

# STATE OF ALASKA

SEAN PARNELL, GOVERNOR

## DEPARTMENT OF LAW

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February 27, 2013

William R. Hupprich, General Counsel  
Alaska Railroad Corporation  
327 West Ship Creek Avenue  
Anchorage AK 99510-7500

Re: Rail Safety Improvement Act of 2008

Dear Bill:

You have requested our review of the federal Rail Safety Improvement Act of 2008<sup>1</sup> and its applicability to the operations of the Alaska Railroad Corporation (“ARRC”). We conclude that federal law requires that ARRC comply with the Act if it wishes to continue providing passenger service.

The Rail Safety Improvement Act is a comprehensive federal safety initiative for railroads that mandates the implementation of Positive Train Control (“PTC”) systems by major rail carriers across the country. PTC is a system of integrated technologies that is designed to prevent train accidents such as derailments and head-on collisions by eliminating the human factor.<sup>2</sup> Each rail carrier must develop a plan for implementing its PTC system and submit it to the U.S. Secretary of Transportation for review and approval.<sup>3</sup> Prior to installing an approved PTC system on a passenger train, the Secretary must certify it as complying with 49 C.F.R. Part 236.<sup>4</sup> The Rail Safety Improvement Act

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<sup>1</sup> Pub. L. No. 110-432 (codified in part at 49 U.S.C. § 20157).

<sup>2</sup> 49 U.S.C. § 20157(i)(3). “The term ‘positive train control system’ means 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.”

<sup>3</sup> 49 U.S.C. § 20157(c).

<sup>4</sup> 49 U.S.C. § 20157(h).

requires that each rail carrier must complete installation of its approved and certified PTC system by December 31, 2015.<sup>5</sup>

The Secretary of Transportation is authorized to assess civil penalties of \$2,500 to \$25,000 per violation for 61 separate violations of PTC-related requirements.<sup>6</sup> These violations include failure to implement a PTC system by December 31, 2015, operation of a PTC system prior to certification, non-compliant operation of unequipped trains in areas where a PTC system is required, failure to comply with record-keeping requirements, failure to repair a faulty PTC system component, and failure to train railroad employees.<sup>7</sup> Higher penalty amounts are assessed for willful violations – for example, the penalty for failure to implement a PTC system by December 31, 2015 is \$16,000 per violation and \$25,000 per “willful violation.”<sup>8</sup> Every day a violation continues constitutes a separate violation.<sup>9</sup> In situations where “a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury,” the Secretary may impose an aggravated civil penalty of up to \$105,000 per day.<sup>10</sup>

In addition to the civil penalties, the Secretary of Transportation may also request an injunction for violations,<sup>11</sup> and may issue a compliance order requiring compliance with a railroad safety regulation or order.<sup>12</sup> The U.S. Attorney General may bring a civil action to enforce railroad safety regulations and orders.<sup>13</sup>

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<sup>5</sup> 49 U.S.C. § 20157(a)(1).

<sup>6</sup> 49 U.S.C. § 20157(e).

<sup>7</sup> 49 C.F.R. Part 236, App. A.

<sup>8</sup> *Id.*

<sup>9</sup> 49 U.S.C. § 21301(a)(1).

<sup>10</sup> 49 U.S.C. § 21301(a)(2). As of June 25, 2012, the aggravated maximum penalty was raised from \$100,000 to \$105,000 pursuant to the Inflation Act.

<sup>11</sup> 49 U.S.C. § 20111(a).

<sup>12</sup> 49 U.S.C. § 20111(b).

<sup>13</sup> 49 U.S.C. § 20112(a).

The Rail Safety Improvement Act applies to all “Class I” rail carriers and every railroad providing regularly scheduled intercity passenger service.<sup>14</sup> Since ARRC provides regularly scheduled intercity passenger service, the Rail Safety Improvement Act applies to it.<sup>15</sup>

The Alaska Railroad Transfer Act of 1982<sup>16</sup> at 45 U.S.C. § 1207 contains the laws applicable to ARRC after its transfer from the federal government to the State.<sup>17</sup> The Act designates ARRC as “a rail carrier engaged in interstate and foreign commerce” subject to all federal statutes applicable to rail carriers operating in interstate commerce, which includes the Rail Safety Improvement Act.<sup>18</sup> Similarly, the State’s Alaska Railroad Corporation Act,<sup>19</sup> which established ARRC as a public corporation of the State, authorizes ARRC to undertake all actions “necessary to carry out the powers and duties of the corporation granted or necessarily implied in . . . the laws or regulations of the federal government.”<sup>20</sup> Thus, both the federal and state statutes contemplate ARRC’s compliance with the federal law, which includes the Rail Safety Improvement Act and the PTC system requirements.

The Rail Safety Improvement Act contains no statutory waivers or exemptions that apply to ARRC’s operations. However, a rail carrier may petition for a waiver from

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<sup>14</sup> 49 U.S.C. § 20157(a).

<sup>15</sup> ARRC provides scheduled passenger service between Anchorage and Fairbanks year round with additional destinations in the summer. See <http://www.alaskarailroad.com/travel/Transit/Schedules/tabid/98/Default.aspx>.

<sup>16</sup> 45 U.S.C. § 1201 – 1214.

<sup>17</sup> The federal government began building the Alaska Railroad in 1914 and operated it until January 5, 1985. The state paid \$22.3 million for the railroad and its assets. ARRC continues to receive federal support – since 1996 ARRC has received \$863 million in federal funding.

<sup>18</sup> 49 U.S.C. § 10501(a).

<sup>19</sup> AS 42.40.010 – 42.40.990.

<sup>20</sup> AS 42.40.250(30).

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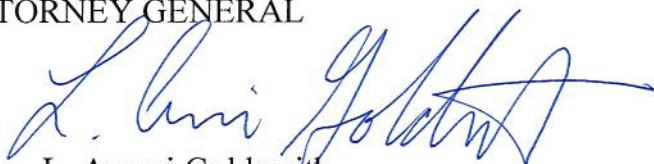
a safety rule, regulation, or order,<sup>21</sup> such as a regulation adopted pursuant to the Rail Safety Improvement Act concerning the specific requirements for a PTC system, the content of a PTC system implementation plan, records retention, training, security, and other specific requirements.<sup>22</sup> A waiver from a safety rule, regulation, or order may only be granted if the Secretary of Transportation determines that “the waiver is in the public interest and consistent with railroad safety.”<sup>23</sup>

Absent a waiver of a specific safety rule, regulation, or order, new federal legislation containing an exemption, or new federal legislation granting an extension of time for compliance,<sup>24</sup> ARRC is required to comply with every provision of the Act and implement a PTC system by December 31, 2015. If ARRC fails to meet the Act’s requirements, ARRC could face civil penalties of up to \$25,000 per day, or \$105,000 for egregious violations, and could be subject to enforcement action by the Secretary of Transportation and the U.S. Attorney General.

Sincerely,

MICHAEL C. GERAGHTY  
ATTORNEY GENERAL

By:



L. Anmei Goldsmith  
Assistant Attorney General

LAG/bap

<sup>21</sup> 49 C.F.R. Part 211.41, 211.43, 211.45.

<sup>22</sup> 49 C.F.R. Part 236.1001 – 236.1049.

<sup>23</sup> 49 U.S.C. § 20103(d).

<sup>24</sup> We are aware that there are ongoing discussions within the Association of American Railroads (ARRC is a member) to pursue a Congressional extension, but we are not aware of any final decision.