

**MEMORANDUM OF AGREEMENT BETWEEN
THE FEDERAL RAILROAD ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION, AND THE
MINE SAFETY AND HEALTH ADMINISTRATION,
U.S. DEPARTMENT OF LABOR**

The Federal Railroad Administration (FRA), U.S. Department of Transportation, and the Mine Safety and Health Administration (MSHA), U.S. Department of Labor, have entered into this Memorandum of Agreement (MOA) to establish cooperative procedures for resolving jurisdictional questions, and to provide for interagency coordination between FRA and MSHA in areas of mutual interest. This MOA is consistent with 49 U.S.C. § 20149, which requires consultation between the two departments “on a regular basis to ensure that all applicable laws affecting safe working conditions for railroad employees are appropriately enforced to ensure a safe and productive working environment for the railroad industry.” This MOA is also consistent with MSHA’s jurisdictional mandate under the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801, *et seq.*

AUTHORITY OF FRA

As the delegate of the Secretary of Transportation, the Administrator of FRA is charged with carrying out 49 U.S.C. ch. 201-213 and uncodified provisions of the Rail Safety Improvement Act of 2008 (Pub. L. No. 110-432, Div. A) (collectively, the Railroad Safety Laws). 49 C.F.R. § 1.89. (See also 49 U.S.C. § 103(g), in which Congress directly confers the Secretary’s authority under, *e.g.*, 49 U.S.C. ch. 203-209, on the Administrator.) FRA has broad statutory rulemaking authority over “every area of railroad safety” to supplement rail safety laws in effect on October 16, 1970. 49 U.S.C. § 20103. In addition, FRA has the “exclusive authority” to enforce the Railroad Safety Laws and implementing railroad safety regulations and orders. 49 U.S.C. § 20111. Pursuant to this statutory authority, FRA promulgates and enforces a comprehensive regulatory program to address railroad safety. See generally 49 C.F.R. Parts 209-244.

FRA’s statutory safety authority extends to all “railroad carriers,” which are defined as persons providing railroad transportation. See 49 U.S.C. § 20102(3). The term “railroad” is defined broadly to include “any form of nonhighway ground transportation that runs on rails or electromagnetic guideways” (The lone exception is for certain rapid transit operations.) See 49 U.S.C. § 20102(2). FRA exercises jurisdiction over any railroad carrier operating on the “general railroad system of transportation” (general system), which is defined as “the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas.” Appendix A to 49 C.F.R. Part 209. Although FRA’s statutory jurisdiction extends to all railroad carriers, FRA has chosen as a matter of policy not to impose its regulations on certain categories of rail operations. As stated in Appendix A to Part 209, FRA’s regulations exclude from their reach railroads whose entire operations are confined to an industrial installation that is not part of the general system

(“plant railroads”). See *id.* Traditional examples of plant railroads are industrial railroads, such as those in steel mills, which operate at plants that are not part of the general system and that do not operate beyond the plants’ boundaries.

FRA may assess civil penalties for violations of statutory provisions at 49 U.S.C. § 20160 and 49 U.S.C. ch. 203-209 and for violations of regulations and orders implementing the Railroad Safety Laws by any “person.” 49 U.S.C. ch. 213. The term “person” has the expansive definition found in 1 U.S.C. § 1.

FRA has broad statutory authority to enter property unannounced to inspect railroad facilities, equipment, rolling stock, operations, and relevant records to carry out the Federal railroad safety laws, 49 U.S.C. §§ 20101, *et seq.*, the hazardous materials transportation laws, 49 U.S.C. §§ 5101, *et seq.*, and their respective implementing regulations. See 49 U.S.C. § 20107; 49 C.F.R. § 1.89. FRA must conduct inspections at reasonable times and in a reasonable way, and inspectors must display their credentials when requested. A railroad carrier may not refuse entry to or impose conditions on the inspectors. FRA reserves the right to seek an injunction against any railroad carrier that impedes, interferes with, or frustrates FRA’s inspections, investigations, or other enforcement efforts under the safety laws. See 49 U.S.C. §§ 20111, 20112.

