RSIA Rulemakings and Other RSIA Projects in General

RSIA mandates that the Secretary produce more than 40 final rules, guidance documents, model State laws, studies, and reports, including 3 types of annual reports and hundreds of periodic audits of railroads' reports of crossing accidents. The Secretary has delegated this responsibility to FRA. Roughly 36 of the mandated projects are to produce single deliverables, as opposed to periodic deliverables. So far, FRA has essentially completed¹ 12 of the roughly 36 projects involving single deliverables and 4 of the 5 annual reports required so far by the 3 annual-reporting mandates. The agency has also completed the first set of the RSIA-mandated periodic audits of railroads' compliance with their duty to report grade crossing collisions and fatalities, with respect to the eight Class I railroads, and has set up a system to handle the first set of RSIA-mandated periodic audits of hundreds of other railroads.

Besides final amendments to the hours of service recordkeeping regulations, interim guidance on the hours of service statutory amendments, and final rules on PTC, all of which will be discussed later, FRA has issued the following: (1) bridge safety standards; (2) regulations requiring the ten States that have had the most highway-rail grade crossing accidents during calendar years 2006-2008 to file State-specific action plans to improve grade crossing safety for FRA approval; and (3) most recently, a model State law on sight obstructions at passively signed highway-rail grade crossings. Moreover, FRA has made a great deal of progress on a number of other RSIA-mandated projects. For example, just last month, FRA submitted a draft of the other RSIA-mandated model law, which concerns motorists' violation of warning signals grade crossings, to various organizations with a request for their comments. FRA has also published an advance notice of proposed rulemaking on the safety risk reduction program and five notices of proposed rulemaking (NPRM)--on concrete crossties, emergency escape breathing apparatus, conductor certification, camp cars used as sleeping quarters, and systems for telephonic notification of unsafe conditions at grade crossings. Further, in 2008 and 2009, FRA completed two final rules that were necessitated by RSIA even though not explicitly mandated by it. The first of these final rules revised the provisions on civil penalties in all of the safety rules to reflect the higher ordinary maximum and aggravated maximum penalty per violation. The other final rule amended FRA's rules of practice to provide for temporary waiver of safety rules on an emergency basis and revised FRA's enforcement procedures to provide for disqualification of railroad employees from safety-sensitive service based on violations of the hazardous materials laws.

In terms of RSIA-mandated single (as opposed to periodic) reports or studies, FRA has completed five and partially completed a sixth. First, FRA has submitted a

¹ That is, the projects are completed apart from litigation in the case of the January 15, 2010, final rule and September 27, 2010, final rule amendments on PTC.

long-term strategy for improving rail safety, with annual plans for the five fiscal years involved. Second, FRA has provided a report to Congress on whether diesel-electric locomotives operated by tourist, excursion, or museum railroads should be subject to less frequent inspections; the report did not support relaxing the requirement. Third, FRA has posted on its Web site its evaluation of current laws on trespass, vandalism, and violation of crossing warning devices. Fourth, after consultation with several other Federal agencies, FRA completed a report to Congress on the exposure of railroad employees to radiation, which it submitted by letter dated January 27, 2011. Fifth, the Secretary submitted a report to Congress on station platform gaps by letter dated January 10, 2011. Finally, FRA has also submitted a report to Congress on the use of personal electronic devices by locomotive engineers, conductors, trainmen, and other railroad operating employees; this initial report will be supplemented by a report dealing with other types of safety-related employees, such as maintenance-of-way employees.

On February 23 of this year, FRA entered into a contract with a law firm to carry out the mandated study on whether barring discovery of certain documents related to safety risk reduction programs would be in the public interest; the contract provides that the study is to be completed within six months. FRA has also made progress on a number of other RSIA-mandated reports, including those on (1) the effect of repeal of “the Conrail exemption,” (2) recommendations for assistance to families of those affected by passenger rail accidents, (3) the adequacy of transportation of domestically produced renewable fuels, and (4) track-inspection intervals.

