

FEDERAL RAILROAD SAFETY IMPROVEMENT ACT OF 2007

SEPTEMBER 19, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OBERSTAR, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 2095]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2095) to amend title 49, United States Code, to prevent railroad fatalities, injuries, and hazardous materials releases, to authorize the Federal Railroad Safety Administration, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Federal Railroad Safety Improvement Act of 2007”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.

**TITLE I—FEDERAL RAILROAD SAFETY ADMINISTRATION**

Sec. 101. Establishment of Federal Railroad Safety Administration.  
Sec. 102. Railroad safety strategy.  
Sec. 103. Reports.  
Sec. 104. Rulemaking process.  
Sec. 105. Authorization of appropriations.

**TITLE II—EMPLOYEE FATIGUE**

Sec. 201. Hours of service reform.  
Sec. 202. Employee sleeping quarters.  
Sec. 203. Fatigue management plans.  
Sec. 204. Regulatory authority.  
Sec. 205. Conforming amendment.

**TITLE III—PROTECTION OF EMPLOYEES AND WITNESSES**

Sec. 301. Employee protections.

## TITLE IV—GRADE CROSSINGS

- Sec. 401. Toll-free number to report grade crossing problems.
- Sec. 402. Roadway user sight distance at highway-rail grade crossings.
- Sec. 403. Grade crossing signal violations.
- Sec. 404. National crossing inventory.
- Sec. 405. Accident and incident reporting.
- Sec. 406. Authority to buy promotional items to improve railroad crossing safety and prevent railroad trespass.
- Sec. 407. Operation Lifesaver.
- Sec. 408. State action plan.
- Sec. 409. Fostering introduction of new technology to improve safety at highway-rail grade crossings.

## TITLE V—ENFORCEMENT

- Sec. 501. Enforcement.
- Sec. 502. Civil penalties.
- Sec. 503. Criminal penalties.
- Sec. 504. Expansion of emergency order authority.
- Sec. 505. Enforcement transparency.
- Sec. 506. Interfering with or hampering safety investigations.
- Sec. 507. Railroad radio monitoring authority.
- Sec. 508. Inspector staffing.

## TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. Positive train control systems.
- Sec. 602. Warning in nonsignaled territory.
- Sec. 603. Track safety.
- Sec. 604. Certification of conductors.
- Sec. 605. Minimum training standards.
- Sec. 606. Prompt medical attention.
- Sec. 607. Emergency escape breathing apparatus.
- Sec. 608. Locomotive cab environment.
- Sec. 609. Tunnel information.
- Sec. 610. Railroad police.
- Sec. 611. Museum locomotive study.
- Sec. 612. Certification of carmen.
- Sec. 613. Train control systems deployment grants.
- Sec. 614. Infrastructure safety investment reports.
- Sec. 615. Emergency grade crossing safety improvements.
- Sec. 616. Clarifications regarding State law causes of action.

## TITLE VII—RAIL PASSENGER DISASTER FAMILY ASSISTANCE

- Sec. 701. Short title.
- Sec. 702. Assistance by National Transportation Safety Board to families of passengers involved in rail passenger accidents.
- Sec. 703. Rail passenger carrier plans to address needs of families of passengers involved in rail passenger accidents.
- Sec. 704. Establishment of task force.

**SEC. 2. DEFINITIONS.**

For purposes of this Act, the terms “railroad” and “railroad carrier” have the meaning given those terms in section 20102 of title 49, United States Code.

## **TITLE I—FEDERAL RAILROAD SAFETY ADMINISTRATION**

**SEC. 101. ESTABLISHMENT OF FEDERAL RAILROAD SAFETY ADMINISTRATION.**

(a) AMENDMENT.—Section 103 of title 49, United States Code, is amended to read as follows:

**“§ 103. Federal Railroad Safety Administration**

“(a) IN GENERAL.—The Federal Railroad Safety Administration (in this section referred to as the ‘Administration’) shall be an administration in the Department of Transportation. To carry out all railroad safety laws of the United States, the Administration shall be divided on a geographical basis into at least 8 safety offices. The Secretary of Transportation shall be responsible for enforcing those laws and for ensuring that those laws are uniformly administered and enforced among the safety offices.

“(b) SAFETY AS HIGHEST PRIORITY.—In carrying out its duties, the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in railroad transportation.

“(c) ADMINISTRATOR.—The head of the Administration shall be the Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be an individual with professional experience in railroad safety, hazardous materials safety, or other transportation safety. The Administrator shall report directly to the Secretary of Transportation.

“(d) DEPUTY ADMINISTRATOR.—The Administration shall have a Deputy Administrator who shall be appointed by the Secretary. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

“(e) CHIEF SAFETY OFFICER.—The Administration shall have an Associate Administrator for Railroad Safety appointed in the competitive service by the Secretary. The Associate Administrator shall be the Chief Safety Officer of the Administration. The Associate Administrator shall carry out the duties and powers prescribed by the Administrator.

“(f) DUTIES AND POWERS OF THE ADMINISTRATOR.—The Administrator shall carry out—

“(1) duties and powers related to railroad safety vested in the Secretary by section 20134(c) and chapters 203 through 211 of this title, and by chapter 213 of this title for carrying out chapters 203 through 211; and

“(2) other duties and powers prescribed by the Secretary.

“(g) LIMITATION.—A duty or power specified in subsection (f)(1) may be transferred to another part of the Department of Transportation or another Federal Government entity only when specifically provided by law. A decision of the Administrator in carrying out the duties or powers of the Administration and involving notice and hearing required by law is administratively final.

“(h) AUTHORITIES.—Subject to the provisions of subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), the Secretary of Transportation may make, enter into, and perform such contracts, grants, leases, cooperative agreements, and other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons, and make such payments, by way of advance or reimbursement, as the Secretary may determine to be necessary or appropriate to carry out functions at the Administration. The authority of the Secretary granted by this subsection shall be carried out by the Administrator. Notwithstanding any other provision of this chapter, no authority to enter into contracts or to make payments under this subsection shall be effective, except as provided for in appropriations Acts.”

(b) REFERENCES AND CONFORMING AMENDMENTS.—(1) All references in Federal law to the Federal Railroad Administration shall be deemed to be references to the Federal Railroad Safety Administration.

(2) The item relating to section 103 in the table of sections of chapter 1 of title 49, United States Code, is amended to read as follows:

“103. Federal Railroad Safety Administration.”

**SEC. 102. RAILROAD SAFETY STRATEGY.**

(a) SAFETY GOALS.—In conjunction with existing federally required strategic planning efforts, the Secretary of Transportation shall develop a long-term strategy for improving railroad safety. The strategy shall include an annual plan and schedule for achieving, at a minimum, the following goals:

(1) Reducing the number and rates of accidents, injuries, and fatalities involving railroads.

(2) Improving the consistency and effectiveness of enforcement and compliance programs.

(3) Identifying and targeting enforcement at, and safety improvements to, high-risk highway-rail grade crossings.

(4) Improving research efforts to enhance and promote railroad safety and performance.

(b) RESOURCE NEEDS.—The strategy and annual plans shall include estimates of the funds and staff resources needed to accomplish each activity. Such estimates shall also include the staff skills and training needed for timely and effective accomplishment of each goal.

(c) SUBMISSION WITH THE PRESIDENT’S BUDGET.—The Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the strategy and annual plan at the same time as the President’s budget submission.

(d) ACHIEVEMENT OF GOALS.—

(1) PROGRESS ASSESSMENT.—No less frequently than semiannually, the Secretary of Transportation and the Administrator of the Federal Railroad Safety Administration shall assess the progress of the Administration toward achieving the strategic goals described in subsection (a). The Secretary and the Administrator shall convey their assessment to the employees of the Federal Railroad Safety Administration and shall identify any deficiencies that should be remediated before the next progress assessment.

(2) REPORT TO CONGRESS.—The Secretary shall transmit a report annually to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the performance of the Federal Railroad Safety Administration relative to the goals of the railroad safety strategy and annual plans under subsection (a).

**SEC. 103. REPORTS.**

(a) REPORTS BY THE INSPECTOR GENERAL.—Not later than 30 days after the date of enactment of this Act, the Inspector General of the Department of Transportation shall submit to the Secretary of Transportation and the Administrator of the Federal Railroad Safety Administration a report containing the following:

(1) A list of each statutory mandate regarding railroad safety that has not been implemented.

(2) A list of each open safety recommendation made by the National Transportation Safety Board or the Inspector General regarding railroad safety.

(b) REPORTS BY THE SECRETARY.—

(1) STATUTORY MANDATES.—Not later than 90 days after the date of enactment of this Act, and every 180 days thereafter until each of the mandates referred to in subsection (a)(1) has been implemented, the Secretary of Transportation shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the specific actions taken to implement such mandates.

(2) NTSB AND INSPECTOR GENERAL RECOMMENDATIONS.—Not later than January 1st of each year, the Secretary of Transportation shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing each recommendation referred to in subsection (a)(2), a copy of the Department of Transportation response to each such recommendation, and a progress report on implementing each such recommendation.

**SEC. 104. RULEMAKING PROCESS.**

(a) AMENDMENT.—Subchapter I of chapter 201 of title 49, United States Code, is amended by inserting after section 20115 the following new section:

**“§ 20116. Rulemaking process**

“No rule or order issued by the Secretary under this part shall be effective if it incorporates by reference a code, rule, standard, requirement, or practice issued by an association or other entity that is not an agency of the Federal Government, unless that reference is to a particular code, rule, standard, requirement, or practice adopted before the date on which the rule is issued by the Secretary, and unless the date on which the code, rule, standard, requirement, or practice was adopted is specifically cited in the rule.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections of subchapter I of chapter 201 of title 49, United States Code, is amended by adding after the item relating to section 20115 the following new item:

“20116. Rulemaking process.”.

**SEC. 105. AUTHORIZATION OF APPROPRIATIONS.**

Section 20117(a) of title 49, United States Code, is amended to read as follows:

“(a) IN GENERAL.—(1) There are authorized to be appropriated to the Secretary of Transportation to carry out this part and to carry out responsibilities under chapter 51 as delegated or authorized by the Secretary—

“(A) \$230,000,000 for fiscal year 2008;

“(B) \$260,000,000 for fiscal year 2009;

“(C) \$295,000,000 for fiscal year 2010; and

“(D) \$335,000,000 for fiscal year 2011.

“(2) With amounts appropriated pursuant to paragraph (1), the Secretary shall purchase 6 Gage Restraint Measurement System vehicles and 5 track geometry vehicles to enable the deployment of 1 Gage Restraint Measurement System vehicle and 1 track geometry vehicle in each region.

“(3) There are authorized to be appropriated to the Secretary \$18,000,000 for the period encompassing fiscal years 2008 through 2011 to design, develop, and construct the Facility for Underground Rail Station and Tunnel at the Transportation Technology Center in Pueblo, Colorado. The facility shall be used to test and evaluate the vulnerabilities of above-ground and underground rail tunnels to prevent accidents and incidents in such tunnels, to mitigate and remediate the consequences of any such accidents or incidents, and to provide a realistic scenario for training emergency responders.

“(4) Such sums as may be necessary from the amount appropriated pursuant to paragraph (1) for each of the fiscal years 2008 through 2011 shall be made available to the Secretary for personnel in regional offices and in Washington, D.C., whose duties primarily involve rail security.”.

## TITLE II—EMPLOYEE FATIGUE

### SEC. 201. HOURS OF SERVICE REFORM.

(a) DEFINITIONS.—Section 21101(4) of title 49, United States Code, is amended by striking “employed by a railroad carrier”.

(b) LIMITATION ON DUTY HOURS OF SIGNAL EMPLOYEES.—Section 21104 of title 49, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

“(a) GENERAL.—Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a signal employee, and a railroad contractor and its officers and agents may not require or allow a signal employee, to remain or go on duty—

“(1) unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours;

“(2) for a period in excess of 12 consecutive hours; or

“(3) unless that employee has had at least one period of at least 24 consecutive hours off duty in the past 7 consecutive days.

The Secretary may waive paragraph (3) if a collective bargaining agreement provides a different arrangement and such arrangement provides an equivalent level of safety.”;

(2) in subsection (b)(3) by striking “, except that up to one hour of that time spent returning from the final trouble call of a period of continuous or broken service is time off duty”;

(3) in subsection (c)—

(A) by inserting “for not more than 3 days during a period of 7 consecutive days” after “24 consecutive hours”; and

(B) by adding at the end the following: “A signal employee may not be allowed to remain or go on duty under the emergency authority provided under this subsection to conduct routine repairs, routine maintenance, or routine inspection of signal systems.”;

(4) by adding at the end the following new subsections:

“(d) COMMUNICATION DURING TIME OFF DUTY.—During a signal employee’s minimum off-duty period of 10 consecutive hours, as provided under subsection (a), a railroad carrier, and its managers, supervisors, officers, and agents, shall not communicate with the signal employee by telephone, by pager, or in any other manner that could disrupt the employee’s rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation posing potential risks to the employee’s safety or health.

“(e) EXCLUSIVITY.—The hours of service, duty hours, and rest periods of signal employees shall be governed exclusively by this chapter. Signal employees operating motor vehicles shall not be subject to any hours of service rules, duty hours, or rest period rules promulgated by any Federal authority, including the Federal Motor Carrier Safety Administration, other than the Federal Railroad Safety Administration.”.

(c) LIMITATION ON DUTY HOURS OF TRAIN EMPLOYEES.—Section 21103 of title 49, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

“(a) GENERAL.—Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to remain or go on duty—

“(1) unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours;

“(2) for a period in excess of 12 consecutive hours; or

“(3) unless that employee has had at least one period of at least 24 consecutive hours off duty in the past 7 consecutive days.

The Secretary may waive paragraph (3) if a collective bargaining agreement provides a different arrangement and such arrangement provides an equivalent level of safety.”;

(2) by amending subsection (b)(4) to read as follows:

“(4)(A)(i) Except as provided in clauses (ii) and (iii), time spent in deadhead transportation to a duty assignment, time spent waiting for deadhead transportation, and time spent in deadhead transportation from a duty assignment to a place of final release is time on duty.

“(ii) Time spent waiting for deadhead transportation and time spent in deadhead transportation from a duty assignment to a place of final release is neither time on duty nor time off duty in situations involving delays in the operations of the railroad carrier, when the delays were caused by any of the following:

- “(I) A casualty.
  - “(II) An accident.
  - “(III) A track obstruction.
  - “(IV) An act of God.
  - “(V) A weather event causing a delay.
  - “(VI) A snowstorm.
  - “(VII) A landslide.
  - “(VIII) A track or bridge washout.
  - “(IX) A derailment.
  - “(X) A major equipment failure which prevents a train from advancing.
  - “(XI) Other delay from a cause unknown or unforeseeable to a railroad carrier and its officers and agents in charge of the employee when the employee left a designated terminal.
- “(iii) In addition to any time qualifying as neither on duty nor off duty under clause (ii), at the election of the railroad carrier, time spent waiting for deadhead transportation and time spent in deadhead transportation to the place of final release may be treated as neither time on duty nor time off duty, subject to the following limitations:

“(I) Not more than 40 hours a month may be elected by the railroad carrier, for an employee, during the period from the date of enactment of the Federal Railroad Safety Improvement Act of 2007 to one year after such date of enactment.

“(II) Not more than 30 hours a month may be elected by the railroad carrier, for an employee, during the period beginning one year after the date of enactment of the Federal Railroad Safety Improvement Act of 2007 and ending two years after such date of enactment.

“(III) Not more than 10 hours a month may be elected by the railroad carrier, for an employee, during the period beginning two years after the date of enactment of the Federal Railroad Safety Improvement Act of 2007.

“(B) Each railroad carrier shall report to the Secretary of Transportation, in accordance with procedures contained in 49 CFR 228.19, each instance within 30 days after the calendar month in which the instance occurs that a member of a train or engine crew or other employee engaged in or connected with the movement of any train, including a hostler, exceeds 12 consecutive hours, including—

- “(i) time on duty; and
- “(ii) time spent waiting for deadhead transportation and the time spent in deadhead transportation from a duty assignment to the place of final release, that is not time on duty.

“(C) If—

- “(i) the time spent waiting for deadhead transportation, and the time spent in deadhead transportation from a duty assignment to the place of final release, that is not time on duty; plus
- “(ii) the time on duty,

exceeds 12 consecutive hours, the railroad carrier and its officers and agents shall provide the train employee with additional time off duty equal to the number of hours that such sum exceeds 12 hours.”; and

(3) by adding at the end the following new subsection:

“(d) COMMUNICATION DURING TIME OFF DUTY.—During a train employee’s minimum off-duty period of 10 consecutive hours, as provided under subsection (a), or during an interim period of at least 4 consecutive hours available for rest under subsection (b)(7), a railroad carrier, and its managers, supervisors, officers, and agents, shall not communicate with the train employee by telephone, by pager, or in any other manner that could disrupt the employee’s rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation posing potential risks to the employee’s safety or health.”.

**SEC. 202. EMPLOYEE SLEEPING QUARTERS.**

Section 21106 of title 49, United States Code, is amended—

(1) by inserting “(a) IN GENERAL.—” before “A railroad carrier”; and

(2) by adding at the end the following new subsection:

“(b) CAMP CARS.—Effective 12 months after the date of enactment of this subsection, a railroad carrier and its officers and agents may not provide sleeping quarters through the use of camp cars, as defined in Appendix C to part 228 of title 49

of the Code of Federal Regulations, for employees and any individuals employed to maintain the right of way of a railroad carrier.”.

**SEC. 203. FATIGUE MANAGEMENT PLANS.**

(a) AMENDMENT.—Chapter 211 of title 49, United States Code, is amended by adding at the end the following new section:

**“§ 21109. Fatigue management plans**

“(a) PLAN SUBMISSION.—

“(1) REQUIREMENT.—Each railroad carrier shall submit to the Secretary of Transportation, and update at least once every 2 years, a fatigue management plan that is designed to reduce the fatigue experienced by railroad employees and to reduce the likelihood of accidents and injuries caused by fatigue. The plan shall address the safety effects of fatigue on all employees performing safety sensitive functions, including employees not covered by this chapter. The plan shall be submitted not later than 1 year after the date of the enactment of this section, or not later than 45 days prior to commencing operations, whichever is later.

“(2) CONTENTS OF PLAN.—The fatigue management plan shall—

“(A) identify and prioritize all situations that pose a risk for safety that may be affected by fatigue;

“(B) include the railroad carrier’s—

“(i) rationale for including and not including each element described in subsection (b)(2) in the plan;

“(ii) analysis supporting each element included in the plan; and

“(iii) explanations for how each element in the plan will reduce the risk associated with fatigue;

“(C) describe how every condition on the railroad carrier’s property, and every type of employee, that is likely to be affected by fatigue is addressed in the plan; and

“(D) include the name, title, address, and telephone number of the primary person to be contacted with regard to review of the plan.

“(3) APPROVAL.—(A) The Secretary shall review each proposed plan and approve or disapprove such plan based on whether the requirements of this section are sufficiently and appropriately addressed and the proposals are adequately justified in the plan.

“(B) If the proposed plan is not approved, the Secretary shall notify the affected railroad carrier as to the specific points in which the proposed plan is deficient, and the railroad carrier shall correct all deficiencies within 30 days following receipt of written notice from the Secretary. If a railroad carrier does not submit a plan (or, when directed by the Secretary, an amended plan), or if a railroad carrier’s amended plan is not approved by the Secretary, the Secretary shall prescribe a fatigue management plan for the railroad carrier.

“(4) EMPLOYEE PARTICIPATION.—(A) Each affected railroad carrier shall consult with, and employ good faith and use its best efforts to reach agreement by consensus with, all of its directly affected employee groups on the contents of the fatigue management plan, and, except as provided in subparagraph (C), shall jointly with such groups submit the plan to the Secretary.

“(B) In the event that labor organizations represent classes or crafts of directly affected employees of the railroad carrier, the railroad carrier shall consult with these organizations in drafting the plan. The Secretary may provide technical assistance and guidance to such parties in the drafting of the plan.

“(C) If the railroad carrier and its directly affected employees (including any labor organization representing a class or craft of directly affected employees of the railroad carrier) cannot reach consensus on the proposed contents of the plan, then—

“(i) the railroad carrier shall file the plan with the Secretary; and

“(ii) directly affected employees and labor organizations representing a class or craft of directly affected employees may, at their option, file a statement with the Secretary explaining their views on the plan on which consensus was not reached.

“(b) ELEMENTS OF THE FATIGUE MANAGEMENT PLAN.—

“(1) CONSIDERATION OF VARYING CIRCUMSTANCES.—Each plan filed with the Secretary under the procedures of subsection (a) shall take into account the varying circumstances of operations by the railroad carrier on different parts of its system, and shall prescribe appropriate fatigue countermeasures to address those varying circumstances.

“(2) ISSUES AFFECTING ALL EMPLOYEES PERFORMING SAFETY SENSITIVE FUNCTIONS.—The railroad carrier shall consider the need to include in its fatigue management plan elements addressing each of the following issues:

“(A) Education and training on the physiological and human factors that affect fatigue, as well as strategies to counter fatigue, based on current and evolving scientific and medical research and literature.

“(B) Opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders.

“(C) Effects on employee fatigue of emergency response involving both short-term emergency situations, including derailments, and long-term emergency situations, including natural disasters.

“(D) Scheduling practices involving train lineups and calling times, including work/rest cycles for shift workers and on-call employees that permit employees to compensate for cumulative sleep loss by guaranteeing a minimum number of consecutive days off (exclusive of time off due to illness or injury).

“(E) Minimizing the incidence of fatigue that occurs as a result of working at times when the natural circadian rhythm increases fatigue.

“(F) Alertness strategies, such as policies on napping, to address acute sleepiness and fatigue while an employee is on duty.

“(G) Opportunities to obtain restful sleep at lodging facilities, including sleeping quarters provided by the railroad carrier.

“(H) In connection with the scheduling of a duty call, increasing the number of consecutive hours of rest off duty, during which an employee receives no communication from the employing railroad carrier or its managers, supervisors, officers, or agents.

“(I) Avoiding abrupt changes in rest cycles for employees returning to duty after an extended absence due to circumstances such as illness or injury.

“(J) Additional elements as the Secretary considers appropriate.

“(c) COMPLIANCE AND ENFORCEMENT.—

“(1) COMPLIANCE REQUIREMENT.—Effective upon approval or prescription of a fatigue management plan, compliance with that fatigue management plan becomes mandatory and enforceable by the Secretary.

“(2) EFFECTIVE DATE.—A fatigue management plan may include effective dates later than the date of approval of the plan, and may include different effective dates for different parts of the plan.

“(3) AUDITS.—To enforce this section, the Secretary may conduct inspections and periodic audits of a railroad carrier’s compliance with its fatigue management plan.

“(d) DEFINITION.—For purposes of this section the term ‘directly affected employees’ means employees, including employees of an independent contractor or subcontractor, to whose hours of service the terms of a fatigue management plan specifically apply.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 211 of title 49, United States Code, is amended by adding at the end the following new item: “21109. Fatigue management plans.”.

**SEC. 204. REGULATORY AUTHORITY.**

(a) AMENDMENT.—Chapter 211 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following new section:

**“§ 21110. Regulatory authority**

“The Secretary of Transportation may by regulation—

“(1) reduce the maximum hours an employee may be required or allowed to go or remain on duty to a level less than the level established under this chapter, based on scientific and medical research; or

“(2) increase the minimum hours an employee may be required or allowed to rest to a level greater than the level established under this chapter, based on scientific and medical research.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 211 of title 49, United States Code, is amended by adding at the end the following new item: “21110. Regulatory authority.”.

**SEC. 205. CONFORMING AMENDMENT.**

Section 21303(c) of title 49, United States Code, is amended by striking “officers and agents” and inserting “managers, supervisors, officers, and agents”.



## TITLE III—PROTECTION OF EMPLOYEES AND WITNESSES

### SEC. 301. EMPLOYEE PROTECTIONS.

Section 20109 of title 49, United States Code, is amended to read as follows:

#### “§ 20109. Employee protections

“(a) **PROTECTED ACTIONS.**—A railroad carrier engaged in interstate or foreign commerce, and an officer or employee of such a railroad carrier, shall not by threat, intimidation, or otherwise attempt to prevent an employee from, or discharge, discipline, or in any way discriminate against an employee for—

“(1) filing a complaint or bringing or causing to be brought a proceeding related to the enforcement of this part or, as applicable to railroad safety, chapter 51 or 57 of this title;

“(2) testifying in a proceeding described in paragraph (1);

“(3) notifying, or attempting to notify, the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee;

“(4) cooperating with a safety investigation by the Secretary of Transportation or the National Transportation Safety Board;

“(5) furnishing information to the Secretary of Transportation, the National Transportation Safety Board, or any other public official as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with railroad transportation; or

“(6) accurately reporting hours of duty pursuant to chapter 211.

“(b) **HAZARDOUS CONDITIONS.**—(1) A railroad carrier engaged in interstate or foreign commerce, and an officer or employee of such a railroad carrier, shall not by threat, intimidation, or otherwise attempt to prevent an employee from, or discharge, discipline, or in any way discriminate against an employee for—

“(A) reporting a hazardous condition;

“(B) refusing to work when confronted by a hazardous condition related to the performance of the employee’s duties, if the conditions described in paragraph (2) exist; or

“(C) refusing to authorize the use of any safety-related equipment, track, or structures, if the employee is responsible for the inspection or repair of the equipment, track, or structures, when the employee believes that the equipment, track, or structures are in a hazardous condition, if the conditions described in paragraph (2) exist.

“(2) A refusal is protected under paragraph (1)(B) and (C) if—

“(A) the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

“(B) the employee reasonably concludes that—

“(i) the hazardous condition presents an imminent danger of death or serious injury; and

“(ii) the urgency of the situation does not allow sufficient time to eliminate the danger without such refusal; and

“(C) the employee, where possible, has notified the carrier of the existence of the hazardous condition and the intention not to perform further work, or not to authorize the use of the hazardous equipment, track, or structures, unless the condition is corrected immediately or the equipment, track, or structures are repaired properly or replaced.

“(3) This subsection does not apply to security personnel employed by a railroad carrier to protect individuals and property transported by railroad.

“(c) **ENFORCEMENT ACTION.**—

“(1) **IN GENERAL.**—An employee who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief in accordance with the provisions of this section, with any petition or other request for relief under this section to be initiated by filing a complaint with the Secretary of Labor.