FRA’s foremost priority is the furtherance of the highest degree of safety in railroad transportation. 49 U.S.C. § 103(c). As a result, FRA has developed a special expertise that makes it uniquely qualified to play the primary role in the Federal Government’s efforts to ensure safe working conditions for railroad employees and safe rail transportation of persons and property. To that end, FRA has issued comprehensive regulations governing all aspects of railroad safety, including, but not limited to, the following: track safety standards (49 C.F.R. Part 213); railroad safety appliance standards (49 C.F.R. Part 231); brake system safety standards (49 C.F.R. Part 232); and railroad freight car safety standards (49 C.F.R. Part 215).

The track safety standards apply to any track that is part of the general system; this would ordinarily include standard gage track owned by and connected to the track system of a railroad carrier that is located on mine property. 49 C.F.R. § 213.3; see also 49 C.F.R. Part 209, Appendix A.

FRA’s freight car safety standards apply to freight cars in service on standard gage track of a railroad carrier, or while the car is being operated by, or under the control of, a railroad carrier when used on standard gage track not owned by the railroad carrier. 49 C.F.R. § 215.3.

FRA’s safety appliance standards (and the safety appliance laws at 49 U.S.C. § 20302) apply when a railroad car or locomotive is being hauled or used by a railroad carrier or when a railroad carrier permits a railroad car or locomotive to be hauled or used on its line. 49 C.F.R. § 231.0 and 49 U.S.C. ch. 203.

FRA’s brake system safety standards apply when a railroad car or locomotive is being hauled or used by a railroad carrier or when a railroad carrier permits a railroad car or locomotive to be hauled or used on its line. 49 C.F.R. § 232.3.

AUTHORITY OF MSHA

Congress broadly defined MSHA's jurisdiction over a "coal or other mine" to bring the operations, activities, procedures, and equipment that are integral to mineral extraction, milling, and preparation thereof within the coverage of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801, *et seq.* (Mine Act). Section 4 of the Mine Act provides that "each coal or other mine, the products of which enter commerce or the operations or products of which affect commerce, and each operator of such mine [including independent contractors], and every miner in such mine shall be subject to the provisions of this Act." In addition, Section 3(g) of the Mine Act defines "miner" as "any individual working in a coal or other mine." Section 3(h)(1) of the Mine Act defines "coal or other mine" as:

(A) an area of land from which minerals are extracted in nonliquid form . . . (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including the impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form . . . or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities. In making a determination of what constitutes mineral milling for purposes of this chapter, the Secretary shall give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment.

Section 3(h)(1) does not require that those structures or facilities be owned by a firm that also engages in the extraction of minerals from the ground or that they be located on property where such extraction occurs.

Section 103(a) of the Mine Act requires MSHA mine inspectors to inspect underground mines at least four times a year and surface mines at least twice a year to ensure compliance with health and safety standards, and to make follow-up inspections to determine whether previously discovered violations have been corrected. This section also grants MSHA inspectors the right of entry to any coal or other mine and provides that no advance notice of an inspection be given. If a mine operator refuses to allow a warrantless inspection under Section 103(a), the Secretary of Labor is authorized to bring a civil action for injunctive or other relief. If an MSHA inspector finds that an imminent danger exists, the inspector is required to determine the area of the mine affected and issue a withdrawal order. Pursuant to Section 107(a) of the Mine Act, imminent danger is defined to mean "the existence of any condition or practice in a coal or other mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated."

Section 103 of the Mine Act also authorizes MSHA to conduct investigations of mine accidents and to use appropriate means to gather pertinent evidence.

AUTHORITY FOR MOA

The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801, *et seq.*; 30 C.F.R. Parts 1 to 199.

49 U.S.C. § 20149; 49 U.S.C. ch. 201-213; 49 U.S.C. § 103(g); Rail Safety Improvement Act of 2008 (Pub. L. No. 110-432, Div. A); 49 C.F.R. § 1.89; 49 C.F.R. Parts 209-244.

CLARIFICATION OF AUTHORITY

A. FRA

With respect to unsafe working conditions involving railroad equipment that operates on the general system, track over which general system railroad carriers operate, conditions affecting general system railroad employees and railroad contractors, and conditions affecting the transportation of persons and property on the general system, FRA will apply the provisions of the Rail Safety Laws, FRA's regulations, and related policies to address those conditions.

FRA's exercise of jurisdiction will include, but is not exhaustive, with respect to:

1. Operation and maintenance of railroad cars, locomotives, and track-mounted and stationary car-moving equipment owned, leased or operated by a railroad carrier and performed by employees or contractors of the railroad carrier; and
2. Non-mining injuries and fatalities involving employees or contractors of general system railroad carriers.