In terms of RSIA-mandated, periodic reports, FRA has provided two RSIA-mandated annual reports to Congress that list all unmet rail safety statutory mandates and open rail safety recommendations from the DOT Inspector General and the National Transportation Safety Board and summarize FRA’s responsive action. The latest report that has been submitted to Congress is current through December 30, 2009. A draft of the third such annual report is in clearance in the Executive Branch. Finally, FRA has posted on its Web site its first two annual enforcement reports under RSIA (an expanded version of FRA’s traditional report on civil penalty cases closed), which provide specific analyses of civil penalty assessments and settlements as well as information on other types of enforcement actions, the activities of the Locomotive Engineer Review Board, and the results of FRA safety inspections.

II. Four RSIA-Based Projects Involving Hours of Service

On May 27, 2009, less than eight months after enactment of RSIA, FRA published a final rule amending FRA’s existing regulations requiring records and reports on hours of service, primarily to reflect the RSIA amendments to the hours of service laws and also to permit electronic recordkeeping. The mandatory rulemaking was conducted with the assistance of the Railroad Safety Advisory Committee (RSAC). The RSAC includes representatives from all of FRA’s major stakeholder groups, including

railroads, labor organizations, suppliers and manufacturers, other government agencies, and other interested parties.

Less than a month after producing that final rule, on June 26, 2009, FRA published lengthy and detailed interim and proposed interpretations of the major hours of service statutory provisions amended by RSIA. The RSAC aided FRA's development of this document to a certain extent, as well. During the comment period, FRA received 56 comments on the proposed interpretation and interim interpretations, the majority of which addressed either the proposed "continuous lookback" interpretation or the interpretation of the requirement of time off after a series of consecutive days of covered service. Most opposed the new proposed interpretation. FRA is in the process of drafting the Final Statement of Agency Policy and Interpretation, which will respond to comments and may revise some of the interim interpretations.

On January 3, 2011, FRA published a proposed rule on safety and health requirements for camp cars used as sleeping quarters for covered-service employees or maintenance-of-way employees. In response to the rulemaking mandate, FRA has proposed to require a number of improvements to camp-car living arrangements. In addition, to implement a related RSIA amendment, the proposal would extend FRA's existing regulations prohibiting railroads from beginning construction or reconstruction of employee sleeping quarters in the immediate vicinity of switching or humping operations to cover camp cars used as sleeping quarters for maintenance-of-way workers.

Finally, with the assistance of the RSAC, FRA has recently issued and sent to the Federal Register for publication an NPRM to establish hours of service requirements for train employees providing commuter or intercity rail passenger transportation. When the proposed rule is published in the Federal Register, FRA will welcome comments. FRA is working hard to meet the statutory deadline of producing a final rule that is effective before October 16, 2011, to avoid the requirements of the RSIA currently in effect for other train employees going into effect for these employees.

III. Carrying Out RSIA Provisions on PTC

I would like to end my testimony by discussing the agency's work to implement the two major RSIA provisions on PTC. RSIA defines a "positive train control system" as "a system designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position." RSIA requires that by April 16, 2010, each Class I railroad and each entity that provides regularly scheduled intercity or commuter rail passenger transportation submit to FRA (as the Secretary's delegate) a plan for implementation of such a PTC system on certain specified lines by the end of calendar 2015. RSIA also requires that the railroad implement a PTC system in accordance with its plan. Further, RSIA requires that FRA review and either approve or disapprove each plan within 90 days of receipt, conduct an annual review to ensure that railroads are complying with their respective plans, issue regulations or orders necessary to implement

that section, and report to Congress by December 31, 2012, on railroads' progress in implementing PTC systems. Finally, RSIA allows FRA to require PTC systems on lines other than those specified in the statute, provide technical assistance to railroads in developing their plans, and assess civil penalties for a railroad's failure to submit a PTC implementation plan or comply with its PTC implementation plan.