“(2) **PROCEDURE.**—

“(A) **IN GENERAL.**—An action under this section shall be governed under the rules and procedures set forth in section 42121(b).

“(B) **EXCEPTION.**—Notification made under section 42121(b)(1) shall be made to the person named in the complaint and to the person’s employer.

“(C) **BURDENS OF PROOF.**—An action brought under this section shall be governed by the legal burdens of proof set forth in section 42121(b).

“(D) **STATUTE OF LIMITATIONS.**—An action under this section shall be commenced not later than 1 year after the date on which the violation occurs.

“(3) DE NOVO REVIEW.—If the Secretary of Labor has not issued a final decision within 180 days after the filing of the complaint (or, in the event that a final order or decision is issued by the Secretary of Labor, whether within the 180-day period or thereafter, then, not later than 90 days after such an order or decision is issued), the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

“(d) REMEDIES.—

“(1) IN GENERAL.—An employee prevailing in any action under this section shall be entitled to all relief necessary to make the covered individual whole.

“(2) DAMAGES.—Relief in an action under this section shall include—

“(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;

“(B) the amount of any back pay, with interest; and

“(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

“(3) POSSIBLE RELIEF.—Relief may also include punitive damages in an amount not to exceed 10 times the amount of any compensatory damages awarded under this section.

“(e) CRIMINAL PENALTIES.—

“(1) IN GENERAL.—It shall be unlawful for any railroad carrier to commit an act prohibited by subsection (a). Any person who willfully violates this section by terminating or retaliating against any such covered individual who makes a claim under this section shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both.

“(2) REPORTING REQUIREMENT.—

“(A) IN GENERAL.—The Attorney General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an annual report on the enforcement of paragraph (1).

“(B) CONTENTS.—Each such report shall—

“(i) identify each case in which formal charges under paragraph (1) were brought;

“(ii) describe the status or disposition of each such case; and

“(iii) in any actions under subsection (c)(1) in which the employee was the prevailing party or the substantially prevailing party, indicate whether or not any formal charges under paragraph (1) of this subsection have been brought and, if not, the reasons therefor.

“(f) NO PREEMPTION.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

“(g) RIGHTS RETAINED BY COVERED INDIVIDUAL.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.”.

## TITLE IV—GRADE CROSSINGS

### SEC. 401. TOLL-FREE NUMBER TO REPORT GRADE CROSSING PROBLEMS.

Section 20152 of title 49, United States Code, is amended to read as follows:

#### “§ 20152. Emergency notification of grade crossing problems

“Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall require each railroad carrier to—

“(1) establish and maintain a toll-free telephone service, for rights-of-way over which it dispatches trains, to directly receive calls reporting—

“(A) malfunctions of signals, crossing gates, and other devices to promote safety at the grade crossing of railroad tracks on those rights-of-way and public or private roads; and

“(B) disabled vehicles blocking railroad tracks at such grade crossings;

“(2) upon receiving a report of a malfunction or disabled vehicle pursuant to paragraph (1), immediately contact trains operating near the grade crossing to warn them of the malfunction or disabled vehicle;

“(3) upon receiving a report of a malfunction or disabled vehicle pursuant to paragraph (1), and after contacting trains pursuant to paragraph (2), contact, as necessary, appropriate public safety officials having jurisdiction over the grade crossing to provide them with the information necessary for them to direct traffic, assist in the removal of the disabled vehicle, or carry out other activities appropriate to responding to the hazardous circumstance; and

“(4) ensure the placement at each grade crossing on rights-of-way that it owns of appropriately located signs, on which shall appear, at a minimum—

“(A) a toll-free telephone number to be used for placing calls described in paragraph (1) to the railroad carrier dispatching trains on that right-of-way;

“(B) an explanation of the purpose of that toll-free number as described in paragraph (1); and

“(C) the grade crossing number assigned for that crossing by the National Highway-Rail Crossing Inventory established by the Department of Transportation.

The Secretary of Transportation shall implement this section through appropriate regulations.”.

**SEC. 402. ROADWAY USER SIGHT DISTANCE AT HIGHWAY-RAIL GRADE CROSSINGS.**

(a) IN GENERAL.—Subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following new section:

**“§ 20156. Roadway user sight distance at highway-rail grade crossings**

“(a) IN GENERAL.—Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall prescribe regulations that require each railroad carrier to remove from its rights-of-way at all public highway-rail grade crossings, and at all private highway-rail grade crossings open to unrestricted public access (as declared in writing by the holder of the crossing right), grass, brush, shrubbery, trees, and other vegetation which may obstruct the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of the train’s approach, and to maintain its rights-of-way at all such crossings free of such vegetation. In prescribing the regulations, the Secretary shall take into consideration to the extent practicable—

“(1) the type of warning device or warning devices installed at the crossing;

“(2) factors affecting the timeliness and effectiveness of roadway user decisionmaking, including the maximum allowable roadway speed, maximum authorized train speed, angle of intersection, and topography;

“(3) the presence or absence of other sight distance obstructions off the railroad right-of-way; and

“(4) any other factors affecting safety at such crossings.

“(b) PROTECTED VEGETATION.—In promulgating regulations pursuant to this section, the Secretary may make allowance for preservation of trees and other ornamental or protective growth where State or local law or policy would otherwise protect the vegetation from removal and where the roadway authority or private crossing holder is notified of the sight distance obstruction and, within a reasonable period specified by the regulation, takes appropriate temporary and permanent action to abate the hazard to roadway users (such as by closing the crossing, posting supplementary signage, installing active warning devices, lowering roadway speed, or installing traffic calming devices).

“(c) NO PREEMPTION.—Notwithstanding section 20106, subsections (a) and (b) of this section do not prohibit a State from continuing in force, or from enacting, a law, regulation, or order requiring the removal of obstructive vegetation from a railroad right-of-way for safety reasons that is more stringent than the requirements of the regulations prescribed pursuant to this section.

“(d) MODEL LEGISLATION.—Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary, after consultation with the Federal Railroad Safety Administration, the Federal Highway Administration, and States, shall develop and make available to States model legislation providing for improving safety by addressing sight obstructions at highway-rail grade crossings that are equipped solely with passive warnings, such as permanent structures, temporary structures, and standing railroad equipment, as recommended by the Inspector General of the Department of Transportation in Report No. MH-2007-044.”.

(b) CONFORMING AMENDMENT.—The table of sections for such subchapter II of chapter 201 is amended by inserting after the item relating to section 20155 the following new item:

“20156. Roadway user sight distance at highway-rail grade crossings.”.

**SEC. 403. GRADE CROSSING SIGNAL VIOLATIONS.**

(a) AMENDMENTS.—Section 20151 of title 49, United States Code, is amended—  
(1) by amending the section heading to read as follows:

**“§ 20151. Railroad trespassing, vandalism, and signal violation prevention strategy”;**

(2) in subsection (a)—

(A) by striking “and vandalism affecting railroad safety” and inserting in lieu thereof “, vandalism affecting railroad safety, and violations of grade crossing signals”;

(B) by inserting “, concerning trespassing and vandalism,” after “such evaluation and review”; and

(C) by inserting “The second such evaluation and review, concerning violations of grade crossing signals, shall be completed before April 1, 2008.” after “November 2, 1994.”;

(3) in the subsection heading of subsection (b), by inserting “FOR TRESPASSING AND VANDALISM PREVENTION” after “OUTREACH PROGRAM”;

(4) in subsection (c)—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(B) by inserting “(1)” after “MODEL LEGISLATION.—”; and

(C) by adding at the end the following new paragraph:

“(2) Within 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary, after consultation with State and local governments, railroad carriers, and rail labor organizations, shall develop and make available to State and local governments model State legislation providing for civil or criminal penalties, or both, for violations of grade crossing signals.”; and

(5) by adding at the end the following new subsection:

“(d) DEFINITION.—For purposes of this section, the term ‘violation of grade crossing signals’ includes any action by a motorist, unless directed by an authorized safety officer—

“(1) to drive around a grade crossing gate in a position intended to block passage over railroad tracks;

“(2) to drive through a flashing grade crossing signal;

“(3) to drive through a grade crossing with passive warning signs without ensuring that the grade crossing could be safely crossed before any train arrived; and

“(4) in the vicinity of a grade crossing, that creates a hazard of an accident involving injury or property damage at the grade crossing.”.

(b) CONFORMING AMENDMENT.—The item relating to section 20151 in the table of sections for subchapter II of chapter 201 of title 49, United States Code, is amended to read as follows:

“20151. Railroad trespassing, vandalism, and signal violation prevention strategy.”.

**SEC. 404. NATIONAL CROSSING INVENTORY.**

(a) IN GENERAL.—Subchapter II of chapter 201 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following new section:

**“§ 20157. National crossing inventory**

“(a) INITIAL REPORTING OF INFORMATION ABOUT PREVIOUSLY UNREPORTED CROSSINGS.—Not later than 1 year after the date of enactment of the Federal Railroad Safety Improvement Act of 2007 or 6 months after a new crossing becomes operational, whichever occurs later, each railroad carrier shall—

“(1) report to the Secretary of Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported crossing through which it operates; or

“(2) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

“(b) UPDATING OF CROSSING INFORMATION.—(1) On a periodic basis beginning not later than 3 years after the date of enactment of the Federal Railroad Safety Improvement Act of 2007 and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall—

“(A) report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each crossing through which it operates; or

“(B) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

“(2) A railroad carrier that sells a crossing or any part of a crossing on or after the date of enactment of the Federal Railroad Safety Improvement Act of 2007 shall, not later than the date that is 18 months after the date of enactment of that Act or 3 months after the sale, whichever occurs later, or as otherwise specified by the Secretary, report to the Secretary current information, as specified by the Secretary, concerning the change in ownership of the crossing or part of the crossing.

“(c) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Department of Transportation’s statement of the national highway-rail crossing inventory policy, procedures, and instruction for States and railroads that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act of 2007, until such provision is superseded by a regulation issued under this section.

“(d) DEFINITIONS.—In this section:

“(1) CROSSING.—The term ‘crossing’ means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where—

“(A) a public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

“(B) a pathway dedicated for the use of nonvehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated.

“(2) STATE.—The term ‘State’ means a State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.”

(b) CONFORMING AMENDMENT.—The table of sections for such subchapter II of chapter 201 is amended by adding at the end the following new item:

“20157. National crossing inventory.”.

(c) REPORTING AND UPDATING.—Section 130 of title 23, United States Code, is amended by adding at the end the following:

“(1) NATIONAL CROSSING INVENTORY.—

“(1) INITIAL REPORTING OF CROSSING INFORMATION.—Not later than 1 year after the date of enactment of the Federal Railroad Safety Improvement Act of 2007 or within 6 months of a new crossing becoming operational, whichever occurs later, each State shall report to the Secretary of Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported crossing located within its borders.

“(2) PERIODIC UPDATING OF CROSSING INFORMATION.—On a periodic basis beginning not later than 3 years after the date of enactment of the Federal Railroad Safety Improvement Act of 2007 and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each State shall report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each crossing located within its borders.

“(3) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this subsection. The Secretary may enforce each provision of the Department of Transportation’s statement of the national highway-rail crossing inventory policy, procedures, and instructions for States and railroads that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act of 2007, until such provision is superseded by a regulation issued under this subsection.

“(4) DEFINITIONS.—In this subsection, the terms ‘crossing’ and ‘State’ have the meaning given those terms by section 20157(d)(1) and (2), respectively, of title 49.”

(d) CIVIL PENALTIES.—(1) Section 21301(a)(1) of title 49, United States Code, is amended—

(A) by inserting “with section 20157 or” after “comply” in the first sentence; and

(B) by inserting “section 20157 of this title or” after “violating” in the second sentence.

(2) Section 21301(a)(2) of title 49, United States Code, is amended by inserting “The Secretary shall impose a civil penalty for a violation of section 20157 of this title.” after the first sentence.

**SEC. 405. ACCIDENT AND INCIDENT REPORTING.**

The Federal Railroad Safety Administration shall conduct an audit of each Class I railroad at least once every 2 years and conduct an audit of each non-Class I railroad at least once every 5 years to ensure that all grade crossing collisions and fatalities are reported to the national accident database.

**SEC. 406. AUTHORITY TO BUY PROMOTIONAL ITEMS TO IMPROVE RAILROAD CROSSING SAFETY AND PREVENT RAILROAD TRESPASS.**

Section 20134(a) of title 49, United States Code, is amended by adding at the end the following: “The Secretary may purchase promotional items of nominal value and distribute them to the public without charge as part of an educational or awareness program to accomplish the purposes of this section and of any other sections of this title related to improving the safety of highway-rail crossings and to prevent trespass on railroad rights of way, and the Secretary shall prescribe guidelines for the administration of this authority.”.

**SEC. 407. OPERATION LIFESAVER.**

(a) GRANT.—The Federal Railroad Safety Administration shall make a grant or grants to Operation Lifesaver to carry out a public information and education program to help prevent and reduce pedestrian, bicycle, motor vehicle, and other incidents, injuries, and fatalities, and to improve awareness along railroad rights-of-way and at highway-rail grade crossings. This includes development, placement, and dissemination of Public Service Announcements in newspaper, radio, television, and other media. It will also include school presentations, brochures and materials, support for public awareness campaigns, and related support for the activities of Operation Lifesaver’s member organizations.

(b) PILOT PROGRAM.—Funds provided under subsection (a) may also be used by Operation Lifesaver to implement a pilot program, to be known as the Railroad Safety Public Awareness Program, that addresses the need for targeted, sustained community outreach on the subjects described in subsection (a). Such pilot program shall be established in States and communities where risk is greatest, in terms of the number of crashes and population density near the railroad, including residences, businesses, and schools. Such pilot program shall be carried out through grants to Operation Lifesaver for work with community leaders, school districts, and public and private partners to identify the communities at greatest risk, and through development of an implementation plan. An evaluation component requirement shall be included in the grant to measure results.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Railroad Safety Administration for carrying out this section \$1,500,000 for each of the fiscal years 2008 through 2011.

**SEC. 408. STATE ACTION PLAN.**

(a) IN GENERAL.—The Secretary shall identify on an annual basis the top 10 States that have had the most highway-rail grade crossing collisions over the past year. The Secretary shall work with each of these States to develop a State Grade Crossing Action Plan that identifies specific solutions for improving safety at crossings, particularly at crossings that have experienced multiple accidents.

(b) REVIEW AND APPROVAL.—Not later than 60 days after the Secretary receives a plan under subsection (a), the Secretary shall review and approve or disapprove it. If the proposed plan is not approved, the Secretary shall notify the affected State as to the specific points in which the proposed plan is deficient, and the State shall correct all deficiencies within 30 days following receipt of written notice from the Secretary.

**SEC. 409. FOSTERING INTRODUCTION OF NEW TECHNOLOGY TO IMPROVE SAFETY AT HIGHWAY-RAIL GRADE CROSSINGS.**

(a) AMENDMENT.—Chapter 201 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following:

**“§ 20165. Fostering introduction of new technology to improve safety at highway-rail grade crossings**

“(a) FINDINGS.—(1) Collisions between highway users and trains at highway-rail grade crossings continue to cause an unacceptable loss of life and serious personal injury and also threaten the safety of rail transportation.

“(2) While elimination of at-grade crossings through consolidation of crossings and grade separations offers the greatest long-term promise for optimizing the safety and efficiency of the two modes of transportation, over 140,000 public grade cross-

ings remain on the general rail system—approximately one for each route mile on the general rail system.

“(3) Conventional highway traffic control devices such as flashing lights and gates are effective in warning motorists of a train’s approach to an equipped crossing.

“(4) Since enactment of the Highway Safety Act of 1973, over \$4,200,000,000 of Federal funding has been invested in safety improvements at highway-rail grade crossings, yet a majority of public highway-rail grade crossings are not yet equipped with active warning systems.

“(5) The emergence of new technologies supporting Intelligent Transportation Systems presents opportunities for more effective and affordable warnings and safer passage of highway users and trains at remaining highway-rail grade crossings.

“(6) Implementation of new crossing safety technology will require extensive cooperation between highway authorities and railroad carriers.

“(7) Federal Railroad Safety Administration regulations establishing performance standards for processor-based signal and train control systems provide a suitable framework for qualification of new or novel technology at highway-rail grade crossings, and the Federal Highway Administration’s Manual on Uniform Traffic Control Devices provides an appropriate means of determining highway user interface with such new technology.

“(b) POLICY.—It is the policy of the United States to encourage the development of new technology that can prevent loss of life and injuries at highway-rail grade crossings. The Secretary of Transportation is designated to carry out this policy in consultation with States and necessary public and private entities.”

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 201 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following new item:

“20165. Fostering introduction of new technology to improve safety at highway-rail grade crossings.”.

## TITLE V—ENFORCEMENT

### SEC. 501. ENFORCEMENT.

Section 20112(a) of title 49, United States Code, is amended—

- (1) by inserting “this part or” in paragraph (1) after “enforce,”;
- (2) by striking “21301” in paragraph (2) and inserting “21301, 21302, or 21303”;
- (3) by striking “subpena” in paragraph (3) and inserting “subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition”; and
- (4) by striking “chapter.” in paragraph (3) and inserting “part.”.

### SEC. 502. CIVIL PENALTIES.

(a) GENERAL VIOLATIONS OF CHAPTER 201.—Section 21301(a)(2) of title 49, United States Code, is amended—

- (1) by striking “\$10,000” and inserting “\$25,000”; and
- (2) by striking “\$20,000” and inserting “\$100,000”.

(b) ACCIDENT AND INCIDENT VIOLATIONS OF CHAPTER 201; VIOLATIONS OF CHAPTERS 203 THROUGH 209.—Section 21302(a)(2) of title 49, United States Code, is amended—

- (1) by striking “\$10,000” and inserting “\$25,000”; and
- (2) by striking “\$20,000” and inserting “\$100,000”.

(c) VIOLATIONS OF CHAPTER 211.—Section 21303(a)(2) of title 49, United States Code, is amended—

- (1) by striking “\$10,000” and inserting “\$25,000”; and
- (2) by striking “\$20,000” and inserting “\$100,000”.

### SEC. 503. CRIMINAL PENALTIES.

Section 21311(b) of title 49, United States Code, is amended by striking “\$500” both places it appears and inserting “\$2,500”.

### SEC. 504. EXPANSION OF EMERGENCY ORDER AUTHORITY.

Section 20104(a)(1) of title 49, United States Code, is amended by striking “death or personal injury” and inserting “death, personal injury, or significant harm to the environment”.

### SEC. 505. ENFORCEMENT TRANSPARENCY.

(a) AMENDMENT.—Subchapter I of chapter 201 of title 49, United States Code, is amended by adding at the end the following:

**“§ 20118. Enforcement transparency**

“(a) IN GENERAL.—Not later than December 31, 2007, the Secretary of Transportation shall—

“(1) provide a monthly updated summary to the public of all railroad enforcement actions taken by the Secretary or the Federal Railroad Safety Administration, from the time a notice commencing an enforcement action is issued until the enforcement action is final;

“(2) include in each such summary identification of the railroad carrier or person involved in the enforcement activity, the type of alleged violation, the penalty or penalties proposed, any changes in case status since the previous summary, the final assessment amount of each penalty, and the reasons for a reduction in the proposed penalty, if appropriate; and

“(3) provide a mechanism by which a railroad carrier or person named in an enforcement action may make information, explanations, or documents it believes are responsive to the enforcement action available to the public.

“(b) ELECTRONIC AVAILABILITY.—Each summary under this section shall be made available to the public by electronic means.

“(c) RELATIONSHIP TO FOIA.—Nothing in this section shall be construed to require disclosure of information or records that are exempt from disclosure under section 552 of title 5.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections of subchapter I of chapter 201 of title 49, United States Code, is amended by adding at the end the following new item:

“20118. Enforcement transparency.”.

**SEC. 506. INTERFERING WITH OR HAMPERING SAFETY INVESTIGATIONS.**

(a) AMENDMENT.—Subchapter II of chapter 213 of title 49, United States Code, is amended by adding at the end the following new section:

**“§ 21312. Interfering with or hampering safety investigations**

“(a) IN GENERAL.—It shall be unlawful for any person knowingly to interfere with, obstruct, or hamper an investigation by the Secretary of Transportation conducted under section 20703 or 20902 of this title, or a railroad investigation by the National Transportation Safety Board under chapter 11 of this title.

“(b) INTIMIDATION AND HARASSMENT.—It shall be unlawful for any person, with regard to an investigation conducted by the Secretary under section 20703 or 20902 of this title, or a railroad investigation by the National Transportation Safety Board under chapter 11 of this title, knowingly or intentionally to use intimidation, harassment, threats, or physical force toward another person, or corruptly persuade another person, or attempt to do so, or engage in misleading conduct toward another person, with the intent or effect of—

“(1) influencing the testimony or statement of any person;

“(2) hindering, delaying, preventing, or dissuading any person from—

“(A) attending a proceeding or interview with, testifying before, or providing a written statement to, a National Transportation Safety Board railroad investigator, a Federal railroad safety inspector or State railroad safety inspector, or their superiors;

“(B) communicating or reporting to a National Transportation Safety Board railroad investigator, a Federal railroad safety inspector, or a State railroad safety inspector, or their superiors, information relating to the commission or possible commission of one or more violations of this part or of chapter 51 of this title; or

“(C) recommending or using any legal remedy available to the Secretary under this title; or

“(3) causing or inducing any person to—

“(A) withhold testimony, or a statement, record, document, or other object, from the investigation;

“(B) alter, destroy, mutilate, or conceal a statement, record, document, or other object with intent to impair the integrity or availability of the statement, record, document, or other object for use in the investigation;

“(C) evade legal process summoning that person to appear as a witness, or to produce a statement, record, document, or other object, in the investigation; or

“(D) be absent from an investigation to which such person has been summoned by legal process.

“(c) ELEMENTS OF VIOLATION.—(1) For the purposes of this section, the testimony or statement, or the record, document, or other object, need not be admissible in evidence or free from a claim of privilege.



“(2) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance that the investigation is being conducted by the Secretary under section 20703 or 20902 of this title or by the National Transportation Safety Board under chapter 11 of this title.

“(d) CRIMINAL PENALTIES.—A person violating this section shall be fined under title 18, imprisoned for not more than 1 year, or both.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections of subchapter II of chapter 213 of title 49, United States Code, is amended by adding at the end the following new item:

“21312. Interfering with or hampering safety investigations.”.

**SEC. 507. RAILROAD RADIO MONITORING AUTHORITY.**

Section 20107 of title 49, United States Code, is amended by inserting at the end the following:

“(c) RAILROAD RADIO COMMUNICATIONS.—

“(1) IN GENERAL.—To carry out the Secretary’s responsibilities under this part and under chapter 51, the Secretary may authorize officers, employees, or agents of the Secretary to conduct the following activities in circumstances the Secretary finds to be reasonable:

“(A) Intercepting a radio communication, with or without the consent of the sender or other receivers of the communication, but only where such communication is broadcast or transmitted over a radio frequency which is—

“(i) authorized for use by one or more railroad carriers by the Federal Communications Commission; and

“(ii) primarily used by such railroad carriers for communications in connection with railroad operations.

“(B) Communicating the existence, contents, substance, purport, effect, or meaning of the communication, subject to the restrictions in paragraph (3).

“(C) Receiving or assisting in receiving the communication (or any information therein contained).

“(D) Disclosing the contents, substance, purport, effect, or meaning of the communication (or any part thereof of such communication) or using the communication (or any information contained therein), subject to the restrictions in paragraph (3), after having received the communication or acquired knowledge of the contents, substance, purport, effect, or meaning of the communication (or any part thereof).

“(E) Recording the communication by any means, including writing and tape recording.

“(2) ACCIDENT PREVENTION AND ACCIDENT INVESTIGATION.—The Secretary, and officers, employees, and agents of the Department of Transportation authorized by the Secretary, may engage in the activities authorized by paragraph (1) for the purpose of accident prevention and accident investigation.

“(3) USE OF INFORMATION.—(A) Information obtained through activities authorized by paragraphs (1) and (2) shall not be admitted into evidence in any administrative or judicial proceeding except—

“(i) in a prosecution of a felony under Federal or State criminal law; or

“(ii) to impeach evidence offered by a party other than the Federal Government regarding the existence, electronic characteristics, content, substance, purport, effect, meaning, or timing of, or identity of parties to, a communication intercepted pursuant to paragraphs (1) and (2) in proceedings pursuant to section 5122, 5123, 20702(b), 20111, 20112, 20113, or 20114 of this title.

“(B) If information obtained through activities set forth in paragraphs (1) and (2) is admitted into evidence for impeachment purposes in accordance with subparagraph (A), the court, administrative law judge, or other officer before whom the proceeding is conducted may make such protective orders regarding the confidentiality or use of the information as may be appropriate in the circumstances to protect privacy and administer justice.

“(C) No evidence shall be excluded in an administrative or judicial proceeding solely because the government would not have learned of the existence of or obtained such evidence but for the interception of information that is not admissible in such proceeding under subparagraph (A).

“(D) Information obtained through activities set forth in paragraphs (1) and (2) shall not be subject to publication or disclosure, or search or review in connection therewith, under section 552 of title 5.

“(E) Nothing in this subsection shall be construed to impair or otherwise affect the authority of the United States to intercept a communication, and col-

lect, retain, analyze, use, and disseminate the information obtained thereby, under a provision of law other than this subsection.

“(4) APPLICATION WITH OTHER LAW.—Section 705 of the Communications Act of 1934 (47 U.S.C. 605) and chapter 119 of title 18 shall not apply to conduct authorized by and pursuant to this subsection.”.

**SEC. 508. INSPECTOR STAFFING.**

The Secretary shall increase the total number of positions for railroad safety inspection and enforcement personnel at the Federal Railroad Safety Administration so that by December 31, 2008, the total number of such positions is at least 500, by December 31, 2009, the total number of such positions is at least 600, by December 31, 2010, the total number of such positions is at least 700, and by December 31, 2011, the total number of positions is at least 800.

## **TITLE VI—MISCELLANEOUS PROVISIONS**

**SEC. 601. POSITIVE TRAIN CONTROL SYSTEMS.**

(a) **IN GENERAL.**—Not later than 12 months after the date of enactment of this Act, each Class I railroad carrier shall develop and submit to the Secretary a plan for implementing a positive train control system by December 31, 2014, that will minimize the risk of train collisions and over-speed derailments, provide protection to maintenance-of-way workers within established work zone limits, and minimize the risk of the movement of a train through a switch left in the wrong position.