B. MSHA

With respect to unsafe and unhealthful working conditions on mine property that may pose a health or safety hazard to miners, MSHA will apply the provisions of the Mine Act, MSHA's standards, regulations, and related policies to address those conditions.

MSHA's exercise of jurisdiction will include, but is not exhaustive, with respect to:

1. Maintenance of track off of the general system owned by the mine or performed by the mine operator, any independent contractor performing services or construction at such mine, or by miners;
2. Maintenance, operation, and inspection of railroad cars, locomotives, and car-moving equipment that are owned, leased or operated at the mine or mill rail system (off of the general system) by the mine operator and performed by miners, or by any independent contractor performing services or construction at such mine; and
3. Injuries and fatalities associated with equipment operated by mine operators, any independent contractor performing services or construction at such mine, or miners.

C. Concurrent

MSHA and FRA acknowledge that there may be unsafe or unhealthful working conditions over which both agencies have concurrent jurisdiction. The Mine Act does not contain a provision circumscribing or precluding MSHA's jurisdiction where other Federal agencies may exercise statutory authority to regulate or enforce safety and health standards over the working conditions in question. Accordingly, where MSHA's exercise of jurisdiction is consistent with its authority under Section 3(h)(1) of the Mine Act, MSHA is not required to consider another Federal agency's exercise of regulatory authority when determining the scope of its own jurisdiction. Similarly, the Railroad Safety Laws and regulations do not preclude FRA's jurisdiction where other Federal agencies exercise statutory authority to regulate or enforce safety and health standards over the working conditions in question. Accordingly, where FRA's exercise of jurisdiction is consistent with its authority, FRA is not required to consider another Federal agency's exercise of regulatory authority when determining the scope of its own jurisdiction.

FRA's and MSHA's concurrent exercise of jurisdiction will include, but is not exhaustive, with respect to:

1. Maintenance of track located on mine property, or owned by a mine operator, and performed by employees of a railroad carrier or contractors of a railroad carrier;
2. Maintenance of track over which general system railroad carriers operate, which is performed by the mine operator, any independent contractor performing services or construction at such mine, or by miners;
3. Adjacent "off-site" property that miners routinely access to retrieve or drop-off locomotives and/or railcars;
4. Maintenance, operation, and inspection of railroad cars, locomotives and car-moving equipment that are operated on the general system and that are owned, leased or operated by the mine operator and performed by miners, or by any independent contractor performing services or construction at such mine; and
5. Railroad cars and other rail equipment that are owned by a railroad carrier and delivered to mine property in a condition that poses safety or health hazards to miners.

TRAINING

MSHA requires site specific hazard awareness training (30 C.F.R. Part 46) or hazard training (30 C.F.R. Part 48) for railroad carriers and their employees or contractors who exit the locomotive and/or train and engage in any activity not related to train or track duties, or which takes them out of the immediate proximity of the train, the track, and the roadbed.

Pursuant to 49 C.F.R. Parts 214 and 218, FRA requires safety briefings of all mine operators, independent contractors of mine operators, or miners, relating to railroad-specific hazards, when

working around a locomotive, railcar, or track that is part of the general system and railroad employees or contractors are present.

REFERRALS TO MSHA

FRA will refer to MSHA for investigation and enforcement action any working conditions and practices affecting the safety of miners, which are caused by a mine operator and/or any independent contractor performing services or construction at such mine, of which FRA becomes aware. MSHA will investigate such working conditions and practices referred to it by FRA. MSHA will take enforcement action against mine operators or independent contractors of mine operators, as it deems appropriate, for violations of the Mine Act and/or MSHA regulations. Nothing under this provision excludes FRA jurisdictional responsibilities.

REFERRALS TO FRA

MSHA will refer to FRA for investigation and enforcement action any safety incident, safety condition, or other safety problem of which MSHA becomes aware that has a primary impact on railroad operations, a railroad carrier or railroad contractor, or is the responsibility of a railroad carrier or railroad contractor that operates on the general system. FRA will investigate such working conditions and practices referred to it by MSHA. FRA will take enforcement action against railroad carriers or contractors that operate on the general system, as it deems appropriate, for violations of the Railroad Safety Laws and/or FRA regulations. Nothing under this provision excludes MSHA jurisdictional responsibilities.