In response to this PTC regulatory mandate in RSIA, FRA conducted a rulemaking with the assistance of its RSAC. In January 2010, when FRA issued the PTC final rule, the agency simultaneously sought comment on certain narrow issues, in contemplation of making future amendments to the PTC final rule. The Association of American Railroads (AAR), The Chlorine Institute, Inc., and various other parties filed petitions for reconsideration of the January 2010 final rule, all of which FRA denied by letter in July 2010. Final rule amendments were published in September 2010.

As to the contents of FRA's January 2010 PTC final rule as amended in September 2010 (the PTC Rule), it provides that, with some limited exceptions, PTC systems must be installed and operated (1) on lines over which intercity rail passenger transportation or commuter rail passenger transportation is regularly provided and (2) on freight-only rail lines if they are part of a Class I railroad's system, carrying at least 5 million gross tons (mgt) of freight annually, and carrying any amount of poison- or toxic-by-inhalation (PIH/TIH) material (e.g., chlorine or anhydrous ammonia).

In issuing the PTC Rule, FRA provided the following exceptions and exclusions that provide relief to the railroads while maintaining safety. First, a *de minimis* PIH risk exclusion for low volume Class I tracks that have no passenger traffic. Second, an exception for low speed operations occurring in passenger yards and terminals when the trains are either empty or no freight operations are permitted and reverse movements are restricted. Third, an exception for limited passenger operations where track speeds are restricted, temporal separation is maintained, or the passenger trains are operated under a risk mitigation plan. Fourth, a number of exclusions for Class II and III railroads. A Class II or III railroad is not required to install PTC on its locomotives when operating on a Class I PTC-equipped track if: (1) the track segment has no regularly scheduled intercity or commuter passenger rail traffic, or if it does have such traffic, the applicable PTC system permits the operation of a non-equipped train; (2) the operations are restricted to four trains a day; and (3) the train movement is less than 20 miles or if the movement is greater than 20 miles, the non-equipped operations may continue only until December 31, 2020. A Class II or III railroad is not required to install PTC on its line if: (1) the freight traffic is less than 15 mgt per year; and (2) if the line segment is un-signalized, no more than 4 regularly scheduled passenger trains operate per day; or if the line segment is signalized, no more than 12 regularly scheduled passenger trains operate per day.

A PTC system or component of such a system may not be permitted to be installed in revenue service unless FRA has certified that the system or component has been approved by FRA. In order to receive such approval, subject railroads must each

submit, and FRA must approve, the following three plans: (1) a PTC Implementation Plan, which includes a full schedule for PTC system implementation on the railroad by December 31, 2015; (2) a PTC Development Plan, which describes in technical detail the PTC system to be implemented, if the PTC system has not yet been approved by FRA; and (3) a PTC Safety Plan, which shows that the PTC system described in the PTC Development Plan will work correctly in the subject territory.

Both the PTC Implementation Plan and the PTC Development Plan were required to be submitted together by April 16, 2010. Simultaneous submission was required to evaluate the feasibility of the proposed PTC Implementation Plan schedule with respect to the technology being selected according to the PTC Development Plan. In recognition that such an early deadline may limit the railroads' opportunities to research, bid, and otherwise "shop around" for PTC systems, thus reducing market competitiveness, the rule permitted railroads to submit with their PTC Implementation Plan a shorter version of a PTC Development Plan, called a Notice of Product Intent. The Notices of Product Intent describe the functions and requirements of the intended system without identifying the particular manufacturer or product. If a railroad submitted a Notice of Product Intent with its PTC Implementation Plan, the railroad would have an additional 270 days to submit its PTC Development Plan.