(b) **SAFETY REDUNDANCY.**—The positive train control system required under subsection (a) shall provide a safety redundancy to minimize the risk of accidents by overriding human performance failures involving train movements on main line tracks.

(c) **CONTENTS OF PLAN.**—The Secretary may provide technical assistance and guidance to railroad carriers in developing the plans required under subsection (a), and shall require that each railroad carrier include in the plan, at a minimum—

(1) measurable goals, including a strategy and timeline for implementation of such systems;

(2) a prioritization of how the systems will be implemented, with particular emphasis on high-risk corridors such as those that have significant movements of hazardous materials or where commuter and intercity passenger railroads operate;

(3) identification of detailed steps the carriers will take to implement the systems; and

(4) any other element the Secretary considers appropriate.

(d) **REVIEW AND APPROVAL.**—Not later than 90 days after the Secretary receives a plan, the Secretary shall review and approve it. If the proposed plan is not approved, the Secretary shall notify the affected railroad carrier as to the specific points in which the proposed plan is deficient, and the railroad carrier shall correct all deficiencies within 30 days following receipt of written notice from the Secretary. The Secretary shall annually conduct a review to ensure that the railroads are complying with their plans.

(e) **REPORT.**—Not later than December 31, 2011, the Secretary shall transmit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the progress of the railroad carriers in implementing such positive train control systems.

(f) **AUTHORITY TO EXTEND DEADLINE.**—The Secretary may extend the date for implementation required under subsection (a) for any Class I railroad carrier for a period of not more than 24 months if the Secretary determines such an extension is necessary—

(1) to implement a more effective positive train control system than would be possible under the date established in subsection (a);

(2) to obtain interoperability between positive train control systems implemented by railroad carriers;

(3) for the Secretary to determine that a positive train control system meets the requirements of this section and regulations issued by the Secretary; or

(4) to otherwise enhance safety.

(g) **CERTIFICATION.**—The Secretary shall not permit the installation of any positive train control system or component unless the Secretary has certified that such system or component has not experienced a safety-critical failure during prior testing and evaluation. If such a failure has occurred, the system or component may be repaired and evaluated in accordance with part 236 of title 49 of the Code of Federal Regulations and may be installed when the Secretary certifies that the factors caus-

ing the failure have been corrected and approves the system for installation in accordance with such part 236.

(h) NOTICE.—Not later than 30 days after the Secretary grants an extension under subsection (f), the Secretary shall publish a notice in the Federal Register that identifies the Class I railroad carrier that is being granted the extension, the reasons for granting the extension, and the length of the extension.

**SEC. 602. WARNING IN NONSIGNALLED TERRITORY.**

(a) AMENDMENT.—Subchapter II of chapter 201 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following new section:

**“§ 20158. Warning in nonsignaled territory**

“Not later than 12 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall prescribe regulations that require railroads, with respect to main lines in nonsignaled territory without a train speed enforcement system that would stop a train in advance of a misaligned switch, to either—

“(1) install an automatically activated device, in addition to the switch banner, that will, visually or electronically, compellingly capture the attention of the employees involved with switch operations and clearly convey the status of the switch both in daylight and darkness; or

“(2) operate trains at speeds that will allow them to be safely stopped in advance of misaligned switches.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections of subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following new item:

“20158. Warning in nonsignaled territory.”.

**SEC. 603. TRACK SAFETY.**

(a) AMENDMENT.—Subchapter II of chapter 201 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following new section:

**“§ 20159. Track safety**

“(a) RAIL INTEGRITY.—Not later than 12 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall prescribe regulations to require railroad carriers to manage the rail in their tracks so as to minimize accidents due to internal rail flaws. The regulations shall, at a minimum—

“(1) require railroad carriers to conduct ultrasonic or other appropriate inspections to ensure that rail used to replace defective segments of existing rail is free from internal defects;

“(2) require railroad carriers to perform rail integrity inspections to manage an annual service failure rate of less than .1 per track mile on high-risk corridors such as those that have significant movements of hazardous materials or where commuter and intercity passenger railroads operate; and

“(3) encourage railroad carrier use of advanced rail defect inspection equipment and similar technologies as part of a comprehensive rail inspection program.

“(b) CONCRETE CROSSTIES.—Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary shall develop and implement regulations for all classes of track for concrete crossties that address, at a minimum—

“(1) limits for rail seat abrasion;

“(2) concrete crosstie pad wear limits;

“(3) missing or broken rail fasteners;

“(4) loss of appropriate toeload pressure;

“(5) improper fastener configurations; and

“(6) excessive lateral rail movement.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections of subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following new item:

“20159. Track safety.”.

**SEC. 604. CERTIFICATION OF CONDUCTORS.**

(a) AMENDMENT.—Subchapter II of chapter 201 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following new section:

**“§ 20160. Certification of conductors**

“(a) REGULATIONS.—Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall prescribe regulations and issue orders to establish a program requiring the certification of train conductors. In prescribing such regulations, the Secretary shall require that conductors on passenger trains be trained in security, first aid, and emergency preparedness.

“(b) PROGRAM DESIGN.—The program established under this section shall be designed based on the requirements of section 20135(b) through (e).”

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections of subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following new item:

“20160. Certification of conductors.”

**SEC. 605. MINIMUM TRAINING STANDARDS.**

(a) AMENDMENT.—Subchapter II of chapter 201 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following new section:

**“§ 20161. Minimum training standards**

“The Secretary of Transportation shall, not later than 180 days after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, establish—

“(1) minimum training standards for each class and craft of railroad employees, which shall require railroad carriers to qualify or otherwise document the proficiency of their employees in each class and craft regarding their knowledge of, and ability to comply with, Federal railroad safety laws and regulations and railroad carrier rules and procedures promulgated to implement those Federal railroad safety laws and regulations;

“(2) a requirement for railroad carriers to submit their training and qualification programs to the Federal Railroad Safety Administration for approval; and

“(3) a minimum training curriculum, and ongoing training criteria, testing, and skills evaluation measures to ensure that railroad employees charged with the inspection of track or railroad equipment are qualified to assess railroad compliance with Federal standards to identify defective conditions and initiate immediate remedial action to correct critical safety defects that are known to contribute to derailments, accidents, or injury. In implementing the requirements of this paragraph, the Secretary shall take into consideration existing training programs of railroad carriers.”

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections of subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following new item:

“20161. Minimum training standards.”

**SEC. 606. PROMPT MEDICAL ATTENTION.**

(a) AMENDMENT.—Subchapter II of chapter 201 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following new section:

**“§ 20162. Prompt medical attention**

“(a) PROHIBITION.—A railroad or person covered under this title shall not deny, delay, or interfere with the medical or first aid treatment of an employee who is injured during the course of employment. If transportation to a hospital is requested by an employee who is injured during the course of employment, the railroad shall promptly arrange to have the injured employee transported to the nearest medically appropriate hospital.

“(b) DISCIPLINE.—A railroad or person covered under this title shall not discipline, or threaten discipline to, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician. For purposes of this subsection, discipline means to bring charges against a person in a disciplinary proceeding, suspend, terminate, place on probation, or make note of reprimand on an employee’s record.”

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections of subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following new item:

“20162. Prompt medical attention.”

**SEC. 607. EMERGENCY ESCAPE BREATHING APPARATUS.**

(a) AMENDMENT.—Subchapter II of chapter 201 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following new section:

**“§ 20163. Emergency escape breathing apparatus**

“Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall prescribe regulations that require railroads to—

“(1) provide emergency escape breathing apparatus for all crewmembers on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of release; and

“(2) provide their crewmembers with appropriate training for using the breathing apparatus.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections of subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following new item:

“20163. Emergency escape breathing apparatus.”.

**SEC. 608. LOCOMOTIVE CAB ENVIRONMENT.**

Not later than 12 months after the date of enactment of this Act, the Secretary of Transportation shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the effects of the locomotive cab environment on the safety, health, and performance of train crews.

**SEC. 609. TUNNEL INFORMATION.**

Not later than 120 days after the date of enactment of this Act, each railroad carrier (as defined in section 20102 of title 49, United States Code) shall, with respect to each of its tunnels which—

(1) are longer than 1000 feet and located under a city with a population of 400,000 or greater; or

(2) carry 5 or more scheduled passenger trains per day, or 500 or more carloads of Toxic Inhalation Hazardous materials per year,

maintain for at least two years historical documentation of structural inspection and maintenance activities for such tunnels, including information on the methods of ingress and egress into and out of the tunnel, the types of cargos typically transported through the tunnel, and schematics or blueprints for the tunnel, when available. Upon request, a railroad carrier shall also provide periodic briefings to the government of the local jurisdiction in which the tunnel is located, including updates whenever a repair or rehabilitation project substantially alters the methods of ingress and egress. Such governments shall use appropriate means to protect and restrict the distribution of any security sensitive information provided by the railroad carrier under this section, consistent with national security interests.

**SEC. 610. RAILROAD POLICE.**

Section 28101 of title 49, United States Code, is amended by striking “the rail carrier” each place it appears and inserting “any rail carrier”.

**SEC. 611. MUSEUM LOCOMOTIVE STUDY.**

(a) STUDY.—The Secretary of Transportation shall conduct a study of its regulations relating to safety inspections of diesel-electric locomotives and equipment and the safety consequences of requiring less frequent inspections of such locomotives which are operated by museums, including annual inspections or inspections based on accumulated operating hours. The study shall include an analysis of the safety consequences of requiring less frequent air brake inspections of such locomotives.

(b) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary of Transportation shall transmit a report on the results of the study conducted under subsection (a) to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

**SEC. 612. CERTIFICATION OF CARMEN.**

(a) AMENDMENT.—Subchapter II of chapter 201 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following new section:

**“§ 20164. Certification of carmen**

“(a) REGULATIONS.—Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall prescribe regulations and issue orders to establish a program requiring the certification of carmen, including all employees performing mechanical inspections, brake system inspections, or maintenance on freight and passenger rail cars.

“(b) PROGRAM DESIGN.—The program established under this section shall be designed by the Secretary of Transportation based on the requirements of parts 215, 221, 231, 232, and 238 of title 49 of the Code of Federal Regulations.”.

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections of subchapter II of chapter 201 of title 49, United States Code, is amended by adding at the end the following new item:

“20164. Certification of carmen.”.

**SEC. 613. TRAIN CONTROL SYSTEMS DEPLOYMENT GRANTS.**

(a) GRANT PROGRAM.—The Secretary of Transportation shall establish a grant program for the deployment of train control and component technologies, including—

- (1) communications-based train control systems designed to prevent train movement authority violations, over-speed violations, and train collision accidents caused by noncompliance with authorities as well as to provide additional protections to roadway workers and protect against open switches in nonsignal territories;
- (2) remote control power switch technology;
- (3) switch point monitoring technology; and
- (4) track integrity circuit technology.

(b) GRANT CRITERIA.—

(1) ELIGIBILITY.—Grants shall be made under this section to eligible passenger and freight railroad carriers and State and local governments for projects described in subsection (a) that have a public benefit of improved safety or network efficiency.

(2) IMPLEMENTATION PLAN.—An applicant for a grant made pursuant to this section shall file with the Secretary a train control implementation plan that shall describe the overall safety and efficiency benefits of installing systems described in subsection (a) and the stages for implementing such systems.

(3) CONSIDERATION.—The Secretary shall give priority consideration to applications that benefit both passenger and freight safety and efficiency, or incentivize train control technology deployment on high-risk corridors such as those that have significant movements of hazardous materials or where commuter and intercity passenger railroads operate.

(c) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the Secretary such sums as may be necessary for each of fiscal years 2008 through 2011 to carry out this section.

(2) Amounts made available pursuant to this subsection shall remain available until expended.

**SEC. 614. INFRASTRUCTURE SAFETY INVESTMENT REPORTS.**

Not later than February 15th of each year, each Class I railroad shall file a report with both the Federal Railroad Safety Administration and the Surface Transportation Board detailing, by State, the infrastructure investments and maintenance they have performed on their system, including but not limited to track, locomotives, railcars, and grade crossings, in the previous calendar year to ensure the safe movement of freight, and their plans for such investments and maintenance in the current calendar year. Such reports shall be publicly available, and any interested party may file comments about the reports, which also shall be made public.

**SEC. 615. EMERGENCY GRADE CROSSING SAFETY IMPROVEMENTS.**

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Transportation shall establish a grant program to provide for emergency grade crossing safety improvements, including the installation, repair, or improvement of—

- (1) railroad crossing signals, gates, and related technologies, including median barriers and four quadrant gates;
- (2) highway traffic signalization, including highway signals tied to railroad signal systems;
- (3) highway lighting and crossing approach signage;
- (4) roadway improvements, including railroad crossing panels and surfaces; and
- (5) related work to mitigate dangerous conditions.

(b) GRANT CRITERIA.—

(1) ELIGIBILITY.—The Secretary may make grants to State and local governments under this section to provide emergency grade crossing safety improvements at a location where there has been a railroad grade crossing collision with a school bus, or collision involving three or more serious bodily injuries or fatalities.

(2) MAXIMUM AMOUNT.—Grants awarded under paragraph (1) shall not exceed \$250,000 per crossing.

(3) NO STATE OR LOCAL SHARE.—The Secretary shall not require the contribution of a State or local share as a condition of the grant.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of fiscal years 2008 through 2011 to carry out this section. Amounts made available under this subsection shall remain available until expended.

**SEC. 616. CLARIFICATIONS REGARDING STATE LAW CAUSES OF ACTION.**

Section 20106 of title 49, United States Code, is amended—

(1) by inserting “(a) IN GENERAL.—” before “Laws, regulations”; and

(2) by inserting at the end the following new subsection:

“(b) CLARIFICATIONS REGARDING STATE LAW CAUSES OF ACTION.—

“(1) IN GENERAL.—Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has violated the Federal standard of care established by a regulation or order issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to the railroad security matters) covering the subject matter as provided in subsection (a) of this section. This includes actions under State law for a party’s violation of or failure to adequately comply with its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries or for a party’s failure to adequately comply with a law, regulation, or order issued by either of the Secretaries. Actions under State law for a violation of a State law, regulation, or order that is not inconsistent with subsection (a)(2) are also not preempted.

“(2) RETROACTIVITY.—This subsection shall apply to all pending State law causes of action arising from events or activities occurring on or after January 18, 2002.”.

## **TITLE VII—RAIL PASSENGER DISASTER FAMILY ASSISTANCE**

**SEC. 701. SHORT TITLE.**

This title may be cited as the “Rail Passenger Disaster Family Assistance Act of 2007”.

**SEC. 702. ASSISTANCE BY NATIONAL TRANSPORTATION SAFETY BOARD TO FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.**

(a) IN GENERAL.—Subchapter III of chapter 11 of title 49, United States Code, is amended by adding at the end the following:

**“§ 1139. Assistance to families of passengers involved in rail passenger accidents**

“(a) IN GENERAL.—As soon as practicable after being notified of a rail passenger accident within the United States involving a rail passenger carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall—

“(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the rail passenger carrier and the families; and

“(2) designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

“(b) RESPONSIBILITIES OF THE BOARD.—The Board shall have primary Federal responsibility for—

“(1) facilitating the recovery and identification of fatally injured passengers involved in an accident described in subsection (a); and

“(2) communicating with the families of passengers involved in the accident as to the roles of—

“(A) the organization designated for an accident under subsection (a)(2);

“(B) Government agencies; and

“(C) the rail passenger carrier involved,

with respect to the accident and the post-accident activities.

“(c) RESPONSIBILITIES OF DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

“(1) To provide mental health and counseling services, in coordination with the disaster response team of the rail passenger carrier involved.

“(2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

“(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

“(4) To arrange a suitable memorial service, in consultation with the families.

“(d) PASSENGER LISTS.—

“(1) REQUESTS FOR PASSENGER LISTS.—

“(A) REQUESTS BY DIRECTOR OF FAMILY SUPPORT SERVICES.—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the rail passenger carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the rail passenger carrier’s train involved in the accident. A rail passenger carrier shall use reasonable efforts, with respect to its unreserved trains, and passengers not holding reservations on its other trains, to ascertain the names of passengers aboard a train involved in an accident.

“(B) REQUESTS BY DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) may request from the rail passenger carrier involved in the accident a list described in subparagraph (A).

“(2) USE OF INFORMATION.—The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

“(e) CONTINUING RESPONSIBILITIES OF THE BOARD.—In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident—

“(1) are briefed, prior to any public briefing, about the accident and any other findings from the investigation; and

“(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

“(f) USE OF RAIL PASSENGER CARRIER RESOURCES.—To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the rail passenger carrier involved in the accident to facilitate the reasonable use of the resources of the carrier.

“(g) PROHIBITED ACTIONS.—

“(1) ACTIONS TO IMPEDE THE BOARD.—No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

“(2) UNSOLICITED COMMUNICATIONS.—No unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual (other than an employee of the rail passenger carrier) injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.

“(3) PROHIBITION ON ACTIONS TO PREVENT MENTAL HEALTH AND COUNSELING SERVICES.—No State or political subdivision may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

“(h) DEFINITIONS.—In this section, the following definitions apply:

“(1) RAIL PASSENGER ACCIDENT.—The term ‘rail passenger accident’ means any rail passenger disaster occurring in the provision of—



“(A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or

“(B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation, regardless of its cause or suspected cause.

“(2) RAIL PASSENGER CARRIER.—The term ‘rail passenger carrier’ means a rail carrier providing—

“(A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or

“(B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation, except that such term shall not include a tourist, historic, scenic, or excursion rail carrier.

“(3) PASSENGER.—The term ‘passenger’ includes—

“(A) an employee of a rail passenger carrier aboard a train;

“(B) any other person aboard the train without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the rail transportation; and

“(C) any other person injured or killed in the accident.

“(i) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.

“(j) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—

“(1) GENERAL RULE.—This section (other than subsection (g)) shall not apply to a railroad accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

“(2) BOARD ASSISTANCE.—If this section does not apply to a railroad accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.”.

(b) CONFORMING AMENDMENT.—The table of sections for such chapter is amended by inserting after the item relating to section 1138 the following:

“1139. Assistance to families of passengers involved in rail passenger accidents.”.

**SEC. 703. RAIL PASSENGER CARRIER PLANS TO ADDRESS NEEDS OF FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.**

(a) IN GENERAL.—Part C of subtitle V of title 49, United States Code, is amended by adding at the end the following new chapter:

**“CHAPTER 251—FAMILY ASSISTANCE**

“Sec.

“25101. Plans to address needs of families of passengers involved in rail passenger accidents.

**“§ 25101. Plans to address needs of families of passengers involved in rail passenger accidents**

“(a) SUBMISSION OF PLANS.—Not later than 6 months after the date of the enactment of this section, each rail passenger carrier shall submit to the Secretary of Transportation and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving a train of the rail passenger carrier and resulting in a major loss of life.

“(b) CONTENTS OF PLANS.—A plan to be submitted by a rail passenger carrier under subsection (a) shall include, at a minimum, the following:

“(1) A plan for publicizing a reliable, toll-free telephone number, and for providing staff, to handle calls from the families of the passengers.

“(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1139(a)(2) of this title or the services of other suitably trained individuals.

“(3) An assurance that the notice described in paragraph (2) will be provided to the family of a passenger as soon as the rail passenger carrier has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified) and, to the extent practicable, in person.

“(4) An assurance that the rail passenger carrier will provide to the director of family support services designated for the accident under section 1139(a)(1)

of this title, and to the organization designated for the accident under section 1139(a)(2) of this title, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for the rail passenger carrier to use reasonable efforts to ascertain the names of passengers aboard a train involved in an accident.

“(5) An assurance that the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within the control of the rail passenger carrier.

“(6) An assurance that if requested by the family of a passenger, any possession of the passenger within the control of the rail passenger carrier (regardless of its condition) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.

“(7) An assurance that any unclaimed possession of a passenger within the control of the rail passenger carrier will be retained by the rail passenger carrier for at least 18 months.

“(8) An assurance that the family of each passenger or other person killed in the accident will be consulted about construction by the rail passenger carrier of any monument to the passengers, including any inscription on the monument.

“(9) An assurance that the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

“(10) An assurance that the rail passenger carrier will work with any organization designated under section 1139(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.

“(11) An assurance that the rail passenger carrier will provide reasonable compensation to any organization designated under section 1139(a)(2) of this title for services provided by the organization.

“(12) An assurance that the rail passenger carrier will assist the family of a passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

“(13) An assurance that the rail passenger carrier will commit sufficient resources to carry out the plan.

“(14) An assurance that the rail passenger carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

“(15) An assurance that, upon request of the family of a passenger, the rail passenger carrier will inform the family of whether the passenger’s name appeared on any preliminary passenger manifest for the train involved in the accident.

“(c) LIMITATION ON LIABILITY.—A rail passenger carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the rail passenger carrier in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by the rail passenger carrier under subsection (b), unless such liability was caused by conduct of the rail passenger carrier which was grossly negligent or which constituted intentional misconduct.

“(d) DEFINITIONS.—In this section—

“(1) the terms ‘rail passenger accident’ and ‘rail passenger carrier’ have the meanings such terms have in section 1139 of this title; and

“(2) the term ‘passenger’ means a person aboard a rail passenger carrier’s train that is involved in a rail passenger accident.

“(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.”

(b) CONFORMING AMENDMENT.—The table of chapters for subtitle V of title 49, United States Code, is amended by adding after the item relating to chapter 249 the following new item:

“251. FAMILY ASSISTANCE ..... 25101”.

**SEC. 704. ESTABLISHMENT OF TASK FORCE.**

(a) ESTABLISHMENT.—The Secretary of Transportation, in cooperation with the National Transportation Safety Board, organizations potentially designated under section 1139(a)(2) of title 49, United States Code, rail passenger carriers, and families which have been involved in rail accidents, shall establish a task force con-

sisting of representatives of such entities and families, representatives of passenger rail carrier employees, and representatives of such other entities as the Secretary considers appropriate.

(b) MODEL PLAN AND RECOMMENDATIONS.—The task force established pursuant to subsection (a) shall develop—

(1) a model plan to assist passenger rail carriers in responding to passenger rail accidents;

(2) recommendations on methods to improve the timeliness of the notification provided by passenger rail carriers to the families of passengers involved in a passenger rail accident;

(3) recommendations on methods to ensure that the families of passengers involved in a passenger rail accident who are not citizens of the United States receive appropriate assistance; and

(4) recommendations on methods to ensure that emergency services personnel have as immediate and accurate a count of the number of passengers onboard the train as possible.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report containing the model plan and recommendations developed by the task force under subsection (b).

#### PURPOSE OF THE LEGISLATION

H.R. 2095 reauthorizes the Federal Railroad Administration and establishes safety measures to prevent railroad fatalities, injuries, and hazardous materials releases.

#### BACKGROUND AND NEED FOR LEGISLATION

The Subcommittee on Railroads, Pipelines, and Hazardous Materials has jurisdiction over rail safety and programs administered by the Federal Railroad Administration (“FRA”). The FRA is one of 10 modal agencies within the U.S. Department of Transportation (“DOT”). It was created in 1966 by the Department of Transportation Act, when all safety responsibilities of the Interstate Commerce Commission were transferred to the DOT.

The FRA’s safety responsibilities were further enhanced by the Federal Railroad Safety Act of 1970, the Federal Railroad Safety Authorization Act of 1973, the Federal Railroad Safety and Hazardous Materials Transportation Amendments of 1974, the Federal Railroad Safety Authorization Act of 1976, the Federal Railroad Safety Amendments Act of 1978, the Federal Railroad Safety Authorization Act of 1980, the Railroad Safety and Service Improvement Act of 1982, the Rail Safety Improvement Act of 1988, the Railroad Safety Enforcement and Review Act of 1991, and the Federal Railroad Safety Authorization Act of 1994.

One of the main responsibilities of the FRA is to promulgate and enforce rail safety regulations. It also conducts research and development in support of improved rail safety. In addition, the FRA has a number of responsibilities relating to rail security, including assessing civil and criminal penalties for actions that impair or impede the operation of railroad equipment.

The FRA has the authority to issue regulations and orders pertaining to rail safety and security and to issue civil and criminal penalties to enforce those regulations and orders. Under current law, all laws, regulations, and orders related to rail safety and security must be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to rail safety or security until the Secretary of Transportation or the Secretary of Homeland Security prescribes a regulation or issues an order covering the subject matter of the State require-

ment. A State may adopt or continue in force an additional or more stringent law, regulation, or order only in instances where the law, regulation, or order is necessary to eliminate or reduce an essentially local safety or security hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not unreasonably burden interstate commerce.

The preemption standard has been a concern among some states and localities that have tried to adopt regulations requiring trains to operate at slower speeds and railroads to re-route hazardous materials around heavily populated areas. (The routing of trains is subject to the jurisdiction of the Surface Transportation Board.) The preemption standard has also been an issue for rail accident victims who are seeking relief for injuries or damages from the railroads in court. A number of recent Federal court decisions surprisingly reached the conclusion that the standard does not just preempt state or local regulations that conflict with Federal regulations, but also preempts state tort liability law, thereby preventing the injured parties from bringing a state suit against the carrier. See *Lundeen v. Canadian Pacific Railway Co.*, \_\_\_ F.3d \_\_\_ (No. 05-1918, 8th Cir., May 16, 2006); *Mehl v. Canadian Pacific Railway Ltd.*, (No. 4-02-cv-009, D.N.D. March 6, 2006). Congress disagreed with the Federal court decisions related to the Minot, North Dakota accident and adopted a provision to clarify the intent and interpretations of the existing preemption statute in Public Law 110-259, the “Implementing Recommendations of the 9/11 Commission Act of 2007”, which the President signed into law on August 3, 2007.

P.L. 110-259 clarifies that section 20106 of title 49, United States Code, does not preempt State law causes of action where a party has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary of Transportation or the Secretary of Homeland Security, its own plan or standard that it created pursuant to a regulation or order issued by either of the Secretaries, or a State law, regulation, or order that is not incompatible with section 20106(a)(2). P.L. 110-259 also clarifies that section 20106 applies to all pending State law causes of action arising from activities or events occurring on or after January 18, 2002, the date of the Minot, North Dakota derailment.