NOTIFICATION OF DISPOSITION

The appropriate FRA Regional Administrator and the appropriate MSHA Chief of Safety agree to promptly notify the other of the disposition of enforcement matters that are referred to it for appropriate action by the other agency. Upon request, each agency agrees to provide the other with a copy of any citations, orders, civil penalty assessments, or reports issued as a result of its inspection or investigation.

INVESTIGATORY LEAD

To the extent that a safety incident or other safety problem is caused by a mine operator, an independent contractor of the mine operator, or a miner (even if the safety incident or other safety problem has a primary impact on railroad operations), MSHA has the investigatory lead and will notify FRA of the safety incident or other safety problem and may invite FRA to participate in any investigation of the safety incident, or other safety problem. MSHA will also consult with FRA as to how to best complete its investigation in a manner that least disrupts railroad operations and that ensures that railroad operations will return to normal as expeditiously as possible.

To the extent that a safety incident or other safety problem is caused by a railroad carrier or its contractors that operates on the general system (even if the safety incident or other safety problem has a primary impact on mining operations), FRA has the investigatory lead and will

notify MSHA of the safety incident or other safety problem and may invite MSHA to participate in any investigation of the safety incident, or other safety problem. FRA will also consult with MSHA as to how to best complete its investigation in a manner that least disrupts the mining operations and that ensures that the mining operations will return to normal as expeditiously as possible.

INTERAGENCY COORDINATION

When any question of jurisdiction between FRA and MSHA arises, the appropriate FRA Regional Administrator and the appropriate MSHA Chief of Safety shall attempt to resolve the issue in accordance with this MOA and existing law and policy. The Director of the Office of Safety Assurance and Compliance in FRA's Office of Railroad Safety and the appropriate MSHA Chief of Safety shall serve as the liaison points at the respective FRA and MSHA headquarters. If unresolved, the matter shall be referred to the FRA Administrator and the appropriate MSHA Administrator, or the MSHA Assistant Secretary, for resolution.

FRA and MSHA agree to consult with each other prior to drafting and issuing regulations pertaining to railroad operations that occur on mine property. This interagency coordination may also include cooperative training and technical assistance.

APPROPRIATIONS

This MOA does not itself authorize the expenditure or reimbursement of any funds, and nothing in this MOA obligates the parties to expend appropriations or enter into any contract or other obligations. Any work that requires the expending or obligating of funds will be accomplished through a separate agreement. This MOA is limited to the available resources of each agency.

PERIOD OF AGREEMENT

This MOA shall continue in effect from the date of the last signature, unless terminated by the mutual, written consent of both agencies or terminated by either agency by serving written notice on the other agency at least thirty (30) days prior to the date of termination.

This MOA may be amended by the mutual, written agreement of both agencies.

This MOA shall take effect on the date of the last signature.

EFFECT OF AGREEMENT

This MOA is an internal Government agreement and does not create a private right of action in any private person or third-party.

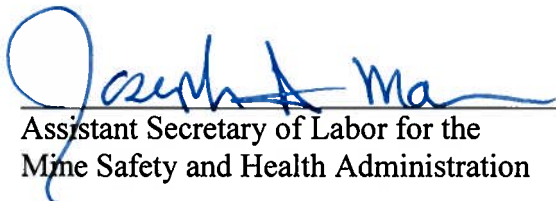
Nothing in this MOA is intended to diminish or otherwise affect the authority of either agency to act in a manner it deems advisable to implement its respective regulatory and statutory functions. Accordingly, nothing in this MOA shall be interpreted as limiting, superseding, or otherwise affecting either agency's normal operations or decisions in carrying out its statutory or regulatory

duties. This MOA does not limit or restrict the parties from participating in similar activities or arrangements with other entities.

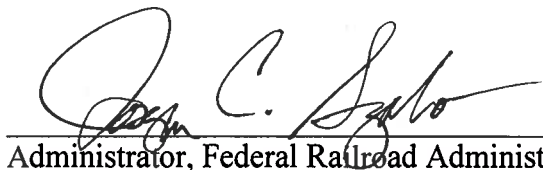
This MOA constitutes the entire agreement between the parties concerning this subject matter and supersedes any prior understanding, written or oral.

This MOA will be executed in full compliance with the Privacy Act of 1974.

4-17-2014
Date


Assistant Secretary of Labor for the
Mine Safety and Health Administration

4/9/14
Date


Administrator, Federal Railroad Administration