Pursuant to the January 2010 final rule, 41 railroads filed PTC Implementation Plans describing how they proposed to deploy PTC systems on their properties by the December 31, 2015, statutory deadline. FRA successfully approved or disapproved all of these PTC Implementation Plans before the 90-day deadline specified in the January 2010 PTC rule. If FRA disapproved the plan, the agency identified the specific issues needing to be addressed. Of these 41 submissions, FRA approved 24 plans without conditions, provisionally approved 1 plan with conditions, provisionally approved 14 plans submitted with Notices of Product Intent pending resubmission with a PTC Development Plan, and disapproved two plans without prejudice. FRA staff is diligently working with these two railroads to create an acceptable plan. As FRA has already informed the Congress, a 42nd railroad was recently identified that is required to submit a PTC Implementation Plan for a single small section of track, and FRA staff is working closely with a representative of that railroad.

FRA has subsequently approved dozens of filings seeking approval to modify railroads' PTC Implementation Plans so as not to install PTC systems on 100 passenger-traffic line segments. FRA staff has also reviewed more than 100 freight-line-exclusion requests based on a *de minimis* PIH/TIH risk. FRA action on some of these requests is pending resolution of the litigation. FRA expects additional requests for exclusions.

FRA staff is also working with several railroads on final approval of their PTC Development Plans so that their proposed PTC systems may be approved. FRA is providing both informal and formal technical assistance to railroads via conference calls, working meetings, e-mail exchanges, and other written correspondence. FRA technical

staff is also supporting both laboratory and field PTC system development and implementation testing. Increased requests for support are expected as the December 31, 2015, implementation deadline approaches.

In addition to supporting PTC implementation by providing technical assistance, FRA has also supported PTC implementation by providing financial assistance. FRA has two means of providing funding to help offset the significant costs of PTC: the Railroad Rehabilitation and Improvement Financing Program (commonly known as the “RRIF Program”) and the Railroad Safety Technology Grant Program mandated by RSIA.

Under the RRIF Program, FRA is authorized to provide direct loans and loan guarantees up to \$35 billion. Eligible borrowers include railroads, State and local governments, government-sponsored authorities and corporations, joint ventures that include at least one railroad, and limited-option shippers that intend to construct a new rail connection. Up to \$7 billion is reserved for projects benefitting freight railroads other than Class I carriers. Direct loans may fund up to 100 percent of a railroad project, with repayment periods of up to 35 years.

RSIA requires FRA as the Secretary’s delegate “to establish a grant program for the deployment of . . . new or novel railroad safety technology,” which FRA has designated the Railroad Safety Technology Grant Program. The section authorizes appropriations of \$50 million annually from FY 2009 through FY 2013 to implement this section. FY 2010 was the first year that FRA received an appropriation to carry out this mandate. In view of the high costs associated with PTC implementation, and the limited funding available in the program, FRA elected to dedicate the FY 2010 funds for collaborative projects that address the resolution of shared technical issues associated with PTC system implementation. Thus far, FRA has provided nine grants for a total of about \$49.9 million under the program. The nine grants are identified in the following table:

Grantee	Project	State	Dollar Amount
Southern California Regional Rail Authority	Interoperable Digital Communications Infrastructure Construction	CA	\$ 6,605,446
Amtrak	Vital Electronic Train Management System (VETMS)-Advanced Civil Speed Enforcement System (ACSES) Interoperability	DC	\$ 10,280,000
New York Metropolitan Transit Authority	ACSES Interface Specification Verification	NY	\$ 6,596,000

Meteorcomm LLC	Interoperable Train Control (ITC) Interoperable 220 Megahertz Radio	WA	\$ 21,050,000
Howard University	Interoperable Identity Management	DC	\$ 857,106
Railroad Research Foundation	Risk Route Evaluation	DC	\$ 1,541,448
WABTEC Corp.	Video PTC Database Verification	IA	\$ 500,000
The Kansas City Southern Ry. Co.	Analog to Digital Communications Infrastructure Conversion	MO	\$ 1,867,450
Maryland Dept. of Transportation	Hi-speed VETMS Performance Verification	MD	\$ 642,445