The FRA relies on 421 Federal safety inspectors and 160 state safety inspectors to monitor the railroads’ compliance with federally mandated safety standards. The Federal inspectors work in eight regional offices and are divided into five safety disciplines—Track and Structures, Signal and Train Control, Motive Power and Equipment, Operating Practices, Hazardous Materials, and Drug and Alcohol. They also promote numerous initiatives under the Highway-Rail Grade Crossing and Trespasser Prevention Programs.

Central to the success of the Federal rail safety program is the ability to understand the nature of rail-related accidents and to analyze trends in railroad safety. To do this, the FRA relies heavily on information that is reported by the railroads following accidents and incidents. Railroad accident reports attribute more than 90 percent of grade crossing collisions to motorists. According to the DOT Inspector General (“Inspector General”), the FRA does not routinely review locomotive event recorder data, police reports, and

other sources of information to determine the causes of the collisions or the need for further investigation.

The Inspector General also found that the FRA investigated few accidents and recommended few findings of critical safety defects identified through inspections. The FRA investigates two-tenths of one percent of all accidents and incidents involving railroads. With regard to findings of violations, from 2002 through 2004, FRA inspectors identified 7,490 critical safety defects out of 69,405 total safety defects related to automated grade crossing warning signals. Yet, FRA recommended only 347 critical defects, or about five percent, for findings of violations that carry a fine. According to the Inspector General, the FRA's policy of inspectors using their discretion in deciding whether to recommend a violation has resulted in the small number of critical defects recommended for violations. Furthermore, after violations are determined, Federal law allows the FRA to negotiate-down the amount of civil penalties proposed, resulting in the collection of lower penalties, despite the many critical safety defects found.

Over the past 30 years, the number of train accidents has been reduced significantly. Since 1978, there has been a 71 percent decline in train accidents. Total rail-related fatalities declined 46 percent and total employee cases (fatal and nonfatal) have dropped 91 percent. According to the Bureau of Labor Statistics, the rail industry is currently rated safer than trucking, construction, and aviation.

However, in recent years, the total number of train accidents has increased significantly. Since the FRA was last reauthorized in 1994, the total number of train accidents, including collisions and derailments, increased from 2,504 in 1994 to 3,325 in 2005. In 2006, the number of train accidents decreased to 2,835. Although train accidents declined in 2006, it is unclear if this one-year progress will be sustained.

In addition, serious accidents continue to occur. On January 6, 2005, Norfolk Southern train 192 traveling through Graniteville, South Carolina, encountered an improperly lined switch that diverted the train from the main line on to an industry track, where it struck an unoccupied, parked train (P22). The collision derailed both locomotives and 16 of the 42 freight cars of train 192, as well as the locomotive and one of the two cars of train P22. Among the derailed cars from train 192 were three tank cars containing chlorine, one of which was breached, releasing chlorine gas. The train engineer and eight other people died as a result of chlorine gas inhalation. About 554 people complaining of respiratory difficulties were taken to local hospitals. Of these people, 75 were admitted for treatment. Because of the chlorine release, about 5,400 people within a one-mile radius of the derailment site were evacuated for several days. Total damages exceeded \$6.9 million.

On June 28, 2004, a westbound Union Pacific ("UP") train traveling on the same main line track as an eastbound BNSF train near Macdona, Texas, struck the midpoint of the 123-car BNSF train as it was leaving the main line to enter a parallel siding. The collision derailed four locomotive units and the first 19 cars of the UP train as well as 17 cars of the BNSF train. As a result of the derailment, the sixteenth car of the UP train, a pressure tank car loaded with liquefied chlorine, ruptured. Chlorine escaping from

the punctured car immediately vaporized into a cloud of chlorine gas that engulfed the accident area to a radius of 700 feet. Three people died, including the conductor of the UP train and two local residents, as a result of chlorine gas inhalation. The UP engineer, 23 civilians, and six emergency responders were treated for respiratory distress and other injuries.

On January 18, 2002, a Canadian Pacific freight train derailed 31 of its 112 cars about one-half mile west of the city limits of Minot, North Dakota. Five tank cars carrying anhydrous ammonia, a liquefied compressed gas, catastrophically ruptured, and a vapor plume covered the derailment site and surrounding area. One resident was fatally injured, 11 people sustained serious injuries, and 322 people, including the two train crewmembers, sustained minor injuries. Damages exceeded \$2 million, and more than \$8 million has been spent for environmental remediation.

#### HUMAN FACTORS AND FATIGUE

Human factors are responsible for nearly 40 percent of all train accidents, and the FRA reports that fatigue plays a role in approximately one of four accidents caused by human factors. The National Transportation Safety Board's ("NTSB") in-depth investigations of accidents have also demonstrated that fatigue is a major factor in transportation accidents. According to the NTSB, "the current railroad hours-of-service laws permit, and many railroad carriers require, the most burdensome fatigue-inducing work schedule of any federally-regulated transportation mode in this country."

A commercial airline pilot (part 121) can work up to 100 hours per month; a commercial airline pilot (part 135) can work up to 120 hours per month; shipboard personnel (ocean going) can work up to 360 hours per month; and a truck driver can be on-duty up to 350 hours per month. Meanwhile, train crews can operate a train up to 432 hours per month. That equates to more than 14 hours a day for each of those 30 days.

On numerous occasions, the NTSB has recommended that the FRA establish within two years scientifically based hours-of-service regulations that set limits on hours-of-service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements. However, the FRA is the only modal administration within DOT that has hours-of-service standards mandated by statute and, therefore, may not be adjusted or modified by administrative procedures.

The Hours of Service Act was first enacted in 1907; it was last substantially amended in 1969. Since that time, a number of serious train accidents have occurred as a result of operator fatigue. One of the issues of concern relating to fatigue is "limbo time". Limbo time is a term used to describe the period of time when a train operating crew's hours-of-service has expired, but the crew has not yet arrived at their point of final release, which is the off-duty location or terminal point where the crew can go home or obtain food and lodging at an away-from-home terminal. Limbo time also accrues for train operating crews whose trains are stopped on a line of track, frequently due to the expiration of their 12-hour on-duty time limit, before they reach their destination terminal (point of final release). Limbo time accrues from the time the train is stopped until the crew arrives at the final release point, and in-

cludes time spent in transportation to their final release point, as well as time spent waiting for transportation to pick them up from their train.

During limbo-time, crew members are required to stay awake, alert, and able to respond to any situation and follow the railroad's operating rules. Although current law does not classify limbo time as either on-duty or off-duty time, any required minimum rest period does not begin until the limbo time period ends. Limbo time can and has kept railroad operating crews effectively on-duty for significantly more than the 12-hour on-duty time limit. For instance, in the 2004 Macdona, Texas train accident, the UP engineer worked for 22 hours (12 hours on-duty and 10 hours of limbo time).

As a result of that accident, the NTSB concluded, "[t]he minimum rest periods prescribed by Federal regulations do not take into account either rotating work schedules or the accumulated hours spent working and in limbo time, both of which can affect the ability of an employee to obtain full rest and recuperation between job assignments." The NTSB recommended that the FRA require railroads to use scientifically based principles when assigning work schedules for train crew members, which consider factors that impact sleep needs, to reduce the effects of fatigue and establish requirements that limit train crewmember limbo time to address fatigue.

The NTSB also stated that it "remains concerned about the safety of railroad operations where backup systems are not available to intervene when, as in this accident, a train crew operates a train improperly or fails to comply with wayside signals. NTSB accident investigations over the past three decades have shown that the most effective way to prevent train-to-train collisions is through the use of a positive train control ("PTC") system that will automatically assume some control of a train when the train crew does not comply with signal indications."

Over the years, the NTSB has issued a series of recommendations on PTC. In fact, PTC has remained on the Board's Most Wanted Transportation Safety Improvements list since 1990. The NTSB concluded that the Macdona, Texas, accident is "another in a long series of railroad accidents that could have been prevented had there been a PTC system in place at the accident location."

#### TRACK-RELATED ACCIDENTS

In 2006, defective track was the leading cause of all train accidents. Prior to 2006, it was either the leading or second leading cause of all train accidents. A series of recent high-profile accidents have called into question the adequacy of track safety regulations, the railroads' track inspection and maintenance programs, and the FRA's oversight of those programs.

On March 12, 2007, a CSX train derailed in Oneida, New York. The cause was defective track. It was one of a series of accidents in Upstate New York, and the FRA launched a rail inspection project to check 1,300 miles of CSX track across New York State for flaws that might lead to a train derailment. On April 18, 2007, the FRA announced that it had found 78 track defects and one serious violation during the audit. The FRA's ongoing review of rail safety in New York has now been expanded to other railroads.

On April 3, 2005, a westbound Amtrak train derailed on BNSF's tracks in Home Valley, Washington. Thirty passengers sustained minor injuries; 14 of those people were taken to local hospitals. Track and equipment damages, in addition to clearing costs associated with the accident, totaled about \$854,000. The NTSB determined that the cause of the accident was BNSF's inadequate response to multiple reports of rough track conditions that were subsequently attributed to excessive concrete crosstie abrasion, which allowed the outer rail to rotate outward and create a wide-gage track condition. Contributing to the accident was the FRA's failure to provide adequate track safety standards for concrete crossties.

On April 6, 2004, an Amtrak train derailed on Canadian National-owned and maintained track near Flora, Mississippi. The entire train derailed, including one locomotive, one baggage car, and eight passenger cars. The derailment resulted in one fatality, three serious injuries, and 43 minor injuries. The equipment costs associated with the accident totaled about \$7 million. In its Railroad Accident Report, the NTSB determined that the probable cause of the accident was "the failure of the Canadian National Railway Company to properly maintain and inspect its track, resulting in rail shift and the subsequent derailment of the train, and the Federal Railroad Administration's ineffective oversight to ensure proper maintenance of the track by the railroad."

On October 16, 2004, a UP freight train derailed three locomotives and 11 cars near Pico Rivera, California. Small amounts of hazardous materials were released from the transported cargo. There were no injuries to area residents, the train crew, or the emergency response personnel. UP estimated the monetary damage at \$2.7 million. In its Railroad Accident Report, the NTSB determined "that the probable cause of the derailment was the failure of a pair of insulated joint bars due to fatigue cracking. Contributing to the accident was the lack of an adequate on-the-ground inspection program for identifying cracks in rail joint bars before they grow to critical size."

On January 18, 2002, a Canadian Pacific freight train derailed 31 of its 112 cars near Minot, North Dakota. Five tank cars carrying anhydrous ammonia, a liquefied compressed gas, catastrophically ruptured, and a vapor plume covered the derailment site and surrounding area. About 11,600 people that occupied the area were affected by the vapor plume. One resident was fatally injured, and 60 to 65 residents of the neighborhood nearest the derailment site were rescued. As a result of the accident, 11 people sustained serious injuries, and 322 people, including the two train crew members, sustained major injuries. Damages exceeded \$2 million, and more than \$8 million has been spent in environmental remediation.

In its Railroad Accident Report, the NTSB determined that the probable cause of the derailment was "an ineffective Canadian Pacific Railway inspection and maintenance program that did not identify and replace cracked joint bars before they completely fractured and led to the breaking of the rail at the joint." The NTSB also found that the FRA's requirements regarding rail joint bars in continuous welded rail ("CWR") were ineffective and that the FRA's oversight of Canadian Pacific's CWR program was ineffective, because the FRA neither reviewed the CWR program nor ensured



that its track inspectors had copies of the CWR programs to determine if the railroad was in compliance with it.

On March 17, 2001, a westbound Amtrak train traveling on BNSF tracks derailed near Nodaway, Iowa. As a result of the derailment, one person died and 77 people were injured. The NTSB determined that the probable cause of the derailment of the Amtrak train was the failure of the rail beneath the train, due to undetected internal defects. BNSF had failed to inspect the rail that it used to replace a defective rail. The replacement rail was also defective. According to the NTSB, contributing to the accident was the BNSF's lack of a comprehensive method for ensuring that replacement rail is free from internal defects.

#### GRADE-CROSSING ACCIDENTS

There are 243,016 grade crossings in the United States, of which 149,628 (62 percent) are public crossings. Of these public crossings, 63,387 (42 percent) have automatic warning devices.

Since the FRA was reauthorized in 1994, significant progress has been made in reducing collisions and fatalities at grade crossings. From 1994 to 2006, total train miles traveled in the United States increased from 655 million miles to 810 million miles, and the total miles traveled by motor vehicle increased from 2.3 trillion miles to 2.9 trillion miles. During the same period, collisions at the nation's grade crossings have decreased from 4,979 in 1994 to 2,908 in 2006. Fatalities have also decreased from 615 in 1994 to 366 in 2006, and injuries have decreased from 1,961 to 1,006 during the same period.

The Inspector General reports that this significant decrease was attributable to DOT addressing much of the "low-hanging fruit"; that is, working with the States and railroads to close grade crossings, install automatic gates and flashing lights at public crossings with a high probability for collisions, and educate the public about crossing safety. DOT also made progress in implementing safety initiatives included in its 1994 Grade Crossing Safety Action Plan.

Recent audit reports of the Inspector General, however, show that DOT can do more to improve grade crossing safety. The audits were requested by Chairman Oberstar, Subcommittee on Railroads, Pipelines, and Hazardous Materials Chairwoman Brown, and former Senator Hollings in response to a series of New York Times articles that alleged problems with railroad accident reporting, investigations at grade crossings, and several other safety issues.

The Inspector General found that railroads failed to report 21 percent of reportable grade-crossing collisions to the National Response Center ("NRC"). Railroads are required to report grade-crossing collisions involving fatalities and/or multiple injuries to passengers or train crew members, and fatalities to motorists or pedestrians involved in grade-crossing collisions to the NRC. Pursuant to FRA regulations, railroads are required to report accidents within two hours. Immediate reporting allows the Federal Government to decide whether or not to conduct an investigation shortly after a grade-crossing collision has occurred. The Inspector General's analysis showed that 115 of 543 (21 percent) reportable grade-crossing collisions that occurred between May 1, 2003, and December 31, 2004, were not reported to the NRC as required by FRA regulations. Although the 115 unreported grade-crossing colli-

sions, which resulted in 116 fatalities, were reported to the FRA within 30 to 60 days after the collision, the delayed reporting did not allow Federal authorities to promptly decide whether or not to conduct an investigation immediately after an accident. In July 2004, the FRA began reconciling its database with the NRC to identify unreported accidents. In March 2005, it began issuing findings of violations to railroads failing to follow reporting requirements.

The Inspector General also found that the Federal Government investigated only a small number of grade-crossing collisions and needs to collect and analyze independent information on all grade-crossing collisions. From 2000 through 2004, the FRA investigated 47 of 376 (13 percent) of the most serious grade-crossing collisions that occurred—those collisions resulting in three or more fatalities and/or severe injuries. No Federal investigations were conducted for the remaining 329 grade-crossing collisions. Those collisions resulted in 159 fatalities and 1,024 injuries. FRA officials stated that the NTSB is the lead Federal agency responsible for investigating railroad accidents, not the FRA. However, the NTSB tends to investigate only high-profile, grade-crossing collisions. For example, from 2000 through 2004, the NTSB conducted seven grade-crossing collision investigations. Consequently, the Federal Government did not independently investigate most grade-crossing collisions, but rather received information concerning the causes of collisions almost exclusively from the railroads.

The railroads' grade-crossing accident reports attributed more than 90 percent of the collisions that occurred from 2000 through 2004 to motorists, but the FRA did not conduct its own investigations to verify the causes. Independently collecting and analyzing information about grade-crossing collisions would substantially improve the FRA's ability to determine the causes of grade-crossing collisions and better target collisions that should be investigated further. The collection and analysis of this information is especially important given the limited resources of the FRA's inspection staff. Nationwide, 55 of 421 FRA inspectors are assigned to inspect the 63,387 warning signal systems at grade crossings.

The small number of FRA inspectors, combined with the extensiveness of the U.S. railroad system, limits the FRA's ability to investigate each accident or incident and inspect each railroad and mile of track. In 2004, the Federal Aviation Administration ("FAA") conducted on-site investigations of 1,392, or 93 percent, of the 1,484 general aviation accidents that the FAA had responsibility for investigating in 2004. Unlike the FRA, however, the FAA has an Office of Accident Investigations staffed with eight full-time investigators whose mission is to detect unsafe conditions and trends and to coordinate the process for corrective actions. In addition, the FAA uses personnel from other disciplines to conduct investigations, including 2,989 inspectors from its Office of Aviation Safety.

The Inspector General also found that the FRA investigated few accidents and recommended few findings of violations for critical safety defects identified through inspections. According to the Government Accountability Office, the FRA investigates two-tenths of one percent of all railroad operations. From 2002 through 2004, for example, FRA inspectors identified 7,490 critical safety defects out of 69,405 total safety defects related to automated grade crossing

warning signals. Yet, FRA recommended only 347 critical defects, or about five percent, for findings of violations that carry a fine. According to the Inspector General, the FRA's policy of inspectors using their discretion in deciding whether to recommend a violation has resulted in a small number of critical defects recommended for violations. Furthermore, after violations are determined, Federal law allows the FRA to negotiate-down the amount of civil penalties proposed, resulting in the collection of lower penalties, despite the many critical safety defects found. According to the Inspector General, on average, the FRA settles fines with the railroad at about 60 cents on the dollar.

Finally, the Inspector General found that the FRA needed to do more to improve grade-crossing safety by addressing sight obstructions, including overgrown vegetation, permanent and temporary structures, and standing railroad equipment, that block highway users' view of approaching trains. Of the 15,416 grade-crossing reports submitted by the railroads from 2001 through 2005, 689 reports documented a sight obstruction. These 689 collisions resulted in 87 fatalities and 242 injuries.

Nationwide, there are nearly 76,000 public grade crossings that are not protected with automated warning devices. In coming years, many of these crossings will require the installation of warning devices as rail and highway traffic volumes increase. In addition, crossings currently equipped with warning lights may require the installation of crossing gates. This need is highlighted by an accident with multiple fatalities which occurred on Easter 2007. Three teenage students died when their car was struck by a freight train at a railroad crossing in Excelsior Springs, Missouri. The crossing was equipped with flashing warning signal lights, but no crossing gates.

Currently, FRA regulations require the railroads to address vegetation growth at these public grade crossings. Some states have passed more stringent laws or issued more stringent regulations that address vegetation and other sight obstructions at grade crossings, but the FRA has no assurance that overgrown vegetation and sight obstructions are addressed in States that lack such laws.

#### SUMMARY OF THE LEGISLATION

##### *Section 1. Short title; table of contents*

This section designates the title of the Act as the "Federal Railroad Safety Improvement Act of 2007".

##### *Section 2. Definitions*

This section states that, for purposes of this Act, the terms "railroad" and "railroad carrier" have the meaning given those terms in section 20102 of title 49, United States Code.

#### Title I. Federal Railroad Safety Administration

##### *Section 101. Establishment of Federal Railroad Safety Administration*

This section amends section 103 of title 49, United States Code, to reestablish the Federal Railroad Administration as the Federal Railroad Safety Administration.

This section also directs the Administration to consider the assignment of maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in railroad transportation. In addition, this section directs the Administration to have an Associate Administrator for Rail Safety appointed in the competitive service by the Secretary. The Associate Administrator shall be the Chief Safety Officer of the Administration, and shall carry out the duties and powers prescribed by the Administrator.

*Section 102. Railroad safety strategy*

This section requires the Secretary of Transportation to develop a long-term strategy for improving rail safety, which must include an annual plan and schedules for reducing the number and rates of accidents, injuries, and fatalities involving railroads; improving the consistency and effectiveness of enforcement and compliance programs; identifying and targeting enforcement at, and safety improvements to, high-risk highway-rail grade crossings; and improving research efforts to enhance and promote railroad safety and performance. The strategy and annual plans must include estimates of the funds and staff resources needed to accomplish each activity, and be submitted to Congress at the same time as the President's budget submission.

Subsection (d) requires the Secretary and the Administrator of the Federal Railroad Safety Administration, no less frequently than semiannually, to assess the progress of the Administration toward achieving each of the strategic goals described above. An annual report must be submitted to Congress on the performance of the Federal Railroad Safety Administration relative to the goals of the railroad safety strategy and annual plans.

*Section 103. Reports*

This section requires the Inspector General of the Department of Transportation to submit to the Secretary of Transportation and the Administrator of the Federal Railroad Safety Administration, within 30 days of the date of enactment, a report containing a list of each statutory mandate regarding railroad safety that has not been implemented and a list of each open safety recommendation made by the National Transportation Safety Board or the Inspector General regarding railroad safety.

Subsection (b)(1) requires the Secretary, not later than 90 days after the date of enactment, and every 180 days thereafter until each of the mandates has been implemented, to transmit to Congress a report on the specific actions taken to implement such mandates.

Subsection (b)(2) requires the Secretary, not later than January 1 of each year, to transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing each open safety recommendation made by the National Transportation Safety Board or the Inspector General regarding railroad safety, a copy of the Department of Transportation's response to each of the recommendations, and a progress report on implementing such recommendations.

*Section 104. Rulemaking process*

This section prohibits the Secretary from issuing a rule or order that incorporates by reference a code, rule, standard, requirement, or practice issued by an association or other entity that is not an agency of the Federal Government, unless that reference is to a particular code, rule, standard, requirement, or practice adopted before the date on which the rule is issued by the Secretary, and unless the date on which the code, rule, standard, requirement, or practices was adopted is specifically cited in the rule.

*Section 105. Authorization of appropriations*

This section amends section 20117 of title 49, United States Code, to authorize to be appropriated a total of \$1.12 billion for fiscal years 2008 through 2011 to the Secretary to carry out his or her rail safety responsibilities. With amounts appropriated, the Secretary is directed to purchase six Gage Restraint Measurement System vehicles and five track geometry vehicles to enable the deployment of one Gage Restraint Measurement System vehicle and one track geometry vehicle in each region. In addition, \$18 million is authorized to be appropriated to the Secretary to design, develop, and construct the Facility for Underground Rail Station and Tunnel at the Transportation Technology Center in Pueblo, Colorado. The facility shall be used to test and evaluate the vulnerabilities of above-ground and underground rail tunnels to prevent accidents and incidents in such tunnels, to mitigate and remediate the consequences of any such accidents or incidents, and to provide a realistic training scenario for training emergency responders. Funding is also authorized to be appropriated to the Secretary for rail security personnel in regional offices and in Washington, DC.

Title II. Employee Fatigue

*Section 201. Hours-of-service reform*

The Committee has received testimony on the importance of strengthening hours-of-service standards for railroad workers and mitigating fatigue. The Committee has also received testimony on the importance of eliminating limbo time.

The NTSB, following a recent investigation of a train accident in Macdona, Texas, recommended that the FRA limit train crewmember limbo time to address fatigue. The NTSB investigation found that in June 2004, the month of the accident, “the Union Pacific engineer worked at least part of 22 days and that his time on duty ranged from nine hours to more than 18 hours. Eleven of his work days were longer than 14 hours, with one day totaling 22 hours (12 hours on-duty and 10 hours of limbo time).”

According to the accident report, the NTSB was concerned that, “because minimum rest periods prescribed under the hours of service regulations do not take limbo time into account, such time could have cumulative detrimental effects on crewmember fatigue.”

The NTSB concluded that limbo time, which is limited neither by Federal regulation nor railroad operating rules, could be a factor in crewmember fatigue in that required rest periods do not take into account the extended hours of wakefulness before the rest period begins. The NTSB stated: “The combination of erratic work sched-

ules and excess limbo time would be expected to have a detrimental impact on crewmember fatigue \* \* \*.”

This section seeks to strengthen the hours-of-service standards for signal and train employees by providing them with at least 10 consecutive hours of undisturbed rest during a period of 24 hours; prohibiting them from working in excess of 12 consecutive hours; and requiring railroad carriers and railroad contractors to provide such employees with at least one period of at least 24 consecutive hours off duty in a period of seven consecutive days. The Secretary is authorized to waive this last requirement if a collective bargaining agreement provides a different arrangement and such arrangement provides an equivalent level of safety.

Subsection (a) extends hours-of-service standards to railroad contractors who are engaged in installing, repairing, or maintaining signal systems.

Subsection (b) clarifies that up to one hour of time spent returning from a final trouble call of a period of continuous or broken service is time off duty, and limits the number of days a signal employee can exceed the 12-hour limit on hours of service for emergencies to no more than three days during a period of seven consecutive days. This standard is consistent with dispatcher limits. The subsection further prohibits signal employees from exceeding the 12-hour limit on hours of service to conduct routine repairs, routine maintenance, or routine inspection of signal systems. A signal employee is only permitted to exceed the hours-of-service limits for no more than four additional hours in a period of 24 consecutive hours when a true emergency exists and the work of that employee is related to the emergency. The subsection also provides that the hours of service, duty hours, and rest periods of signal employees shall be governed exclusively by Chapter 201. Signal employees operating motor vehicles shall not be subject to any hours-of-service rules, duty hours, or rest period rules promulgated by any Federal authority, including the Federal Motor Carrier Safety Administration, other than the Federal Railroad Safety Administration.

Subsection (c) eliminates limbo time by providing that all time spent in deadhead transportation to a duty assignment, all time spent waiting for deadhead transportation, and all time spent in deadhead transportation from a duty assignment to a place of final release is time on duty, with some exceptions. The subsection allows limbo time in situations involving delays in the operations of a railroad carrier, when the delays were caused by a casualty, an accident, a track obstruction, an act of God, a weather event causing a delay, a snowstorm, a landslide, a track or bridge washout, a derailment, a major equipment failure which prevents a train from advancing, or other delay from a cause unknown or unforeseeable to a railroad carrier and its officers and agents in charge of the employee when the employee left a designated terminal. In addition to these exceptions, the subsection allows the carriers to use up to 40 hours a month in limbo time per employee during the first authorization year; 30 hours a month during the second authorization year; and 10 hours a month thereafter. The subsection also requires reporting of railroad use of limbo time which results in total work time of more than 12 hours and requires additional rest equal to all time in limbo in excess of 12 hours.

*Section 202. Employee sleeping quarters*

This section amends Section 21106 of title 49, United States Code, to prohibit railroad carriers from providing sleeping quarters through the use of camp cars, as defined in Appendix C to part 228 of title 49 of the Code of Federal Regulations, for employees and any individuals employed to maintain the right-of-way of a railroad carrier. This prohibition is effective 12 months after the date of enactment.

*Section 203. Fatigue management plans*

This section requires all railroads to submit to the Secretary for review and approval a fatigue management plan that is designed to reduce the fatigue experienced by railroad employees and to reduce the likelihood of accidents and injuries caused by fatigue.

*Section 204. Regulatory authority*

This section authorizes the Secretary of Transportation to issue regulations to reduce the maximum hours an employee may be required or allowed to go or remain on duty to a level less than the level established under Chapter 201 of title 49, United States Code, or to increase the minimum hours an employee may be required or allowed to rest to a level greater than the level established under that chapter. The regulations must be based on scientific and medical research.

*Section 205. Conforming amendment*

This section amends section 21303 of title 49, United States Code, to clarify that a railroad carrier is deemed to know the acts of its managers, supervisors, officers, and agents in any proceeding dealing with a violation of Chapter 211.

## Title III. Protection of Employees and Witnesses

*Section 301. Employee protections*

This section amends section 20109 of title 49, United States Code, to strengthen existing whistleblower protections for railroad workers. It replaces the existing process for filing a petition for relief with the National Mediation Board with a process for filing such petitions with the Secretary of Labor, which is consistent with the whistleblower process for other transportation workers, including aviation personnel and drivers of commercial motor vehicles. The section provides that if the Secretary of Labor has not issued a final decision within 180 days after the filing of the complaint, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States. An employee prevailing in any action under this section shall be entitled to all relief necessary to make the covered individual whole, which shall include reinstatement with the same seniority status that the covered individual would have had, but for the discrimination; the amount of any back pay, with interest; and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees. Relief may also include punitive damages in an amount not to exceed ten times the amount of any compensatory damages awarded.

## Title IV. Grade Crossings

*Section 401. Toll-free number to report grade crossing problems*

This section amends section 20152 of title 49, United States Code, to require the Secretary of Transportation, within 18 months of the date of enactment, to require each railroad carrier to establish and maintain a toll-free telephone service for rights-of-way over which it dispatches trains for the purpose of receiving calls reporting malfunctions of signals, crossing gates, and other devices and disabled vehicles blocking railroad tracks at grade crossings. Upon receiving a report, the railroad carrier is required to immediately contact trains operating near the grade crossing to warn the crews of the malfunction or disabled vehicle and then contact, as necessary, appropriate public safety officials having jurisdiction over the grade crossing to provide them with the information necessary for them to direct traffic, assist in the removal of the disabled vehicle, or carry out other activities appropriate to responding to the hazardous circumstance. The toll-free telephone number, an explanation of the purpose of the number, and the grade crossing number assigned to the particular crossing must be placed on signs at each grade crossing and be visible to the public.

*Section 402. Roadway user sight distance at highway-rail grade crossings*

This section adds section 20156 to title 49, United States Code. Subsection (a) of section 20156 requires the Secretary to prescribe regulations that require each railroad carrier to remove from its rights-of-way at all public highway-rail grade crossings, and at all private highway-rail grade crossings open to unrestricted public access, grass, brush, shrubbery, trees, and other vegetation which may obstruct the view of a pedestrian or a vehicle operator, and to maintain its rights-of-way at all such crossings free of such vegetation.

Subsection (b) of section 20156 allows the Secretary to make allowances for preserving trees and other ornamental or protective growth where State or local law or policy would otherwise protect the vegetation from removal and where the roadway authority or private-crossing holder takes appropriate temporary or permanent action to abate the hazard to roadway users.

Subsection (c) of section 20156 authorizes States to continue in force, or enact, a law, regulation, or order requiring the removal of obstructive vegetation from a railroad right-of-way for safety reasons that is more stringent than the requirements of the regulations prescribed by the Secretary.

Subsection (d) of section 20156 requires the Secretary to develop and make available to States model legislation that addresses sight obstructions at grade crossings that are equipped solely with passive warnings, such as permanent structures, temporary structures, and standing railroad equipment, as recommended by the Inspector General of the Department of Transportation in Report No. MH-2007-044.

*Section 403. Grade crossing signal violations*

This section amends section 20151 of title 49, United States Code, to require the Secretary to develop and make available to



States model legislation providing for civil or criminal penalties, or both, for violations of grade crossing signals.

*Section 404. National crossing inventory*

This section adds section 20157 to title 49, United States Code. Section 20157 requires railroad carriers and States to provide information to the Secretary about grade crossings, and to update that information on a periodic basis beginning not later than three years after the date of enactment. The section also authorizes the Secretary to impose civil penalties for violations of this section.

*Section 405. Accident and incident reporting*

This section directs the Federal Railroad Safety Administration to conduct an audit of each Class I railroad at least once every two years and conduct an audit of each non-Class I railroad at least once every five years to ensure that all grade crossing collisions, fatalities, and injuries are reported to the national accident database, as recommended by the Department of Transportation's Inspector General.

*Section 406. Authority to buy promotional items to improve railroad crossing safety and prevent railroad trespass*

This section amends section 20134(a) of title 49, United States Code, to authorize the Secretary to purchase promotional items of nominal value and distribute them to the public without charge as part of an educational or awareness program to improve the safety of grade crossings and to prevent trespass on railroad rights-of-way. The Secretary is directed to prescribe guidelines for the administration of this authority.

*Section 407. Operation Lifesaver*

This section authorizes appropriations to the Federal Railroad Safety Administration to make grants to Operation Lifesaver to carry out a public information and education program to help prevent railroad incidents, injuries, and fatalities, and to improve awareness along railroad rights-of-way and at grade crossings, and to implement a pilot program, to be known as the Railroad Safety Public Awareness Program, that addresses the need for targeted, sustained community outreach on rail and grade crossing safety. The section authorizes \$1.5 million for each of fiscal years 2008 through 2011 to carry out this section.

*Section 408. State action plan*

This section requires the Secretary to identify on an annual basis the top 10 States that have had the most grade crossing collisions over the past year, and to work with each of those States to develop a State Grade Crossing Action Plan that identifies specific solutions for improving safety at crossings.

*Section 409. Fostering introduction of new technology to improve safety at highway-rail grade crossings*

The installation of grade-crossing warning signals and cross-arms often costs in excess of \$100,000 using current technology. This section adds section 20165 to title 49, United States Code.

Section 20165 encourages the development of new technology that can prevent loss of life and injuries at grade crossings.

#### Title V. Enforcement

##### *Section 501. Enforcement*

This section amends section 20112 of title 49, United States Code, to clarify that the Attorney General may bring a civil action in a district court of the United States to: (1) enjoin a violation of, or to enforce, this part or a railroad safety regulation prescribed or order issued by the Secretary; (2) collect a civil penalty imposed or an amount agreed on in compromise under section 21301 (general railroad safety violations), section 21302 (accidents and incident violations), or section 21303 (hours-of-service violations) of this title; and (3) to enforce a subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition.

##### *Section 502. Civil penalties*

This section amends sections 21301, 21302, and 21303 of title 49, United States Code, to increase the maximum civil penalty for a general railroad safety violation, accident and incident violation, and hours-of-service violation from \$10,000 to \$25,000. The minimum civil penalty remains \$500. However, when 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 maximum civil penalty is increased from \$20,000 under current law to not more than \$100,000.

##### *Section 503. Criminal penalties*

This section amends section 21311 of title 49, United States Code, to increase the maximum penalty for failing to file an accident or incident report on time from \$500 to \$2,500, and the maximum penalty for each day after the due date from \$500 to \$2,500.

##### *Section 504. Expansion of emergency order authority*

This section amends section 20104 of title 49, United States Code, to expand the authority of the Secretary to issue emergency rules or restrictions to events causing significant harm to the environment. Current law allows the Secretary to issue emergency rules or restrictions in the event of death or personal injury.

##### *Section 505. Enforcement transparency*

This section adds section 20118 to title 49, United States Code, to require the Secretary, not later than December 31, 2007, to provide a monthly updated summary to the public of all railroad enforcement actions taken by the Secretary of the Federal Railroad Safety Administration, from the time a notice commencing an enforcement action is issued until the enforcement action is final. In each summary, the Secretary must identify the railroad carrier or person named in the enforcement activity, the type of alleged violation, the penalty or penalties proposed, any changes in case status since the previous summary, the final assessment amount of each penalty, and the reasons for a reduction in the proposed penalty. The Secretary must provide a mechanism by which a railroad car-

rier or person named in an enforcement action may make information, explanations, or documents it believes are responsive to the enforcement action available to the public.

*Section 506. Interfering with or hampering safety investigations*

This section adds section 21312 to title 49, United States Code, to make it unlawful for any person knowingly to interfere with, obstruct, or hamper an investigation by the Secretary of Transportation under section 20702 or section 20902 of title 49, or a railroad investigation by the National Transportation Safety Board.

*Section 507. Railroad radio monitoring authority*

This section allows the Secretary to authorize officers, employees, or agents of the Secretary to intercept and record radio communications, with or without the consent of the sender or other receivers of the communication, but only where such communication is broadcast or transmitted over a radio frequency which is authorized for use by one or more railroad carriers by the Federal Communications Commission and primarily used by such railroad carriers for communications in connection with railroad operations. Information obtained through such monitoring and recording would not be admissible into evidence in any administrative or judicial proceeding, with two exceptions. First, the provision would not bar admission into evidence of the intercepted communication in a judicial proceeding for the prosecution of a felony under Federal or State law. Second, the provision would not bar admission of the intercepted communication for impeachment purposes in seven enumerated types of railroad safety proceedings. In addition, information is not subject to publication or disclosure, or search or review in connection therewith, under section 552 of title 5, United States Code.

*Section 508. Inspector staffing*

This section requires the Secretary to increase the total number of positions for railroad safety inspection and enforcement personnel at the Federal Railroad Safety Administration so that by December 31, 2008, the total number of such positions is at least 500, by December 31, 2009, the total number of such positions is at least 600, by December 31, 2010, the total number of such positions is at least 700, and by December 31, 2011, the total number of positions is at least 800. There are currently 421 Federal rail safety inspectors.

## Title VI. Miscellaneous Provisions

*Section 601. Positive train control systems*

The Committee has received testimony on the importance of implementing positive train control. According to the FRA, 40 percent of all train accidents are the result of human factors. According to the NTSB, technological solutions, such as positive train control, have great potential to reduce the number of serious train accidents by providing safety redundant systems to protect against such human performance failures. Positive train control has been on the NTSB's list of most wanted safety improvements for 17 years.

In the past 10 years alone, the NTSB has investigated 52 rail accidents, including four transit accidents, where the installation of a positive train control system would likely have prevented the accident. These include five serious accidents in 2005: Graniteville, South Carolina; Anding, Mississippi; Shepherd, Texas; Chicago, Illinois; and Texarkana, Arkansas. These figures, however, do not include the numerous accidents that the FRA has investigated, and which could have been prevented, if positive train control was implemented. In August 1999, the Railroad Safety Advisory Committee published a report entitled *Implementation of Positive Train Control Systems*. The report states that out of a select group of 6,400 accidents that occurred from 1998 through 1997, 2,659 of those accidents could have been prevented had some form of positive train control been implemented.

This section requires each Class I railroad, within 12 months of the date of enactment, to develop and submit to the Secretary for review and approval a plan for implementing a positive train control system by December 31, 2014. Such systems must provide a safety redundancy to minimize the risk of accidents by overriding human performance failures involving train movements on main line tracks.

Subsection (c) requires the Secretary to require each railroad carrier to include in its plan, at a minimum, measurable goals, including a strategy and timeline for implementation of such systems; a prioritization of how the systems will be implemented, with particular emphasis on high-risk corridors such as those that have significant movements of hazardous materials or where commuter and intercity passenger railroads operate; identification of detailed steps the carriers will take to implement the systems; and any other elements the Secretary considers appropriate.

Subsection (d) requires the Secretary to review and approve the plan not later than 90 days after the Secretary receives it. If the proposed plan is not approved, the Secretary must notify the affected railroad carrier as to the specific points in which the proposed plan is deficient, and the railroad carrier must correct all deficiencies within 30 days following receipt of the written notice from the Secretary.

Subsection (e) requires the Secretary to submit a report to Congress no later than December 31, 2011, on the progress of the railroads in implementing the systems.

Subsection (f) authorizes the Secretary to extend the date for implementation for any Class I railroad carrier for a period of not more than 24 months if the Secretary determines such an extension is necessary to implement a more effective positive train control system than would be possible by December 31, 2014; to obtain interoperability between positive train control systems implemented by railroad carriers; and for the Secretary to determine that a positive train control system meets the requirements of this section and regulations issued by the Secretary; or to otherwise enhance safety. Not later than 30 days after the Secretary grants an extension, the Secretary shall publish a notice in the Federal Register that identifies the Class I railroad carrier that is being granted the extension, the reasons for granting the extension, and the length of the extension.

Subsection (g) prohibits the Secretary from permitting the installation of any positive train control system or component unless the Secretary has first certified that such system or component has not experienced a safety-critical failure during prior testing and evaluation. If such a failure has occurred, the system or component may be repaired and evaluated in accordance with part 236 of title 49 of the Code of Federal Regulations and may be installed when the Secretary certifies that the factors causing the failure have been corrected and approves the system for installation in accordance with part 236.

*Section 602. Warning in nonsignaled territory*

The Committee has received testimony on the importance of preventing accidents due to misaligned switches. According to the FRA, misaligned switches are consistently either the leading or second leading cause of all human factor accidents. The NTSB has investigated several accidents which resulted from misaligned switches dating back to their investigation of an accident in Cotula, Texas, in 1974. More recently, the NTSB investigated the 2005 accidents in Graniteville, South Carolina, and Shepherd, Texas, which were also caused by misaligned switches.

With respect to the Graniteville accident, a Norfolk Southern train, while traveling 47 mph, encountered an improperly positioned switch that diverted the train from the main line onto an industry track, where it struck an unoccupied parked train. The track through Graniteville was nonsignaled (“dark”) territory. Nine people died as a result of chlorine gas inhalation after a tank car was punctured during the accident. The NTSB investigation found that the improperly lined switch had most recently been used by the crew of a local train about eight hours before the accident. The crew had lined the switch for an industry track in order to place two cars at a local plant and then park their train. No crewmember remembered relining the switch for the main line before they boarded a taxi and returned to the terminal. The NTSB concluded, among other things, that the switch was not visible to the crew as they worked, leaving them without a visual reminder to reline the switch. Further, the crew of the oncoming train could not see that the switch was misaligned in time to stop the train.

With respect to the Shepherd accident, a Union Pacific train entered a siding in Shepherd, Texas, at approximately 37 mph and struck a parked train, killing one crewmember. There were no wayside signals to govern the train movements or protect the train from an interruption in the continuity of the track, such as an open switch. Consequently, strict compliance with the operating rules was necessary to protect one train from another. The probable cause of this accident was the failure of a previous crew to return a main track switch to the normal position after they had secured the train on the siding and departed the area.

In response to these accidents and similar accidents dating back to 1974, the NTSB has repeatedly issued recommendations to the FRA to require installation of technologies that will capture the attention of train crews and prevent misaligned switches. The Committee is aware that there are various forms of such technologies.

This section adds section 20158 to title 49, United States Code. Section 20158 requires the Secretary of Transportation, within 12

months of the date of enactment, to prescribe regulations that require railroads, with respect to main lines in nonsignaled territory, to either install an automatically activated device, in addition to the switch banner, that will, visually or electronically, compellingly capture the attention of the employees involved with switch operations and clearly convey the status of the switch both in daylight and darkness or operate trains at speeds that will allow them to be safely stopped in advance of misaligned switches.

The Committee intends that a railroad carrier would not have to install such automatically activated devices along main lines in nonsignaled territory if the railroad carrier has installed a train speed enforcement system that would stop a train in advance of a misaligned switch in such areas or the railroad carrier operators trains at speeds that will allow them to be safely stopped in advance of such switches.

*Section 603. Track safety*

The Committee has received testimony on the importance of strengthening track safety standards. In 2006, track-related accidents surpassed human factors-related accidents as the leading cause of all train accidents.

This section adds section 20159 to title 49, United States Code. Section 20159 requires the Secretary, within 12 months of the date of enactment, to prescribe regulations to require railroad carriers to manage the rail in their tracks so as to minimize accidents due to internal rail flaws. The regulations must, at a minimum, require railroad carriers to conduct ultrasonic or other appropriate inspections to ensure that rail used to replace defective segments of existing rail is free from internal defects; require railroad carriers to perform rail integrity inspections to manage an annual service failure rate of less than 0.1 per track mile on high-risk corridors, such as those that have significant movements of hazardous materials or where commuter and intercity passenger railroads operate; and encourage railroad use of advanced rail defect inspection equipment and similar technologies as part of a comprehensive rail inspection program. This section also requires the Secretary, within 18 months of the date of enactment, to develop and implement regulations for all classes of track for concrete rail ties that address, at a minimum, limits for rail seat abrasion; concrete crosstie pad wear limits; missing or broken rail fasteners; loss of appropriate toeload pressure; improper fastener configurations; and excessive lateral rail movement.

*Section 604. Certification of conductors*

This section adds section 20160 to title 49, United States Code. Section 20160 requires the Secretary, within 18 months of the date of enactment, to prescribe regulations and issue orders to establish a program requiring the certification of train conductors. In prescribing such regulations, the Secretary must require that conductors on passenger trains be trained in security, first aid, and emergency preparedness.

*Section 605. Minimum training standards*

This section adds section 20161 to title 49, United States Code. Section 20161 requires the Secretary, within 180 days of enact-

ment, to establish minimum training standards for each class and craft of railroad employees and develop a minimum training curriculum, and ongoing training criteria, testing, and skills evaluation measures to ensure that railroad employees charged with the inspection of track or railroad equipment are qualified to assess railroad compliance with Federal standards to identify defective conditions and initiate immediate remedial action to correct critical safety defects that are known to contribute to derailments, accidents, or injury. The section also requires railroad carriers to submit their training and qualification programs to the Federal Railroad Safety Administration for review and approval.

*Section 606. Prompt medical attention*

This section adds section 20162 to title 49, United States Code. Section 20162 prohibits a railroad carrier from denying, delaying, or interfering with the medical or first aid treatment of an employee who is injured during the course of employment. If transportation to a hospital is requested by an employee who is injured during the course of employment, the railroad must promptly arrange to have the injured employee transported to the nearest medically appropriate hospital. This section further prohibits a railroad carrier from disciplining, or threatening to discipline, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician. For purposes of this section, "discipline" means to bring charges against a person in a disciplinary proceeding, suspend, terminate, place on probation, or make note of reprimand on an employee's record.

*Section 607. Emergency escape breathing apparatus*

This section adds section 20163 to title 49, United States Code. Section 20163 requires the Secretary, within 18 months of enactment, to prescribe regulations that require the railroads to provide emergency breathing apparatus for all crewmembers on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of unintentional release and to provide such crewmembers with appropriate training for using the breathing apparatus.

*Section 608. Locomotive cab environment*

This section requires the Secretary, within 12 months of the date of enactment, to transmit a report to Congress on the effects of the locomotive cab environment on the safety, health, and performance of train crews.

*Section 609. Tunnel information*

This section requires each railroad carrier, with respect to each of its tunnels which are longer than 1,000 feet and located under a city with a population of 400,000 or greater or carry five or more scheduled passenger trains per day, or 500 or more carloads of Toxic Inhalation Hazardous materials per year, to maintain for at least two years historical documentation of structural inspection and maintenance activities for such tunnels, including information on the methods of ingress and egress into and out of the tunnels, the types of cargos typically transported through the tunnels, and schematics or blueprints for the tunnels, when available. Upon re-

quest, railroad carriers are also required to provide periodic briefings to the government of the local jurisdictions in which the tunnels are located, including updates whenever a repair or rehabilitation project substantially alters the methods of ingress and egress. Such governments are required to use appropriate means to protect and restrict the distribution of any security sensitive information provided by the railroad carriers, consistent with national security interests.

*Section 610. Railroad police*

This section amends section 28101 of title 49, United States Code, to authorize rail police officers who are employed by a railroad carrier and certified or commissioned as police officers under the laws of a State to enforce the laws of any jurisdiction in which any rail carrier owns property, to the extent of the authority of such police officers to protect employees, passengers, or patrons of any rail carrier; property, equipment, and facilities owned, leased, operated, or maintained by any rail carrier; property moving in interstate or foreign commerce in the possession of any rail carrier; and personnel, equipment, and material moving by rail that are vital to the national defense.

*Section 611. Museum locomotive study*

This section requires the Secretary of Transportation to conduct a study of its regulations relating to safety inspections of diesel-electric locomotives and equipment and the safety consequences of requiring less frequent inspections of such locomotives which are operated by museums. The study must also include an analysis of the safety consequences of requiring less air brake inspections of such locomotives. The Secretary is required to transmit a report to Congress on the results of the study within 12 months of the date of enactment.

*Section 612. Certification of carmen*

This section adds section 20164 to title 49, United States Code. Section 20164 requires the Secretary, within 18 months of the date of enactment, to prescribe regulations and issue orders to establish a program requiring the certification of carmen, including all employees performing mechanical inspections, brake system inspections, or maintenance on freight and passenger rail cars. The program shall be designed based on the requirements of parts 215, 221, 231, 232, and 238 of title 49 of the Code of Federal Regulations.

*Section 613. Train control systems deployment grants*

This section requires the Secretary to establish a grant program for the deployment of train control and component technologies. Grants shall be made to eligible passenger and freight railroad carriers and State and local governments for specified projects that have public benefits of improved safety or network efficiency. Applicants for grants are required to file with the Secretary a train control implementation plan that describes the overall safety and efficiency benefits of installing the systems and the stages for implementing such systems. The Secretary is required to give priority consideration to applications that benefit both passenger and



freight safety and efficiency, or incentivize train control technology deployment on high-risk corridors such as those that have significant movements of hazardous materials or where commuter and intercity passenger railroads operate.

*Section 614. Infrastructure safety investment reports*

This section requires each Class I railroad, not later than February 15 of each year, to file a report with the Federal Railroad Safety Administration and the Surface Transportation Board detailing, by State, the infrastructure investments and maintenance they have performed on their system, including but not limited to track, locomotives, railcars, and grade crossings, in the previous calendar year. Such reports shall be made publicly available, and any interested party may file comments about the reports, which also shall be made public.

*Section 615. Emergency grade crossing safety improvements*

On Easter 2007, three teenage girls died when their car was struck by a freight train at a railroad grade crossing in Excelsior Springs, Missouri. The crossing was equipped with flashing warning signal lights, but no crossing gates.

This section requires the Secretary to establish a grant program for State and local governments to provide emergency grade crossing safety improvements at locations where there has been a railroad grade crossing collision with a school bus or collision involving three or more serious bodily injuries or fatalities. Grants awarded shall not exceed \$250,000 per crossing.

*Section 616. Clarifications regarding State law causes of action*

This section amends section 20106 of title 49, United States Code, to clarify that nothing in that section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has violated the Federal standard of care established by a regulation or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters) covering the same subject matter as provided in section 20106(a). This includes actions under State law for a party's violation of or failure to adequately comply with its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries or for a party's failure to adequately comply with a law, regulation, or order issued by either of the Secretaries. Actions under State law for a violation of a State law, regulation, or order that is not inconsistent with section 20106(a)(2) are also not preempted. Section 20106(b)(2), as amended by this section, clarifies that this entire section shall apply to all pending State law causes of action arising from events or activities occurring on or after January 18, 2002.

After the Committee ordered H.R. 2095 reported favorably to the House on June 14, 2007, the House and Senate passed the Conference Report on H.R. 1, the "Implementing Recommendations of the 9/11 Commission Act of 2007", which addressed this issue and clarified the intent and interpretations of the preemption statute

under current law. The President signed the bill on August 3, 2007 (P.L. 110–259).

P.L. 110–259 clarifies that section 20106 of title 49, United States Code, does not preempt State law causes of action where a party has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary of Transportation or the Secretary of Homeland Security, its own plan or standard that it created pursuant to a regulation or order issued by either of the Secretaries, or a State law, regulation, or order that is not incompatible with section 20106(a)(2). P.L. 110–259 also clarifies that section 20106 applies to all pending State law causes of action arising from activities or events occurring on or after January 18, 2002, the date of the Minot, North Dakota derailment. The provision also states that nothing in section 20106 creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for such State law causes of action.

#### Title VII. Rail Passenger Disaster Family Assistance

##### *Section 701. Short title*

This section designates the title of Title VII as the “Rail Passenger Disaster Family Assistance Act of 2007”.

##### *Section 702. Assistance by National Transportation Safety Board to families of passengers involved in rail passenger accidents*

This section adds section 1139 to title 49, United States Code. Section 1139 requires the Chairman of the National Transportation Safety Board, as soon as practical after being notified of a rail passenger accident within the United States, to (1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the rail passenger carrier and the families; and (2) designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families passengers involved in the accident.

##### *Section 703. Rail passenger carrier plans to address needs of families of passengers involved in rail passenger accidents*

This section adds section 25101 to title 49, United States Code. Section 25101 requires each rail passenger carrier, within six months of the date of enactment, to submit to the Secretary and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving a train of the rail passenger carrier and resulting in a major loss of life. The section further provides that a rail passenger carrier shall not be liable for any damages in any action brought in a Federal or State court arising out of the performance of the rail passenger carrier in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by the rail passenger carrier, unless such liability was caused by conduct of the

rail passenger carrier which was grossly negligent or which constituted intentional misconduct.

*Section 704. Establishment of task force*

This section requires the Secretary to establish a task force to develop a model plan to assist passenger rail carriers in responding to passenger rail accidents; recommendations on methods to improve the timeliness of the notification provided by passenger rail carriers to the families of passengers involved in a passenger rail accident; recommendations on methods to ensure that the families of passengers involved in a passenger rail accident who are not citizens of the United States receive appropriate assistance; and recommendations on methods to ensure that emergency services personnel have as immediate and accurate a count of the number of passengers onboard the train as possible. The Secretary is required to transmit to Congress a report containing the model plan and recommendations developed by the task force not later than one year after the date of enactment.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

The Federal Railroad Administration was last reauthorized by Congress in 1994, in the Federal Railroad Safety Authorization Act of 1994. That authorization expired in 1998. Since 1994, the Committee on Transportation and Infrastructure has held 22 hearings on rail safety.

In the 110th Congress, the Subcommittee on Railroads, Pipelines, and Hazardous Materials has held six hearings on rail safety. On January 30 and 31, 2007, the Subcommittee held hearings on reauthorization of the Federal rail safety program. On February 13, 2007, the Subcommittee held a hearing on fatigue. On March 16, 2007, the Subcommittee held a field hearing on the role of human factors in rail accidents. On May 1, 2007, Chairman Oberstar introduced H.R. 2095, the “Federal Railroad Safety Improvement Act of 2007”. On May 8, 2007, the Subcommittee held a hearing on rail safety legislation, including H.R. 2095. On August 8, 2007, the Subcommittee held a field hearing on Federal, State, and local roles in rail safety.