Finally, I would like to close my discussion of FRA’s implementation of the major PTC provisions of RSIA by focusing on the recent settlement agreement in the lawsuit filed by AAR challenging certain provisions of FRA’s PTC Rule. As previously mentioned, under RSIA, all Class I railroads are required to install PTC systems by December 31, 2015, on their main lines carrying at least 5 million gross tons of annual traffic and any PIH/TIH hazardous materials. Under the PTC Rule as currently crafted, each railroad’s PTC Implementation Plan must indicate that a PTC system will be implemented on each of its track segments that met these statutory criteria during the year that RSIA became law (2008). However, the PTC Rule allows for relief from PTC implementation requirements on a track segment if two conditions are satisfied: (1) if PIH/TIH traffic subsequently ceases on the particular track segment before the end of 2015 or if the annual gross tonnage on the track segment falls below 5 million before the end of 2015 and (2) the track segment passes both a residual risk analysis test (which would be defined in a future rulemaking) and an alternative route analysis test. These tests have the potential of requiring PTC system implementation on Class I track segments that had PIH/TIH hazardous materials traffic in calendar year 2008, but that would not carry such traffic as of December 31, 2015.

In July 2010, the AAR petitioned the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) for review of those provisions of the PTC Rule as well as other provisions regarding requirements associated with the visibility of onboard PTC system information to crewmembers. Recently the AAR approached FRA and suggested that the parties discuss a possible settlement of the suit. On March 2 of this year, FRA and the AAR signed a settlement agreement regarding the AAR’s lawsuit, and on March 3, the D.C. Circuit granted the parties’ motion to hold the case in abeyance with the parties required to file status reports at 60-day intervals. Under the parties’ agreement, FRA will issue two new NPRMs addressing issues that the AAR has raised regarding the PTC Rule. The reexamination of the PTC Rule is consistent with the President’s recently issued Executive Order 13563 requiring agencies to review their significant rules and ensure that the safety benefits of the rules justify the costs imposed by the rules.

The first NPRM will address issues related to the requirements to install PTC on Class I railroad mainline track segments that do not carry PIH traffic and are not used for intercity or commuter rail passenger transportation as of December 31, 2015. The second NPRM will address the issues of how to handle enroute failures of PTC-equipped trains, circumstances under which a signal system may be removed after PTC installation, and whether yard movements and certain other train movements should qualify for a *de minimis* exception to the PTC Rule. Upon the completion of the rulemaking proceeding related to the first NPRM, the parties will determine whether to file a joint motion to dismiss the lawsuit in its entirety. In the second NPRM, FRA expects to address a number of PTC issues unrelated to the litigation that have been raised by the AAR and others since the issuance of the PTC Rule.

It is our understanding that the AAR will be filing a petition with FRA requesting amendments to the PTC Rule and providing FRA with the safety rationale that the AAR believes supports the requested changes. Other parties may also seek amendments to the rule.

In developing an NPRM in response to any rulemaking petition that FRA receives with respect to the PTC Rule, this agency will consult with the PTC working group of the RSAC, which helped FRA develop the PTC Rule. As previously mentioned, RSAC includes representatives of all of FRA's major stakeholder groups, which include freight and passenger railroads, labor organizations, etc.

Both NPRMs will invite public comments on the proposed changes to the PTC Rule. FRA will consider all comments submitted during the rulemaking comment period in determining (1) whether to issue amendments to the PTC Rule, and (2) if so, the contents of those amendments; as a result, any amendments to the PTC Rule may differ from the proposals contained in the NPRMs.

IV. Conclusion

I appreciate this opportunity to speak with you today about FRA's efforts to implement RSIA and look forward to working with the Committee and Subcommittee to learn your ideas on how FRA can do an even better job implementing this important legislation. I would be happy to answer any of your questions.