On May 22, 2007, the Subcommittee on Railroads, Pipelines, and Hazardous Materials met in open session to consider H.R. 2095. The Subcommittee adopted, by voice vote, the following amendments:

- An Amendment in the Nature of a Substitute to require the Secretary to base efforts to strengthen hours-of-service standards on scientific and medical research; to allow the Secretary to extend the December 31, 2014 deadline for implementation of positive train control systems for any railroad carrier for up to 24 additional months if the Secretary determines that such an extension is necessary to implement a more effective positive train control system, to obtain interoperability between positive train control systems implemented by railroad carriers, to determine that a positive train control system meets existing regulations, or to otherwise enhance safety; to limit requirements that railroad carriers perform rail integrity inspections to manage an annual service failure rate of less than 0.1 per track mile to high-risk corridors, such as those that have

significant movements of hazardous materials or where commuter and intercity passenger railroads operate; and to require railroads to transport workers who are injured on-the-job to the nearest hospital. The amendment also provided that time waiting for deadhead transportation and time in deadhead transportation from a duty assignment to the place of final release is neither time on-duty nor time off-duty in situations involving any of the following: a casualty, an accident, an act of God, including a weather event such as a snowstorm, landslide, or track or bridge washout, a track obstruction, a derailment, a major equipment failure, or any other delay that was unforeseen or unknown to the railroad carrier when the employee left a terminal. The amendment requires railroads to report to the Federal Railroad Safety Administration on their usage of limbo time in these situations, and they are required to provide train crews in “limbo” with additional time for rest equal to the time spent in “limbo”;

- An amendment to the Amendment in the Nature of a Substitute to require the Secretary to develop and make available to States model legislation addressing sight obstructions at grade crossings;
- An amendment to the Amendment in the Nature of a Substitute to limit the scope of fatigue management plans submitted by railroad carriers to employees performing safety sensitive functions;
- An amendment to the Amendment in the Nature of a Substitute to authorize \$1.5 million for Operation Lifesaver to carry out a public information and education program to help prevent incidents at grade crossings and to use funds to implement a Railroad Safety Public Awareness pilot program in States and communities where safety is most at risk; and
- An amendment to the Amendment in the Nature of a Substitute to require the Secretary of Transportation to identify on an annual basis the top 10 States with the most grade crossing collisions and to work with those States to develop a State Grade Crossing Action Plan.

The Subcommittee favorably recommended H.R. 2095, as amended, to the Committee on Transportation and Infrastructure by voice vote with a quorum present.

On June 14, 2007, the Committee on Transportation and Infrastructure met in open session to consider H.R. 2095, as favorably recommended by the Subcommittee. The Committee adopted, by voice vote, a manager’s amendment that made several changes to the bill. The manager’s amendment allowed limbo time in circumstances of a casualty, an accident, a track obstruction, an act of God, a weather event causing a delay, a snowstorm, a landslide, a track or bridge washout, a derailment, a major equipment failure which prevents a train from advancing, or other delay from a cause unknown and unforeseeable to a railroad carrier when the employee left a designated terminal. In addition to these exceptions, the amendment allowed the carriers to use up to 40 hours a month in limbo time per employee during the first authorization year; 30 hours a month during the second authorization year; and 10 hours a month thereafter. The amendment also required the Secretary to certify that each positive train control system or component has not

experienced a safety-critical failure during prior testing and evaluation. If such a failure has occurred, the system or component may be repaired and evaluated in accordance with existing regulations and may be installed when the Secretary certifies that the factors causing the failure have been corrected and approves the system for installation. The amendment further established a grant program for the deployment of train control and component technologies. The amendment made additional changes and technical corrections.

The Committee ordered the bill, as amended by the Committee, reported favorably to the House by voice vote with a quorum present.

#### RECORD VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. On June 14, 2007, the Committee on Transportation and Infrastructure met in open session and adopted a manager's amendment to the bill by voice vote with a quorum present. The Committee ordered the bill, as amended, reported favorably to the House by voice vote with a quorum present.

#### COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(I) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

#### COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

#### COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to reauthorize the Federal Railroad Administration and establishes safety measures to prevent railroad fatalities, injuries, and hazardous materials releases.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2095 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 3, 2007.*

Hon. JAMES L. OBERSTAR,  
*Chairman, Committee on Transportation and Infrastructure, House  
of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2095, the Federal Railroad Safety Improvement Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Sarah Puro (for federal spending) and Emily Schlect (for revenues).

Sincerely,

PETER R. ORSZAG,  
*Director.*

Enclosure.

*H.R. 2095—Federal Railroad Safety Improvement Act of 2007*

Summary: H.R. 2095 would authorize appropriations over the 2008–2011 period for operations of the Federal Railroad Administration (FRA) within the Department of Transportation (DOT) and would reorganize that agency and change its name to the Federal Rail Safety Administration (FRSA).

CBO estimates that the bill would authorize the appropriation of \$1.2 billion over the 2008–2012 period. Those amounts include funds for operating FRSA, building a rail facility in Pueblo, Colorado, grants to increase safety throughout the rail system, and implementing National Transportation Safety Board (NTSB) programs to assist the families of passengers who are in rail accidents. Under the bill, FRSA would promulgate and enforce rules and regulations, increase the number of track inspectors, administer grants for projects related to railroad safety, complete studies and reports regarding railroad safety and technology, and create model legislation for state and local governments related to the safety of areas where railroad tracks and highways meet (grade crossings). Assuming appropriation of the amounts authorized and estimated to be necessary, CBO estimates that implementing the bill would cost \$176 million in 2008, \$1.1 billion over the 2008–2012 period, and about \$80 million after 2012.

Enacting H.R. 2095 could increase direct spending, but CBO estimates that any increases in direct spending would be insignificant. CBO estimates that additional penalties of \$6 million a year, \$30 million over the 2008–2012 period, and \$60 million over the 2008–2017 period would be collected under the bill. Penalty collections are classified as revenues in the budget.

H.R. 2095 contains several intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill's mandates include requirements for railroads to comply with hours of service restrictions, certification requirements, safety procedures, and reporting requirements, as well as preemptions of certain state laws. Due to the small number of public entities involved, CBO estimates that compliance costs for those entities would not exceed the annual threshold established in UMRA for intergovernmental mandates (\$66 million in 2007, ad-

justed annually for inflation). Because the costs to comply with the safety systems that would be required by the bill are substantial, CBO estimates that the aggregate cost to private entities of the mandates in the bill would exceed the annual threshold in UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

Other provisions of the bill would authorize grants for which state, local, and private-sector entities would be eligible. Any costs those entities might incur would result from participating in the grant programs and would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2095 is shown in Table 1. The costs of this legislation fall within budget function 400 (transportation).

Basis of estimate: For this estimate, CBO assumes that H.R. 2095 will be enacted near the end of fiscal year 2007, that the authorized and necessary amounts will be appropriated each year, and that outlays will follow the historical rate of spending for similar programs.

#### *Spending subject to appropriation*

H.R. 2095 would reauthorize the programs of the FRA through 2011, reorganize the agency and rename it the Federal Rail Safety Administration, and place certain new requirements on the agency. The current authorization for FRA expired at the end of fiscal year 1998 (although the agency received appropriations in the intervening years). The legislation would specifically authorize the appropriation of about \$1.2 billion over the next four years for FRSA programs, including some grants to improve the safety of rail operations. In addition, title 7 would require the NTSB to provide assistance to the families of passengers involved in rail accidents that result in a loss of life. CBO estimates that provision would cost \$1 million, annually.

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 2095

	By fiscal year, in millions of dollars—					
	2007	2008	2009	2010	2011	2012
SPENDING SUBJECT TO APPROPRIATION						
Spending under Current Law for the Federal Railroad Administration:						
Authorization Level <sup>1</sup> .....	184	13	16	0	0	0
Estimated Outlays .....	188	51	42	11	0	0
Proposed Changes:						
Federal Rail Safety Administration Programs:						
Authorization Level .....	0	230	260	295	335	0
Estimated Outlays .....	0	161	217	269	316	93
Pueblo, Colorado Facility:						
Authorization Level .....	0	18	0	0	0	0
Estimated Outlays .....	0	11	4	2	2	0
Grants for Programs to Increase Rail Safety:						
Estimated Authorization Level .....	0	22	22	22	20	0
Estimated Outlays .....	0	3	9	15	21	19
NTSB Assistance after Rail Accidents:						
Estimated Authorization Level .....	0	1	1	1	1	0
Estimated Outlays .....	0	1	1	1	1	0
Total Changes:						
Estimated Authorization Level .....	0	271	283	318	358	0
Estimated Outlays .....	0	176	230	286	340	112

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 2095—Continued

	By fiscal year, in millions of dollars—					
	2007	2008	2009	2010	2011	2012
Total Spending Under H.R. 2095 for Rail Safety Programs:						
Estimated Authorization Level .....	184	284	299	318	358	0
Estimated Outlays .....	188	227	272	297	340	112
CHANGES IN REVENUES						
Estimated Revenues .....	0	6	6	6	6	6

<sup>1</sup> Certain rail safety programs, but not most, for which the bill authorizes appropriations through fiscal year 2011, were authorized by Public Law 109-59 through fiscal year 2009. The current authorization in fiscal years 2008 and 2009 is in the form of contract authority. The spending of contract authority is controlled by annual limits on obligations set on appropriation acts and is therefore considered discretionary.

Federal Rail Safety Administration (FRSA). The bill would require railroad operators to comply with new safety requirements in the bill. The bill also would require FRSA to establish a chief safety officer, increase track inspectors, and administer new grants. Under the provisions of the bill, FRSA and the Inspector General of DOT would issue studies and reports with respect to rail safety, review and approve plans submitted by railroad operators, create model legislation for states regarding the safety of grade crossings and the prevention of vandalism to railroad safety measures, and establish and enforce regulations regarding the safety and certification requirements in the bill.

The bill would authorize the appropriation of \$230 million in 2008 and \$1.1 billion over the 2008–2012 period for support of those programs. CBO estimates that implementing those provisions would cost \$161 million in 2008 and nearly \$1.1 billion over the 2008–2012 period.

Authorization for Facility in Pueblo, Colorado. The bill would authorize the appropriation of \$18 million to design, develop, and construct the Facility for Underground Rail Station and Tunnel at the Transportation Technology Center in Pueblo, Colorado. Assuming appropriation of the authorized amount, CBO estimates that implementing this provision would cost \$11 million in 2008 and \$18 million over the 2008–2012 period.

Grants for Programs To Increase Rail Safety. H.R. 2095 would direct FRSA to administer three new grant programs. Assuming appropriation of the necessary amounts, CBO estimates that grants would cost \$3 million in 2008 and \$67 million over the 2008–2012 period. The grants would support the deployment of certain automated systems to avoid collisions in the event of a mistake by a train operator, and the installation, repair, or improvement of grade crossings (the location where highways and railroad tracks meet), and Operation Lifesaver—a nonprofit organization with the mission to end accidents at grade crossings.

*Grants for the Deployment of Train Control Systems.* Section 613 would authorize the appropriation of funds to support the deployment of certain automated systems for Class I railroads—there are currently seven such large railroads in the United States—to avoid collisions in the event of a mistake by a train operator. Those large railroads would be required to implement such systems by 2014 under provisions of the bill. Based on information from FRA and industry sources about the need for and cost of such systems, CBO estimates that such grants would cost \$1 million in 2008, \$31 million over the 2008–2012 period, and \$9 million after 2012.





Intergovernmental and private-sector impact: H.R. 2095 contains several intergovernmental and private-sector mandates as defined in UMRA because it would require railroads to comply with hours of service restrictions, certification requirements, safety procedures, and reporting requirements, and would preempt certain state laws. The total cost to comply with those mandates is uncertain and would depend, in part, on regulations that have not yet been established. Due to the small number of public entities involved, however, CBO estimates that the aggregate costs for those entities to comply with the bill's mandates would not exceed the annual threshold established in UMRA for intergovernmental mandates (\$66 million in 2007, adjusted annually for inflation). Because the costs to comply with the safety systems that would be required by the bill are substantial, CBO estimates that the aggregate cost to private entities of the mandates in the bill would exceed the annual threshold in UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

Other provisions of the bill would authorize grants for which state, local, and private-sector entities would be eligible. Any costs those entities might incur arising from participating in the grant programs would be incurred voluntarily.

*Mandates that affect both the public and private sector*

By requiring railroads to comply with hours of service restrictions, certification requirements, safety procedures, reporting requirements, and by preempting certain state laws, H.R. 2095 would impose both intergovernmental and private-sector mandates as defined in UMRA.

**Mandate With Costs Exceeding the Threshold.** The bill would require the Secretary of Transportation to issue regulations requiring railroads to ensure that rail used in track repairs is free of internal defects and that the railroads meet a specific annual service failure rate.

According to government sources, most of the track owned by state and local entities currently meets those requirements, and CBO estimates that additional costs would be small for public entities. According to industry and government sources, however, most of the track owned by private carriers, especially in rural areas, currently does not meet those requirements, although no data exist on the exact amount of track that would need to be updated. According to industry sources, however, the cost to comply with this mandate would be well over the annual threshold for the private sector.

**Mandates With Uncertain Costs.** The bill contains several mandates whose costs CBO cannot estimate at this time. Those mandates would:

- Increase restrictions on the number of hours that signalmen and train crews are allowed to work over certain time periods;
- Require railroads to certify train conductors and carmen, establishing minimum training standards for each craft of railroad employees as well as track and railroad equipment inspectors; and
- Require that railroads report information on the status of grade crossings.

CBO cannot estimate the total costs of those mandates because we do not have sufficient information about how railroads would

choose to adjust their employees' schedules to comply with the restrictions and because total costs would depend upon future regulatory actions of the Secretary.

**Mandates With Minimal Costs.** Several mandates in the bill would impose minimal additional costs on railroads, in CBO's estimation. Those mandates would:

- Strengthen whistleblower protections for railroad employees, specifically protections against intimidation and harassment;
- Require railroads to post a toll-free number at all grade crossings to report problems, and to warn trains and the appropriate public-safety officials about hazardous conditions;
- Require railroads to remove vegetation that obstructs the view of pedestrians and drivers at grade crossings;
- Require railroads to submit plans to address railroad worker fatigue, the needs of families of accident victims, and accidents at highway-rail grade crossings;
- Require railroads to maintain documentation of activities to inspect and maintain the structural integrity of certain tunnels through which they operate;
- Prohibit any individual or state from interfering in or disrupting the work of the National Transportation Safety Board during a railroad disaster;
- Impose restrictions on the unsolicited communications of attorneys or potential parties to litigation in the event of a railroad accident; and
- Prohibit railroad carriers from interfering with the medical treatment of injured workers.

CBO estimates that the additional costs to comply with those mandates would be small because compliance likely would involve only a small adjustment in current procedures, or because railroads or individuals would be unlikely to engage in the prohibited activities. Additionally, the bill would establish a grant program for state and local governments to address some of those requirements.

*Mandates that affect only the private sector*

The bill also would impose additional mandates that affect only private rail carriers. Those mandates include, but are not limited to, requirements for installation of positive train control systems and new switch indicators for tracks; requirements for emergency equipment and training for crewmembers on trains that carry hazardous materials; and requirements related to sleeping quarters for rail employees.

**Positive Train Control (PTC) System.** The bill would require each Class I railroad carrier, within 12 months after enactment, to develop and submit a plan for implementing a positive train control system by December 31, 2014. The Secretary of Transportation, however, would be authorized to extend the date for implementation by two years under certain conditions. Positive train control systems are intended to reduce collisions in the event of a mistake by a train operator. No railroad carrier would be permitted to begin the implementation of their plan before getting approval from the Secretary of Transportation. According to industry sources, some railroad carriers currently are participating in pilot programs with the purpose of developing PTC systems. The cost to implement such systems is uncertain at this stage of development. Based on

information from the Federal Railroad Administration and the Association of American Railroads, CBO estimates that the cost to comply with this mandate would total at least a few billion dollars for the industry. The bill would authorize grants for eligible private-sector entities to assist with the cost of implementing a positive train control system.

**Switch-Position Indicators.** The bill would require the Secretary to issue regulations requiring railroad carriers to install switch-position indicators on main lines in non-signaled territory, or operate trains at speeds that will allow involved train employees to safely stop the train in advance of a misaligned switch. The former option would require private entities to install those switch-position indicators to alert oncoming trains of a misaligned track. According to industry sources, the latter option would require private entities to operate at speeds up to 50 percent slower than normal. The relative cost of each option would depend on the routes of service. While the cost of this mandate is uncertain, it is likely that compliance costs would be large relative to the UMRA's annual threshold. The bill would authorize grants for eligible private-sector entities to assist with the cost of implementing switch-position monitoring technology.

**Emergency Escape Breathing Apparatus.** The bill would require railroads to provide an emergency breathing apparatus for each crewmember on freight trains that carry hazardous materials, and to provide crewmembers with training in the use of those devices. According to industry sources, although the average cost of the apparatus and the large number of private entities that would have to comply suggest that the costs could be substantial, the cost of this mandate would be below the annual threshold established in UMRA for private-sector mandates.

**Sleeping Quarters.** The bill would prohibit railroad carriers from using camp cars as sleeping quarters for its employees one year after the enactment of the bill. Camp cars are mostly used by railroad carriers operating in rural areas where sleeping accommodations are not readily available. To comply with this mandate, private entities would likely have to transport crews working in those areas to proper sleeping accommodations. According to government and industry sources, however, few railroad carriers use camp cars as sleeping quarters. Given the small number of entities that would be affected, CBO estimates that the costs to comply with this mandate would be minimal.

*Other impacts: Grants*

The bill would establish a grant program for passenger and freight railroad carriers, and state and local governments, to install train controls, switch-position indicators, and other component technologies. The bill also would establish a grant program for state and local governments to improve emergency grade crossings. Any costs those entities might incur would result from complying with conditions of federal assistance. Participation in any federal contract, including those grants, is considered a voluntary action. Duties arising from participation in such a voluntary federal program are not mandates under UMRA.

Estimate prepared by: Federal Spending: Sarah Puro; Federal Revenues: Emily Schlect; Impact on State, Local, and Tribal Gov-

ernments: Elizabeth Cove; Impact on the Private Sector: Jacob Kuipers.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2095, the “Federal Railroad Safety Improvement Act of 2007”, contains the following congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives:

Sec. 105, Pueblo, CO, Facility for Underground Rail Station and Tunnel at the Transportation Technology Center—\$18 million, Rep. John T. Salazar.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under Article I, section 8 of the Constitution.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

#### PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 2095 does not preempt any state, local, or tribal law.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

#### APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 49, UNITED STATES CODE**

\* \* \* \* \*

**SUBTITLE I—DEPARTMENT OF  
TRANSPORTATION**

\* \* \* \* \*

**CHAPTER 1—ORGANIZATION**

Sec

101. Purpose.

\* \* \* \* \*

**103. Federal Railroad Administration.**

*103. Federal Railroad Safety Administration.*

\* \* \* \* \*

**103. Federal Railroad Administration**

[(a) The Federal Railroad Administration is an administration in the Department of Transportation. To carry out all railroad safety laws of the United States, the Administration is divided on a geographical basis into at least 8 safety offices. The Secretary of Transportation is responsible for all acts taken under those laws and for ensuring that the laws are uniformly administered and enforced among the safety offices.

[(b) The head of the Administration is the Administrator who is appointed by the President, by and with the advice and consent of the Senate. The Administrator reports directly to the Secretary.

[(c) The Administrator shall carry out—

[(1) duties and powers related to railroad safety vested in the Secretary by section 20134(c) and chapters 203–211 of this title, and chapter 213 of this title in carrying out chapters 203–211; and

[(2) additional duties and powers prescribed by the Secretary.

[(d) A duty or power specified by subsection (c)(1) of this section may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers and involving notice and hearing required by law is administratively final.

[(e) Subject to the provisions of subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), the Secretary of Transportation may make, enter into, and perform such contracts, grants, leases, cooperative agreements, and other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons, and make such payments, by way of advance or reimbursement, as the Secretary may determine to be necessary or appropriate to carry out functions of the Federal Railroad Administration. The authority of the Secretary granted by this sub-

section shall be carried out by the Administrator. Notwithstanding any other provision of this chapter, no authority to enter into contracts or to make payments under this subsection shall be effective, except as provided for in appropriations Acts.】

**§ 103. Federal Railroad Safety Administration**

(a) *IN GENERAL.*—*The Federal Railroad Safety Administration (in this section referred to as the “Administration”) shall be an administration in the Department of Transportation. To carry out all railroad safety laws of the United States, the Administration shall be divided on a geographical basis into at least 8 safety offices. The Secretary of Transportation shall be responsible for enforcing those laws and for ensuring that those laws are uniformly administered and enforced among the safety offices.*

(b) *SAFETY AS HIGHEST PRIORITY.*—*In carrying out its duties, the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in railroad transportation.*

(c) *ADMINISTRATOR.*—*The head of the Administration shall be the Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be an individual with professional experience in railroad safety, hazardous materials safety, or other transportation safety. The Administrator shall report directly to the Secretary of Transportation.*

(d) *DEPUTY ADMINISTRATOR.*—*The Administration shall have a Deputy Administrator who shall be appointed by the Secretary. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.*

(e) *CHIEF SAFETY OFFICER.*—*The Administration shall have an Associate Administrator for Railroad Safety appointed in the competitive service by the Secretary. The Associate Administrator shall be the Chief Safety Officer of the Administration. The Associate Administrator shall carry out the duties and powers prescribed by the Administrator.*

(f) *DUTIES AND POWERS OF THE ADMINISTRATOR.*—*The Administrator shall carry out—*

(1) *duties and powers related to railroad safety vested in the Secretary by section 20134(c) and chapters 203 through 211 of this title, and by chapter 213 of this title for carrying out chapters 203 through 211; and*

(2) *other duties and powers prescribed by the Secretary.*

(g) *LIMITATION.*—*A duty or power specified in subsection (f)(1) may be transferred to another part of the Department of Transportation or another Federal Government entity only when specifically provided by law. A decision of the Administrator in carrying out the duties or powers of the Administration and involving notice and hearing required by law is administratively final.*

(h) *AUTHORITIES.*—*Subject to the provisions of subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), the Secretary of Transportation may make, enter into, and perform such contracts, grants, leases, cooperative agreements, and other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons, and make such payments, by*

*way of advance or reimbursement, as the Secretary may determine to be necessary or appropriate to carry out functions at the Administration. The authority of the Secretary granted by this subsection shall be carried out by the Administrator. Notwithstanding any other provision of this chapter, no authority to enter into contracts or to make payments under this subsection shall be effective, except as provided for in appropriations Acts.*

\* \* \* \* \*

**SUBTITLE II—OTHER GOVERNMENT AGENCIES**

\* \* \* \* \*

**CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD**

SUBCHAPTER I—GENERAL

Sec.  
1101. Definitions.  
\* \* \* \* \*

SUBCHAPTER III—AUTHORITY

\* \* \* \* \*  
1139. *Assistance to families of passengers involved in rail passenger accidents.*  
\* \* \* \* \*

SUBCHAPTER III—AUTHORITY

\* \* \* \* \*

**§ 1139. Assistance to families of passengers involved in rail passenger accidents**

*(a) IN GENERAL.—As soon as practicable after being notified of a rail passenger accident within the United States involving a rail passenger carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall—*

*(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the rail passenger carrier and the families; and*

*(2) designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.*

*(b) RESPONSIBILITIES OF THE BOARD.—The Board shall have primary Federal responsibility for—*

*(1) facilitating the recovery and identification of fatally injured passengers involved in an accident described in subsection (a); and*

*(2) communicating with the families of passengers involved in the accident as to the roles of—*

*(A) the organization designated for an accident under subsection (a)(2);*



(B) Government agencies; and

(C) the rail passenger carrier involved,

with respect to the accident and the post-accident activities.

(c) *RESPONSIBILITIES OF DESIGNATED ORGANIZATION.*—The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

(1) To provide mental health and counseling services, in coordination with the disaster response team of the rail passenger carrier involved.

(2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

(4) To arrange a suitable memorial service, in consultation with the families.

(d) *PASSENGER LISTS.*—

(1) *REQUESTS FOR PASSENGER LISTS.*—

(A) *REQUESTS BY DIRECTOR OF FAMILY SUPPORT SERVICES.*—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the rail passenger carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the rail passenger carrier's train involved in the accident. A rail passenger carrier shall use reasonable efforts, with respect to its unreserved trains, and passengers not holding reservations on its other trains, to ascertain the names of passengers aboard a train involved in an accident.

(B) *REQUESTS BY DESIGNATED ORGANIZATION.*—The organization designated for an accident under subsection (a)(2) may request from the rail passenger carrier involved in the accident a list described in subparagraph (A).

(2) *USE OF INFORMATION.*—The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

(e) *CONTINUING RESPONSIBILITIES OF THE BOARD.*—In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident—

(1) are briefed, prior to any public briefing, about the accident and any other findings from the investigation; and

(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

(f) *USE OF RAIL PASSENGER CARRIER RESOURCES.*—To the extent practicable, the organization designated for an accident under sub-

section (a)(2) shall coordinate its activities with the rail passenger carrier involved in the accident to facilitate the reasonable use of the resources of the carrier.

(g) **PROHIBITED ACTIONS.**—

(1) **ACTIONS TO IMPEDE THE BOARD.**—No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

(2) **UNSOLICITED COMMUNICATIONS.**—No unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual (other than an employee of the rail passenger carrier) injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.

(3) **PROHIBITION ON ACTIONS TO PREVENT MENTAL HEALTH AND COUNSELING SERVICES.**—No State or political subdivision may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

(h) **DEFINITIONS.**—In this section, the following definitions apply:

(1) **RAIL PASSENGER ACCIDENT.**—The term “rail passenger accident” means any rail passenger disaster occurring in the provision of—

(A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or

(B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation, regardless of its cause or suspected cause.

(2) **RAIL PASSENGER CARRIER.**—The term “rail passenger carrier” means a rail carrier providing—

(A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or

(B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation, except that such term shall not include a tourist, historic, scenic, or excursion rail carrier.

(3) **PASSENGER.**—The term “passenger” includes—

(A) an employee of a rail passenger carrier aboard a train;

(B) any other person aboard the train without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the rail transportation; and

(C) any other person injured or killed in the accident.

(i) *LIMITATION ON STATUTORY CONSTRUCTION.*—Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.

(j) *RELINQUISHMENT OF INVESTIGATIVE PRIORITY.*—

(1) *GENERAL RULE.*—This section (other than subsection (g)) shall not apply to a railroad accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

(2) *BOARD ASSISTANCE.*—If this section does not apply to a railroad accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.

\* \* \* \* \*

**SUBTITLE V—RAIL PROGRAMS**

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**PART A—SAFETY**

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**SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY**

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- 20165. *Fostering introduction of new technology to improve safety at highway-rail grade crossings.*

\* \* \* \* \*

SUBCHAPTER I—GENERAL

\* \* \* \* \*

§ 20104. **Emergency authority**

(a) ORDERING RESTRICTIONS AND PROHIBITIONS.—(1) If, through testing, inspection, investigation, or research carried out under this chapter, the Secretary of Transportation decides that an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of [death or personal injury] *death, personal injury, or significant harm to the environment*, the Secretary immediately may order restrictions and prohibitions, without regard to section 20103(e) of this title, that may be necessary to abate the situation.

\* \* \* \* \*

§ 20106. **National uniformity of regulation**

(a) *IN GENERAL.*—Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order—

(1) \* \* \*

\* \* \* \* \*

(b) *CLARIFICATIONS REGARDING STATE LAW CAUSES OF ACTION.*—

(1) *IN GENERAL.*—*Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has violated the Federal standard of care established by a regulation or order issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to the railroad security matters) covering the subject matter as provided in subsection (a) of this section. This includes actions under State law for a party’s violation of or failure to adequately comply with its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries or for a party’s failure to adequately comply with a law, regulation, or order issued by either of the Secretaries. Actions under State law for a violation*

of a State law, regulation, or order that is not inconsistent with subsection (a)(2) are also not preempted.

(2) *RETROACTIVITY.*—This subsection shall apply to all pending State law causes of action arising from events or activities occurring on or after January 18, 2002.

**§ 20107. Inspection and investigation**

(a) \* \* \*

\* \* \* \* \*

(c) *RAILROAD RADIO COMMUNICATIONS.*—

(1) *IN GENERAL.*—To carry out the Secretary’s responsibilities under this part and under chapter 51, the Secretary may authorize officers, employees, or agents of the Secretary to conduct the following activities in circumstances the Secretary finds to be reasonable:

(A) *Intercepting a radio communication, with or without the consent of the sender or other receivers of the communication, but only where such communication is broadcast or transmitted over a radio frequency which is—*

- (i) *authorized for use by one or more railroad carriers by the Federal Communications Commission; and*
- (ii) *primarily used by such railroad carriers for communications in connection with railroad operations.*

(B) *Communicating the existence, contents, substance, purport, effect, or meaning of the communication, subject to the restrictions in paragraph (3).*

(C) *Receiving or assisting in receiving the communication (or any information therein contained).*

(D) *Disclosing the contents, substance, purport, effect, or meaning of the communication (or any part thereof of such communication) or using the communication (or any information contained therein), subject to the restrictions in paragraph (3), after having received the communication or acquired knowledge of the contents, substance, purport, effect, or meaning of the communication (or any part thereof).*

(E) *Recording the communication by any means, including writing and tape recording.*

(2) *ACCIDENT PREVENTION AND ACCIDENT INVESTIGATION.*—The Secretary, and officers, employees, and agents of the Department of Transportation authorized by the Secretary, may engage in the activities authorized by paragraph (1) for the purpose of accident prevention and accident investigation.

(3) *USE OF INFORMATION.*—(A) *Information obtained through activities authorized by paragraphs (1) and (2) shall not be admitted into evidence in any administrative or judicial proceeding except—*

- (i) *in a prosecution of a felony under Federal or State criminal law; or*
- (ii) *to impeach evidence offered by a party other than the Federal Government regarding the existence, electronic characteristics, content, substance, purport, effect, meaning, or timing of, or identity of parties to, a communication intercepted pursuant to paragraphs (1) and (2) in proceedings pursuant to section 5122, 5123, 20702(b), 20111, 20112, 20113, or 20114 of this title.*

(B) If information obtained through activities set forth in paragraphs (1) and (2) is admitted into evidence for impeachment purposes in accordance with subparagraph (A), the court, administrative law judge, or other officer before whom the proceeding is conducted may make such protective orders regarding the confidentiality or use of the information as may be appropriate in the circumstances to protect privacy and administer justice.

(C) No evidence shall be excluded in an administrative or judicial proceeding solely because the government would not have learned of the existence of or obtained such evidence but for the interception of information that is not admissible in such proceeding under subparagraph (A).

(D) Information obtained through activities set forth in paragraphs (1) and (2) shall not be subject to publication or disclosure, or search or review in connection therewith, under section 552 of title 5.

(E) Nothing in this subsection shall be construed to impair or otherwise affect the authority of the United States to intercept a communication, and collect, retain, analyze, use, and disseminate the information obtained thereby, under a provision of law other than this subsection.

(4) APPLICATION WITH OTHER LAW.—Section 705 of the Communications Act of 1934 (47 U.S.C. 605) and chapter 119 of title 18 shall not apply to conduct authorized by and pursuant to this subsection.

\* \* \* \* \*

## § 20109. Employee protections

[(a) FILING COMPLAINTS AND TESTIFYING.—A railroad carrier engaged in interstate or foreign commerce may not discharge or in any way discriminate against an employee because the employee, whether acting for the employee or as a representative, has—

[(1) filed a complaint or brought or caused to be brought a proceeding related to the enforcement of this part or, as applicable to railroad safety, chapter 51 or 57 of this title; or

[(2) testified or will testify in that proceeding.

[(b) REFUSING TO WORK BECAUSE OF HAZARDOUS CONDITIONS.—(1) A railroad carrier engaged in interstate or foreign commerce may not discharge or in any way discriminate against an employee for refusing to work when confronted by a hazardous condition related to the performance of the employee's duties, if—

[(A) the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

[(B) a reasonable individual in the circumstances then confronting the employee would conclude that—

[(i) the hazardous condition presents an imminent danger of death or serious injury; and

[(ii) the urgency of the situation does not allow sufficient time to eliminate the danger through regular statutory means; and

[(C) the employee, where possible, has notified the carrier of the hazardous condition and the intention not to perform further work unless the condition is corrected immediately.

[(2) This subsection does not apply to security personnel employed by a carrier to protect individuals and property transported by railroad.

[(c) DISPUTE RESOLUTION.—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim, the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than \$20,000.

[(d) ELECTION OF REMEDIES.—An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

[(e) DISCLOSURE OF IDENTITY.—(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this part or, as applicable to railroad safety, chapter 51 or 57 of this title or a regulation prescribed or order issued under any of those provisions.

[(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.】

### **§ 20109. Employee protections**

(a) *PROTECTED ACTIONS.*—A railroad carrier engaged in interstate or foreign commerce, and an officer or employee of such a railroad carrier, shall not by threat, intimidation, or otherwise attempt to prevent an employee from, or discharge, discipline, or in any way discriminate against an employee for—

(1) filing a complaint or bringing or causing to be brought a proceeding related to the enforcement of this part or, as applicable to railroad safety, chapter 51 or 57 of this title;

(2) testifying in a proceeding described in paragraph (1);

(3) notifying, or attempting to notify, the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee;

(4) cooperating with a safety investigation by the Secretary of Transportation or the National Transportation Safety Board;

(5) furnishing information to the Secretary of Transportation, the National Transportation Safety Board, or any other public official as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with railroad transportation; or

(6) accurately reporting hours of duty pursuant to chapter 211.

(b) *HAZARDOUS CONDITIONS.*—(1) A railroad carrier engaged in interstate or foreign commerce, and an officer or employee of such a railroad carrier, shall not by threat, intimidation, or otherwise at-

tempt to prevent an employee from, or discharge, discipline, or in any way discriminate against an employee for—

(A) reporting a hazardous condition;

(B) refusing to work when confronted by a hazardous condition related to the performance of the employee's duties, if the conditions described in paragraph (2) exist; or

(C) refusing to authorize the use of any safety-related equipment, track, or structures, if the employee is responsible for the inspection or repair of the equipment, track, or structures, when the employee believes that the equipment, track, or structures are in a hazardous condition, if the conditions described in paragraph (2) exist.

(2) A refusal is protected under paragraph (1)(B) and (C) if—

(A) the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

(B) the employee reasonably concludes that—

(i) the hazardous condition presents an imminent danger of death or serious injury; and

(ii) the urgency of the situation does not allow sufficient time to eliminate the danger without such refusal; and

(C) the employee, where possible, has notified the carrier of the existence of the hazardous condition and the intention not to perform further work, or not to authorize the use of the hazardous equipment, track, or structures, unless the condition is corrected immediately or the equipment, track, or structures are repaired properly or replaced.

(3) This subsection does not apply to security personnel employed by a railroad carrier to protect individuals and property transported by railroad.

(c) ENFORCEMENT ACTION.—

(1) IN GENERAL.—An employee who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief in accordance with the provisions of this section, with any petition or other request for relief under this section to be initiated by filing a complaint with the Secretary of Labor.

(2) PROCEDURE.—

(A) IN GENERAL.—An action under this section shall be governed under the rules and procedures set forth in section 42121(b).

(B) EXCEPTION.—Notification made under section 42121(b)(1) shall be made to the person named in the complaint and to the person's employer.

(C) BURDENS OF PROOF.—An action brought under this section shall be governed by the legal burdens of proof set forth in section 42121(b).

(D) STATUTE OF LIMITATIONS.—An action under this section shall be commenced not later than 1 year after the date on which the violation occurs.

(3) DE NOVO REVIEW.—If the Secretary of Labor has not issued a final decision within 180 days after the filing of the complaint (or, in the event that a final order or decision is issued by the Secretary of Labor, whether within the 180-day period or thereafter, then, not later than 90 days after such an order or decision is issued), the employee may bring an original action at law or equity for de novo review in the appropriate



*district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.*

*(d) REMEDIES.—*

*(1) IN GENERAL.—An employee prevailing in any action under this section shall be entitled to all relief necessary to make the covered individual whole.*

*(2) DAMAGES.—Relief in an action under this section shall include—*

*(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;*

*(B) the amount of any back pay, with interest; and*

*(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.*

*(3) POSSIBLE RELIEF.—Relief may also include punitive damages in an amount not to exceed 10 times the amount of any compensatory damages awarded under this section.*

*(e) CRIMINAL PENALTIES.—*

*(1) IN GENERAL.—It shall be unlawful for any railroad carrier to commit an act prohibited by subsection (a). Any person who willfully violates this section by terminating or retaliating against any such covered individual who makes a claim under this section shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both.*

*(2) REPORTING REQUIREMENT.—*

*(A) IN GENERAL.—The Attorney General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an annual report on the enforcement of paragraph (1).*

*(B) CONTENTS.—Each such report shall—*

*(i) identify each case in which formal charges under paragraph (1) were brought;*

*(ii) describe the status or disposition of each such case; and*

*(iii) in any actions under subsection (c)(1) in which the employee was the prevailing party or the substantially prevailing party, indicate whether or not any formal charges under paragraph (1) of this subsection have been brought and, if not, the reasons therefor.*

*(f) NO PREEMPTION.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.*

*(g) RIGHTS RETAINED BY COVERED INDIVIDUAL.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.*

\* \* \* \* \*

**§ 20112. Enforcement by the Attorney General**

(a) CIVIL ACTIONS.—At the request of the Secretary of Transportation, the Attorney General may bring a civil action in a district court of the United States—

(1) to enjoin a violation of, or to enforce, *this part* or a railroad safety regulation prescribed or order issued by the Secretary;

(2) to collect a civil penalty imposed or an amount agreed on in compromise under section **[21301]** 21301, 21302, or 21303 of this title; or

(3) to enforce a **[subpena]** subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition issued by the Secretary under this **[chapter.]** part.

\* \* \* \* \*

**§ 20116. Rulemaking process**

*No rule or order issued by the Secretary under this part shall be effective if it incorporates by reference a code, rule, standard, requirement, or practice issued by an association or other entity that is not an agency of the Federal Government, unless that reference is to a particular code, rule, standard, requirement, or practice adopted before the date on which the rule is issued by the Secretary, and unless the date on which the code, rule, standard, requirement, or practice was adopted is specifically cited in the rule.*

**§ 20117. Authorization of appropriations**

**[(a) GENERAL.—(1) Not more than the following amounts may be appropriated to the Secretary of Transportation to carry out this chapter:**

**[(A) \$68,283,000 for the fiscal year ending September 30, 1993.**

**[(B) \$71,690,000 for the fiscal year ending September 30, 1994.**

**[(C) \$68,289,000 for fiscal year 1995.**

**[(D) \$75,112,000 for fiscal year 1996.**

**[(E) \$82,563,000 for fiscal year 1997.**

**[(F) \$90,739,000 for fiscal year 1998.**

**[(2) Not more than \$5,000,000 may be appropriated to the Secretary for the fiscal year ending September 30, 1993, to carry out section 20105 of this title.]**

*(a) IN GENERAL.—(1) There are authorized to be appropriated to the Secretary of Transportation to carry out this part and to carry out responsibilities under chapter 51 as delegated or authorized by the Secretary—*

*(A) \$230,000,000 for fiscal year 2008;*

*(B) \$260,000,000 for fiscal year 2009;*

*(C) \$295,000,000 for fiscal year 2010; and*

*(D) \$335,000,000 for fiscal year 2011.*

*(2) With amounts appropriated pursuant to paragraph (1), the Secretary shall purchase 6 Gage Restraint Measurement System vehicles and 5 track geometry vehicles to enable the deployment of 1 Gage Restraint Measurement System vehicle and 1 track geometry vehicle in each region.*

(3) *There are authorized to be appropriated to the Secretary \$18,000,000 for the period encompassing fiscal years 2008 through 2011 to design, develop, and construct the Facility for Underground Rail Station and Tunnel at the Transportation Technology Center in Pueblo, Colorado. The facility shall be used to test and evaluate the vulnerabilities of above-ground and underground rail tunnels to prevent accidents and incidents in such tunnels, to mitigate and remediate the consequences of any such accidents or incidents, and to provide a realistic scenario for training emergency responders.*

(4) *Such sums as may be necessary from the amount appropriated pursuant to paragraph (1) for each of the fiscal years 2008 through 2011 shall be made available to the Secretary for personnel in regional offices and in Washington, D.C., whose duties primarily involve rail security.*

\* \* \* \* \*

**§20118. Enforcement transparency**

(a) *IN GENERAL.—Not later than December 31, 2007, the Secretary of Transportation shall—*

(1) *provide a monthly updated summary to the public of all railroad enforcement actions taken by the Secretary or the Federal Railroad Safety Administration, from the time a notice commencing an enforcement action is issued until the enforcement action is final;*

(2) *include in each such summary identification of the railroad carrier or person involved in the enforcement activity, the type of alleged violation, the penalty or penalties proposed, any changes in case status since the previous summary, the final assessment amount of each penalty, and the reasons for a reduction in the proposed penalty, if appropriate; and*

(3) *provide a mechanism by which a railroad carrier or person named in an enforcement action may make information, explanations, or documents it believes are responsive to the enforcement action available to the public.*

(b) *ELECTRONIC AVAILABILITY.—Each summary under this section shall be made available to the public by electronic means.*

(c) *RELATIONSHIP TO FOIA.—Nothing in this section shall be construed to require disclosure of information or records that are exempt from disclosure under section 552 of title 5.*

SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

\* \* \* \* \*

**§ 20134. Grade crossings and railroad rights of way**

(a) *GENERAL.—To the extent practicable, the Secretary of Transportation shall maintain a coordinated effort to develop and carry out solutions to the railroad grade crossing problem and measures to protect pedestrians in densely populated areas along railroad rights of way. To carry out this subsection, the Secretary may use the authority of the Secretary under this chapter and over highway, traffic, and motor vehicle safety and over highway construction. The Secretary may purchase promotional items of nominal value and distribute them to the public without charge as part of an educational or awareness program to accomplish the purposes of*

*this section and of any other sections of this title related to improving the safety of highway-rail crossings and to prevent trespass on railroad rights of way, and the Secretary shall prescribe guidelines for the administration of this authority.*

\* \* \* \* \*

**【§20151. Railroad trespassing and vandalism prevention strategy】**

**§20151. *Railroad trespassing, vandalism, and signal violation prevention strategy***

(a) EVALUATION OF EXISTING LAWS.—In consultation with affected parties, the Secretary of Transportation shall evaluate and review current local, State, and Federal laws regarding trespassing on railroad property **【and vandalism affecting railroad safety】**, *vandalism affecting railroad safety, and violations of grade crossing signals*, and develop model prevention strategies and enforcement laws to be used for the consideration of State and local legislatures and governmental entities. The first such evaluation and review, *concerning trespassing and vandalism*, shall be completed within 1 year after November 2, 1994. *The second such evaluation and review, concerning violations of grade crossing signals, shall be completed before April 1, 2008.* The Secretary shall revise such model prevention strategies and enforcement codes periodically.

(b) OUTREACH PROGRAM FOR TRESPASSING AND VANDALISM PREVENTION.—The Secretary shall develop and maintain a comprehensive outreach program to improve communications among Federal railroad safety inspectors, State inspectors certified by the Federal Railroad Administration, railroad police, and State and local law enforcement officers, for the purpose of addressing trespassing and vandalism problems on railroad property, and strengthening relevant enforcement strategies. This program shall be designed to increase public and police awareness of the illegality of, dangers inherent in, and the extent of, trespassing on railroad rights-of-way, to develop strategies to improve the prevention of trespassing and vandalism, and to improve the enforcement of laws relating to railroad trespass, vandalism, and safety.

(c) MODEL LEGISLATION.—(1) Within 18 months after November 2, 1994, the Secretary, after consultation with State and local governments and railroad carriers, shall develop and make available to State and local governments model State legislation providing for—

**【(1)】** (A) civil or criminal penalties, or both, for vandalism of railroad equipment or property which could affect the safety of the public or of railroad employees; and

**【(2)】** (B) civil or criminal penalties, or both, for trespassing on a railroad owned or leased right-of-way.

(2) *Within 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary, after consultation with State and local governments, railroad carriers, and rail labor organizations, shall develop and make available to State and local governments model State legislation providing for civil or criminal penalties, or both, for violations of grade crossing signals.*

(d) *DEFINITION.*—For purposes of this section, the term “violation of grade crossing signals” includes any action by a motorist, unless directed by an authorized safety officer—

(1) to drive around a grade crossing gate in a position intended to block passage over railroad tracks;

(2) to drive through a flashing grade crossing signal;

(3) to drive through a grade crossing with passive warning signs without ensuring that the grade crossing could be safely crossed before any train arrived; and

(4) in the vicinity of a grade crossing, that creates a hazard of an accident involving injury or property damage at the grade crossing.

### **§ 20152. Emergency notification of grade crossing problems**

[(a) *PILOT PROGRAMS.*—The Secretary of Transportation shall conduct a pilot program to demonstrate an emergency notification system utilizing a toll free telephone number that the public can use to convey to railroad carriers, either directly or through public safety personnel, information about malfunctions or other safety problems at railroad-highway grade crossings. The pilot program, at a minimum—

[(1) shall include railroad-highway grade crossings in at least 2 States;

[(2) shall include provisions for public education and awareness of the program; and

[(3) shall require information to be posted at the railroad-highway grade crossing describing the emergency notification system and instructions on how to use the system.

The Secretary may, by grant, provide funding for the expense of information signs and public awareness campaigns necessary to demonstrate the notification system.

[(b) *REPORT.*—The Secretary shall complete the pilot program not later than 24 months after November 2, 1994, and shall submit to the Congress not later than 30 months after November 2, 1994, an evaluation of the pilot program, together with findings as to the effectiveness of such emergency notification systems. The report shall compare and contrast the structure, cost, and effectiveness of the pilot program with other emergency notification systems in effect within other States. Such evaluation shall include analyses of the safety benefits derived from the programs, cost effectiveness, and the burdens on participants, including railroad carriers and law enforcement personnel.]

### **§ 20152. Emergency notification of grade crossing problems**

*Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall require each railroad carrier to—*

*(1) establish and maintain a toll-free telephone service, for rights-of-way over which it dispatches trains, to directly receive calls reporting—*

*(A) malfunctions of signals, crossing gates, and other devices to promote safety at the grade crossing of railroad tracks on those rights-of-way and public or private roads; and*

(B) disabled vehicles blocking railroad tracks at such grade crossings;

(2) upon receiving a report of a malfunction or disabled vehicle pursuant to paragraph (1), immediately contact trains operating near the grade crossing to warn them of the malfunction or disabled vehicle;

(3) upon receiving a report of a malfunction or disabled vehicle pursuant to paragraph (1), and after contacting trains pursuant to paragraph (2), contact, as necessary, appropriate public safety officials having jurisdiction over the grade crossing to provide them with the information necessary for them to direct traffic, assist in the removal of the disabled vehicle, or carry out other activities appropriate to responding to the hazardous circumstance; and

(4) ensure the placement at each grade crossing on rights-of-way that it owns of appropriately located signs, on which shall appear, at a minimum—

(A) a toll-free telephone number to be used for placing calls described in paragraph (1) to the railroad carrier dispatching trains on that right-of-way;

(B) an explanation of the purpose of that toll-free number as described in paragraph (1); and

(C) the grade crossing number assigned for that crossing by the National Highway-Rail Crossing Inventory established by the Department of Transportation.

The Secretary of Transportation shall implement this section through appropriate regulations.

\* \* \* \* \*

**§20156. Roadway user sight distance at highway-rail grade crossings**

(a) *IN GENERAL.*—Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall prescribe regulations that require each railroad carrier to remove from its rights-of-way at all public highway-rail grade crossings, and at all private highway-rail grade crossings open to unrestricted public access (as declared in writing by the holder of the crossing right), grass, brush, shrubbery, trees, and other vegetation which may obstruct the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of the train’s approach, and to maintain its rights-of-way at all such crossings free of such vegetation. In prescribing the regulations, the Secretary shall take into consideration to the extent practicable—

(1) the type of warning device or warning devices installed at the crossing;

(2) factors affecting the timeliness and effectiveness of roadway user decisionmaking, including the maximum allowable roadway speed, maximum authorized train speed, angle of intersection, and topography;

(3) the presence or absence of other sight distance obstructions off the railroad right-of-way; and

(4) any other factors affecting safety at such crossings.

(b) *PROTECTED VEGETATION.*—In promulgating regulations pursuant to this section, the Secretary may make allowance for preserva-

tion of trees and other ornamental or protective growth where State or local law or policy would otherwise protect the vegetation from removal and where the roadway authority or private crossing holder is notified of the sight distance obstruction and, within a reasonable period specified by the regulation, takes appropriate temporary and permanent action to abate the hazard to roadway users (such as by closing the crossing, posting supplementary signage, installing active warning devices, lowering roadway speed, or installing traffic calming devices).

(c) **NO PREEMPTION.**—Notwithstanding section 20106, subsections (a) and (b) of this section do not prohibit a State from continuing in force, or from enacting, a law, regulation, or order requiring the removal of obstructive vegetation from a railroad right-of-way for safety reasons that is more stringent than the requirements of the regulations prescribed pursuant to this section.

(d) **MODEL LEGISLATION.**—Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary, after consultation with the Federal Railroad Safety Administration, the Federal Highway Administration, and States, shall develop and make available to States model legislation providing for improving safety by addressing sight obstructions, at highway-rail grade crossings that are equipped solely with passive warnings, such as permanent structures, temporary structures, and standing railroad equipment, as recommended by the Inspector General of the Department of Transportation in Report No. MH-2007-044.

### **§20157. National crossing inventory**

(a) **INITIAL REPORTING OF INFORMATION ABOUT PREVIOUSLY UNREPORTED CROSSINGS.**—Not later than 1 year after the date of enactment of the Federal Railroad Safety Improvement Act of 2007 or 6 months after a new crossing becomes operational, whichever occurs later, each railroad carrier shall—

(1) report to the Secretary of Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported crossing through which it operates; or

(2) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

(b) **UPDATING OF CROSSING INFORMATION.**—(1) On a periodic basis beginning not later than 3 years after the date of enactment of the Federal Railroad Safety Improvement Act of 2007 and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall—

(A) report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each crossing through which it operates; or

(B) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

(2) A railroad carrier that sells a crossing or any part of a crossing on or after the date of enactment of the Federal Railroad Safety Improvement Act of 2007 shall, not later than the date that is 18

months after the date of enactment of that Act or 3 months after the sale, whichever occurs later, or as otherwise specified by the Secretary, report to the Secretary current information, as specified by the Secretary, concerning the change in ownership of the crossing or part of the crossing.

(c) **RULEMAKING AUTHORITY.**—The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Department of Transportation’s statement of the national highway-rail crossing inventory policy, procedures, and instruction for States and railroads that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act of 2007, until such provision is superseded by a regulation issued under this section.

(d) **DEFINITIONS.**—In this section:

(1) **CROSSING.**—The term “crossing” means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where—

(A) a public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

(B) a pathway dedicated for the use of nonvehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated.

(2) **STATE.**—The term “State” means a State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

#### **§20158. Warning in nonsignaled territory**

Not later than 12 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall prescribe regulations that require railroads, with respect to main lines in nonsignaled territory without a train speed enforcement system that would stop a train in advance of a misaligned switch, to either—

(1) install an automatically activated device, in addition to the switch banner, that will, visually or electronically, compellingly capture the attention of the employees involved with switch operations and clearly convey the status of the switch both in daylight and darkness; or

(2) operate trains at speeds that will allow them to be safely stopped in advance of misaligned switches.

#### **§20159. Track safety**

(a) **RAIL INTEGRITY.**—Not later than 12 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall prescribe regulations to require railroad carriers to manage the rail in their tracks so as to minimize accidents due to internal rail flaws. The regulations shall, at a minimum—



(1) require railroad carriers to conduct ultrasonic or other appropriate inspections to ensure that rail used to replace defective segments of existing rail is free from internal defects;

(2) require railroad carriers to perform rail integrity inspections to manage an annual service failure rate of less than .1 per track mile on high-risk corridors such as those that have significant movements of hazardous materials or where commuter and intercity passenger railroads operate; and

(3) encourage railroad carrier use of advanced rail defect inspection equipment and similar technologies as part of a comprehensive rail inspection program.

(b) **CONCRETE CROSSTIES.**—Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary shall develop and implement regulations for all classes of track for concrete crossties that address, at a minimum—

- (1) limits for rail seat abrasion;
- (2) concrete crosstie pad wear limits;
- (3) missing or broken rail fasteners;
- (4) loss of appropriate toeload pressure;
- (5) improper fastener configurations; and
- (6) excessive lateral rail movement.

#### **§ 20160. Certification of conductors**

(a) **REGULATIONS.**—Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall prescribe regulations and issue orders to establish a program requiring the certification of train conductors. In prescribing such regulations, the Secretary shall require that conductors on passenger trains be trained in security, first aid, and emergency preparedness.

(b) **PROGRAM DESIGN.**—The program established under this section shall be designed based on the requirements of section 20135(b) through (e).

#### **§ 20161. Minimum training standards**

The Secretary of Transportation shall, not later than 180 days after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, establish—

(1) minimum training standards for each class and craft of railroad employees, which shall require railroad carriers to qualify or otherwise document the proficiency of their employees in each class and craft regarding their knowledge of, and ability to comply with, Federal railroad safety laws and regulations and railroad carrier rules and procedures promulgated to implement those Federal railroad safety laws and regulations;

(2) a requirement for railroad carriers to submit their training and qualification programs to the Federal Railroad Safety Administration for approval; and

(3) a minimum training curriculum, and ongoing training criteria, testing, and skills evaluation measures to ensure that railroad employees charged with the inspection of track or railroad equipment are qualified to assess railroad compliance with Federal standards to identify defective conditions and initiate immediate remedial action to correct critical safety defects

*that are known to contribute to derailments, accidents, or injury. In implementing the requirements of this paragraph, the Secretary shall take into consideration existing training programs of railroad carriers.*

**§20162. Prompt medical attention**

*(a) PROHIBITION.—A railroad or person covered under this title shall not deny, delay, or interfere with the medical or first aid treatment of an employee who is injured during the course of employment. If transportation to a hospital is requested by an employee who is injured during the course of employment, the railroad shall promptly arrange to have the injured employee transported to the nearest medically appropriate hospital.*

*(b) DISCIPLINE.—A railroad or person covered under this title shall not discipline, or threaten discipline to, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician. For purposes of this subsection, discipline means to bring charges against a person in a disciplinary proceeding, suspend, terminate, place on probation, or make note of reprimand on an employee's record.*

**§20163. Emergency escape breathing apparatus**

*Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall prescribe regulations that require railroads to—*

*(1) provide emergency escape breathing apparatus for all crewmembers on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of release; and*

*(2) provide their crewmembers with appropriate training for using the breathing apparatus.*

**§20164. Certification of carmen**

*(a) REGULATIONS.—Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act of 2007, the Secretary of Transportation shall prescribe regulations and issue orders to establish a program requiring the certification of carmen, including all employees performing mechanical inspections, brake system inspections, or maintenance on freight and passenger rail cars.*

*(b) PROGRAM DESIGN.—The program established under this section shall be designed by the Secretary of Transportation based on the requirements of parts 215, 221, 231, 232, and 238 of title 49 of the Code of Federal Regulations.*

**§20165. Fostering introduction of new technology to improve safety at highway-rail grade crossings**

*(a) FINDINGS.—(1) Collisions between highway users and trains at highway-rail grade crossings continue to cause an unacceptable loss of life and serious personal injury and also threaten the safety of rail transportation.*

*(2) While elimination of at-grade crossings through consolidation of crossings and grade separations offers the greatest long-term promise for optimizing the safety and efficiency of the two modes of*

transportation, over 140,000 public grade crossings remain on the general rail system—approximately one for each route mile on the general rail system.

(3) Conventional highway traffic control devices such as flashing lights and gates are effective in warning motorists of a train’s approach to an equipped crossing.

(4) Since enactment of the Highway Safety Act of 1973, over \$4,200,000,000 of Federal funding has been invested in safety improvements at highway-rail grade crossings, yet a majority of public highway-rail grade crossings are not yet equipped with active warning systems.

(5) The emergence of new technologies supporting Intelligent Transportation Systems presents opportunities for more effective and affordable warnings and safer passage of highway users and trains at remaining highway-rail grade crossings.

(6) Implementation of new crossing safety technology will require extensive cooperation between highway authorities and railroad carriers.

(7) Federal Railroad Safety Administration regulations establishing performance standards for processor-based signal and train control systems provide a suitable framework for qualification of new or novel technology at highway-rail grade crossings, and the Federal Highway Administration’s Manual on Uniform Traffic Control Devices provides an appropriate means of determining highway user interface with such new technology.

(b) *POLICY.*—It is the policy of the United States to encourage the development of new technology that can prevent loss of life and injuries at highway-rail grade crossings. The Secretary of Transportation is designated to carry out this policy in consultation with States and necessary public and private entities.

\* \* \* \* \*

**CHAPTER 211—HOURS OF SERVICE**

Sec

21101.	Definitions.	*	*	*	*	*	*
21109.	<i>Fatigue management plans.</i>						
21110.	<i>Regulatory authority.</i>	*	*	*	*	*	*

**§ 21101. Definitions**

In this chapter—

(1) \* \* \*

\* \* \* \* \*

(4) “signal employee” means an individual [employed by a railroad carrier] who is engaged in installing, repairing, or maintaining signal systems.

\* \* \* \* \*

**§ 21103. Limitations on duty hours of train employees**

[(a) *GENERAL.*—Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to remain or go on duty—

【(1) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours; or

【(2) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty.】

(a) *GENERAL.—Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to remain or go on duty—*

*(1) unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours;*

*(2) for a period in excess of 12 consecutive hours; or*

*(3) unless that employee has had at least one period of at least 24 consecutive hours off duty in the past 7 consecutive days.*

*The Secretary may waive paragraph (3) if a collective bargaining agreement provides a different arrangement and such arrangement provides an equivalent level of safety.*

(b) *DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a train employee is on or off duty, the following rules apply:*

(1) \* \* \*

\* \* \* \* \*

【(4) Time spent in deadhead transportation to a duty assignment is time on duty, but time spent in deadhead transportation from a duty assignment to the place of final release is neither time on duty nor time off duty.】

*(4)(A)(i) Except as provided in clauses (ii) and (iii), time spent in deadhead transportation to a duty assignment, time spent waiting for deadhead transportation, and time spent in deadhead transportation from a duty assignment to a place of final release is time on duty.*

*(ii) Time spent waiting for deadhead transportation and time spent in deadhead transportation from a duty assignment to a place of final release is neither time on duty nor time off duty in situations involving delays in the operations of the railroad carrier, when the delays were caused by any of the following:*

*(I) A casualty.*

*(II) An accident.*

*(III) A track obstruction.*

*(IV) An act of God.*

*(V) A weather event causing a delay.*

*(VI) A snowstorm.*

*(VII) A landslide.*

*(VIII) A track or bridge washout.*

*(IX) A derailment.*

*(X) A major equipment failure which prevents a train from advancing.*

*(XI) Other delay from a cause unknown or unforeseeable to a railroad carrier and its officers and agents in charge of the employee when the employee left a designated terminal.*

*(iii) In addition to any time qualifying as neither on duty nor off duty under clause (ii), at the election of the railroad carrier, time spent waiting for deadhead transportation and time spent in deadhead transportation to the place of final release may be*

*treated as neither time on duty nor time off duty, subject to the following limitations:*

*(I) Not more than 40 hours a month may be elected by the railroad carrier, for an employee, during the period from the date of enactment of the Federal Railroad Safety Improvement Act of 2007 to one year after such date of enactment.*

*(II) Not more than 30 hours a month may be elected by the railroad carrier, for an employee, during the period beginning one year after the date of enactment of the Federal Railroad Safety Improvement Act of 2007 and ending two years after such date of enactment.*

*(III) Not more than 10 hours a month may be elected by the railroad carrier, for an employee, during the period beginning two years after the date of enactment of the Federal Railroad Safety Improvement Act of 2007.*

*(B) Each railroad carrier shall report to the Secretary of Transportation, in accordance with procedures contained in 49 CFR 228.19, each instance within 30 days after the calendar month in which the instance occurs that a member of a train or engine crew or other employee engaged in or connected with the movement of any train, including a hostler, exceeds 12 consecutive hours, including—*

*(i) time on duty; and*

*(ii) time spent waiting for deadhead transportation and the time spent in deadhead transportation from a duty assignment to the place of final release, that is not time on duty.*

*(C) If—*

*(i) the time spent waiting for deadhead transportation, and the time spent in deadhead transportation from a duty assignment to the place of final release, that is not time on duty; plus*

*(ii) the time on duty, exceeds 12 consecutive hours, the railroad carrier and its officers and agents shall provide the train employee with additional time off duty equal to the number of hours that such sum exceeds 12 hours.*

\* \* \* \* \*

*(d) COMMUNICATION DURING TIME OFF DUTY.—During a train employee’s minimum off-duty period of 10 consecutive hours, as provided under subsection (a), or during an interim period of at least 4 consecutive hours available for rest under subsection (b)(7), a railroad carrier, and its managers, supervisors, officers, and agents, shall not communicate with the train employee by telephone, by pager, or in any other manner that could disrupt the employee’s rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation posing potential risks to the employee’s safety or health.*

**§ 21104. Limitations on duty hours of signal employees**

**[(a) GENERAL.—(1) In paragraph (2)(C) of this subsection, “24-hour period” means the period beginning when a signal employee reports for duty immediately after 8 consecutive hours off duty or,**

when required under paragraph (2)(B) of this subsection, after 10 consecutive hours off duty.

[(2) Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a signal employee to remain or go on duty—

[(A) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours;

[(B) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty; or

[(C) after that employee has been on duty a total of 12 hours during a 24-hour period, or after the end of that 24-hour period, whichever occurs first, until that employee has had at least 8 consecutive hours off duty.]

(a) GENERAL.—*Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a signal employee, and a railroad contractor and its officers and agents may not require or allow a signal employee, to remain or go on duty—*

*(1) unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours;*

*(2) for a period in excess of 12 consecutive hours; or*

*(3) unless that employee has had at least one period of at least 24 consecutive hours off duty in the past 7 consecutive days.*

*The Secretary may waive paragraph (3) if a collective bargaining agreement provides a different arrangement and such arrangement provides an equivalent level of safety.*

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a signal employee is on duty or off duty, the following rules apply:

(1) \* \* \*

\* \* \* \* \*

(3) Time spent returning from a trouble call, whether the employee goes directly to the employee's residence or by way of the employee's headquarters, is neither time on duty nor time off duty, except that up to one hour of that time spent returning from the final trouble call of a period of continuous or broken service is time off duty.

\* \* \* \* \*

(c) EMERGENCIES.—A signal employee may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours *for not more than 3 days during a period of 7 consecutive days* when an emergency exists and the work of that employee is related to the emergency. In this subsection, an emergency ends when the signal system is restored to service. *A signal employee may not be allowed to remain or go on duty under the emergency authority provided under this subsection to conduct routine repairs, routine maintenance, or routine inspection of signal systems.*

(d) COMMUNICATION DURING TIME OFF DUTY.—*During a signal employee's minimum off-duty period of 10 consecutive hours, as provided under subsection (a), a railroad carrier, and its managers, supervisors, officers, and agents, shall not communicate with the sig-*

*nal employee by telephone, by pager, or in any other manner that could disrupt the employee's rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation posing potential risks to the employee's safety or health.*

*(e) EXCLUSIVITY.—The hours of service, duty hours, and rest periods of signal employees shall be governed exclusively by this chapter. Signal employees operating motor vehicles shall not be subject to any hours of service rules, duty hours, or rest period rules promulgated by any Federal authority, including the Federal Motor Carrier Safety Administration, other than the Federal Railroad Safety Administration.*

\* \* \* \* \*

**§ 21106. Limitations on employee sleeping quarters**

*(a) IN GENERAL.—A railroad carrier and its officers and agents—*

*(1) \* \* \**

\* \* \* \* \*

*(b) CAMP CARS.—Effective 12 months after the date of enactment of this subsection, a railroad carrier and its officers and agents may not provide sleeping quarters through the use of camp cars, as defined in Appendix C to part 228 of title 49 of the Code of Federal Regulations, for employees and any individuals employed to maintain the right of way of a railroad carrier.*

\* \* \* \* \*

**§ 21109. Fatigue management plans**

*(a) PLAN SUBMISSION.—*

*(1) REQUIREMENT.—Each railroad carrier shall submit to the Secretary of Transportation, and update at least once every 2 years, a fatigue management plan that is designed to reduce the fatigue experienced by railroad employees and to reduce the likelihood of accidents and injuries caused by fatigue. The plan shall address the safety effects of fatigue on all employees performing safety sensitive functions, including employees not covered by this chapter. The plan shall be submitted not later than 1 year after the date of the enactment of this section, or not later than 45 days prior to commencing operations, whichever is later.*

*(2) CONTENTS OF PLAN.—The fatigue management plan shall—*

*(A) identify and prioritize all situations that pose a risk for safety that may be affected by fatigue;*

*(B) include the railroad carrier's—*

*(i) rationale for including and not including each element described in subsection (b)(2) in the plan;*

*(ii) analysis supporting each element included in the plan; and*

*(iii) explanations for how each element in the plan will reduce the risk associated with fatigue;*

*(C) describe how every condition on the railroad carrier's property, and every type of employee, that is likely to be affected by fatigue is addressed in the plan; and*

(D) include the name, title, address, and telephone number of the primary person to be contacted with regard to review of the plan.

(3) APPROVAL.—(A) The Secretary shall review each proposed plan and approve or disapprove such plan based on whether the requirements of this section are sufficiently and appropriately addressed and the proposals are adequately justified in the plan.

(B) If the proposed plan is not approved, the Secretary shall notify the affected railroad carrier as to the specific points in which the proposed plan is deficient, and the railroad carrier shall correct all deficiencies within 30 days following receipt of written notice from the Secretary. If a railroad carrier does not submit a plan (or, when directed by the Secretary, an amended plan), or if a railroad carrier's amended plan is not approved by the Secretary, the Secretary shall prescribe a fatigue management plan for the railroad carrier.

(4) EMPLOYEE PARTICIPATION.—(A) Each affected railroad carrier shall consult with, and employ good faith and use its best efforts to reach agreement by consensus with, all of its directly affected employee groups on the contents of the fatigue management plan, and, except as provided in subparagraph (C), shall jointly with such groups submit the plan to the Secretary.

(B) In the event that labor organizations represent classes or crafts of directly affected employees of the railroad carrier, the railroad carrier shall consult with these organizations in drafting the plan. The Secretary may provide technical assistance and guidance to such parties in the drafting of the plan.

(C) If the railroad carrier and its directly affected employees (including any labor organization representing a class or craft of directly affected employees of the railroad carrier) cannot reach consensus on the proposed contents of the plan, then—

(i) the railroad carrier shall file the plan with the Secretary; and

(ii) directly affected employees and labor organizations representing a class or craft of directly affected employees may, at their option, file a statement with the Secretary explaining their views on the plan on which consensus was not reached.

(b) ELEMENTS OF THE FATIGUE MANAGEMENT PLAN.—

(1) CONSIDERATION OF VARYING CIRCUMSTANCES.—Each plan filed with the Secretary under the procedures of subsection (a) shall take into account the varying circumstances of operations by the railroad carrier on different parts of its system, and shall prescribe appropriate fatigue countermeasures to address those varying circumstances.

(2) ISSUES AFFECTING ALL EMPLOYEES PERFORMING SAFETY SENSITIVE FUNCTIONS.—The railroad carrier shall consider the need to include in its fatigue management plan elements addressing each of the following issues:

(A) Education and training on the physiological and human factors that affect fatigue, as well as strategies to counter fatigue, based on current and evolving scientific and medical research and literature.



(B) Opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders.

(C) Effects on employee fatigue of emergency response involving both short-term emergency situations, including derailments, and long-term emergency situations, including natural disasters.

(D) Scheduling practices involving train lineups and calling times, including work/rest cycles for shift workers and on-call employees that permit employees to compensate for cumulative sleep loss by guaranteeing a minimum number of consecutive days off (exclusive of time off due to illness or injury).

(E) Minimizing the incidence of fatigue that occurs as a result of working at times when the natural circadian rhythm increases fatigue.

(F) Alertness strategies, such as policies on napping, to address acute sleepiness and fatigue while an employee is on duty.

(G) Opportunities to obtain restful sleep at lodging facilities, including sleeping quarters provided by the railroad carrier.

(H) In connection with the scheduling of a duty call, increasing the number of consecutive hours of rest off duty, during which an employee receives no communication from the employing railroad carrier or its managers, supervisors, officers, or agents.

(I) Avoiding abrupt changes in rest cycles for employees returning to duty after an extended absence due to circumstances such as illness or injury.

(J) Additional elements as the Secretary considers appropriate.

(c) COMPLIANCE AND ENFORCEMENT.—

(1) COMPLIANCE REQUIREMENT.—Effective upon approval or prescription of a fatigue management plan, compliance with that fatigue management plan becomes mandatory and enforceable by the Secretary.

(2) EFFECTIVE DATE.—A fatigue management plan may include effective dates later than the date of approval of the plan, and may include different effective dates for different parts of the plan.

(3) AUDITS.—To enforce this section, the Secretary may conduct inspections and periodic audits of a railroad carrier's compliance with its fatigue management plan.

(d) DEFINITION.—For purposes of this section the term “directly affected employees” means employees, including employees of an independent contractor or subcontractor, to whose hours of service the terms of a fatigue management plan specifically apply.

**§21110. Regulatory authority**

The Secretary of Transportation may by regulation—

(1) reduce the maximum hours an employee may be required or allowed to go or remain on duty to a level less than the level established under this chapter, based on scientific and medical research; or

*(2) increase the minimum hours an employee may be required or allowed to rest to a level greater than the level established under this chapter, based on scientific and medical research.*

\* \* \* \* \*

**CHAPTER 213—PENALTIES**

SUBCHAPTER I—CIVIL PENALTIES

Sec

21301. Chapter 201 general violations.

\* \* \* \* \*

SUBCHAPTER II—CRIMINAL PENALTIES

21312. *Interfering with or hampering safety investigations.*

\* \* \* \* \*

SUBCHAPTER I—CIVIL PENALTIES

**§ 21301. Chapter 201 general violations**

(a) PENALTY.—(1) A person may not fail to comply *with section 20157 or* with a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title. Subject to section 21304 of this title, a person violating *section 20157 of this title or* a regulation prescribed or order issued by the Secretary under chapter 201 is liable to the United States Government for a civil penalty. The Secretary shall impose the penalty applicable under paragraph (2) of this subsection. A separate violation occurs for each day the violation continues.

(2) The Secretary shall include in, or make applicable to, each regulation prescribed and order issued under chapter 201 of this title a civil penalty for a violation. *The Secretary shall impose a civil penalty for a violation of section 20157 of this title.* The amount of the penalty shall be at least \$500 but not more than **[\$10,000]** *\$25,000*. However, when 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 amount may be not more than **[\$20,000]** *\$100,000*.

\* \* \* \* \*

**§ 21302. Chapter 201 accident and incident violations and chapter 203–209 violations**

(a) PENALTY.—(1) \* \* \*

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least \$500 but not more than **[\$10,000]** *\$25,000*. However, when 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 amount may be not more than **[\$20,000]** *\$100,000*.

\* \* \* \* \*

**§ 21303. Chapter 211 violations**

(a) PENALTY.—(1) \* \* \*

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least \$500 but not more than ~~[\$10,000]~~ \$25,000. However, when 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 amount may be not more than ~~[\$20,000]~~ \$100,000.

\* \* \* \* \*

(c) IMPUTATION OF KNOWLEDGE.—In any proceeding under this section, a railroad carrier is deemed to know the acts of its ~~[officers and agents]~~ *managers, supervisors, officers, and agents.*

\* \* \* \* \*

SUBCHAPTER II—CRIMINAL PENALTIES

**§ 21311. Records and reports**

(a) \* \* \*

(b) ACCIDENT AND INCIDENT REPORTS.—A railroad carrier not filing the report required by section 20901 of this title shall be fined not more than ~~[\$500]~~ \$2,500 for each violation and not more than ~~[\$500]~~ \$2,500 for each day during which the report is overdue.

**§ 21312. Interfering with or hampering safety investigations**

(a) *IN GENERAL.*—It shall be unlawful for any person knowingly to interfere with, obstruct, or hamper an investigation by the Secretary of Transportation conducted under section 20703 or 20902 of this title, or a railroad investigation by the National Transportation Safety Board under chapter 11 of this title.

(b) *INTIMIDATION AND HARASSMENT.*—It shall be unlawful for any person, with regard to an investigation conducted by the Secretary under section 20703 or 20902 of this title, or a railroad investigation by the National Transportation Safety Board under chapter 11 of this title, knowingly or intentionally to use intimidation, harassment, threats, or physical force toward another person, or corruptly persuade another person, or attempt to do so, or engage in misleading conduct toward another person, with the intent or effect of—

(1) influencing the testimony or statement of any person;

(2) hindering, delaying, preventing, or dissuading any person from—

(A) attending a proceeding or interview with, testifying before, or providing a written statement to, a National Transportation Safety Board railroad investigator, a Federal railroad safety inspector or State railroad safety inspector, or their superiors;

(B) communicating or reporting to a National Transportation Safety Board railroad investigator, a Federal railroad safety inspector, or a State railroad safety inspector, or their superiors, information relating to the commission or possible commission of one or more violations of this part or of chapter 51 of this title; or

(C) recommending or using any legal remedy available to the Secretary under this title; or

(3) causing or inducing any person to—

(A) withhold testimony, or a statement, record, document, or other object, from the investigation;

(B) alter, destroy, mutilate, or conceal a statement, record, document, or other object with intent to impair the integrity or availability of the statement, record, document, or other object for use in the investigation;

(C) evade legal process summoning that person to appear as a witness, or to produce a statement, record, document, or other object, in the investigation; or

(D) be absent from an investigation to which such person has been summoned by legal process.

(c) *ELEMENTS OF VIOLATION.*—(1) For the purposes of this section, the testimony or statement, or the record, document, or other object, need not be admissible in evidence or free from a claim of privilege.

(2) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance that the investigation is being conducted by the Secretary under section 20703 or 20902 of this title or by the National Transportation Safety Board under chapter 11 of this title.

(d) *CRIMINAL PENALTIES.*—A person violating this section shall be fined under title 18, imprisoned for not more than 1 year, or both.

\* \* \* \* \*

**PART C—PASSENGER TRANSPORTATION**

\* \* \* \* \*

**CHAPTER 251—FAMILY ASSISTANCE**

Sec.  
25101. *Plans to address needs of families of passengers involved in rail passenger accidents.*

**§25101. Plans to address needs of families of passengers involved in rail passenger accidents**

(a) *SUBMISSION OF PLANS.*—Not later than 6 months after the date of the enactment of this section, each rail passenger carrier shall submit to the Secretary of Transportation and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving a train of the rail passenger carrier and resulting in a major loss of life.

(b) *CONTENTS OF PLANS.*—A plan to be submitted by a rail passenger carrier under subsection (a) shall include, at a minimum, the following:

(1) A plan for publicizing a reliable, toll-free telephone number, and for providing staff, to handle calls from the families of the passengers.

(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1139(a)(2) of this title or the services of other suitably trained individuals.

(3) An assurance that the notice described in paragraph (2) will be provided to the family of a passenger as soon as the rail

*passenger carrier has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified) and, to the extent practicable, in person.*

*(4) An assurance that the rail passenger carrier will provide to the director of family support services designated for the accident under section 1139(a)(1) of this title, and to the organization designated for the accident under section 1139(a)(2) of this title, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for the rail passenger carrier to use reasonable efforts to ascertain the names of passengers aboard a train involved in an accident.*

*(5) An assurance that the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within the control of the rail passenger carrier.*

*(6) An assurance that if requested by the family of a passenger, any possession of the passenger within the control of the rail passenger carrier (regardless of its condition) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.*

*(7) An assurance that any unclaimed possession of a passenger within the control of the rail passenger carrier will be retained by the rail passenger carrier for at least 18 months.*

*(8) An assurance that the family of each passenger or other person killed in the accident will be consulted about construction by the rail passenger carrier of any monument to the passengers, including any inscription on the monument.*

*(9) An assurance that the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.*

*(10) An assurance that the rail passenger carrier will work with any organization designated under section 1139(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.*

*(11) An assurance that the rail passenger carrier will provide reasonable compensation to any organization designated under section 1139(a)(2) of this title for services provided by the organization.*

*(12) An assurance that the rail passenger carrier will assist the family of a passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.*

*(13) An assurance that the rail passenger carrier will commit sufficient resources to carry out the plan.*

*(14) An assurance that the rail passenger carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.*

(15) *An assurance that, upon request of the family of a passenger, the rail passenger carrier will inform the family of whether the passenger's name appeared on any preliminary passenger manifest for the train involved in the accident.*

(c) *LIMITATION ON LIABILITY.—A rail passenger carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the rail passenger carrier in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by the rail passenger carrier under subsection (b), unless such liability was caused by conduct of the rail passenger carrier which was grossly negligent or which constituted intentional misconduct.*

(d) *DEFINITIONS.—In this section—*

(1) *the terms “rail passenger accident” and “rail passenger carrier” have the meanings such terms have in section 1139 of this title; and*

(2) *the term “passenger” means a person aboard a rail passenger carrier's train that is involved in a rail passenger accident.*

(e) *LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.*

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**PART E—MISCELLANEOUS**

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**CHAPTER 281—LAW ENFORCEMENT**

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**§ 28101. Rail police officers**

Under regulations prescribed by the Secretary of Transportation, a rail police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of a State may enforce the laws of any jurisdiction in which **the rail carrier** *any rail carrier* owns property, to the extent of the authority of a police officer certified or commissioned under the laws of that jurisdiction, to protect—

(1) employees, passengers, or patrons of **the rail carrier** *any rail carrier*;

(2) property, equipment, and facilities owned, leased, operated, or maintained by **the rail carrier** *any rail carrier*;

(3) property moving in interstate or foreign commerce in the possession of **the rail carrier** *any rail carrier*; and

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**TITLE 23, UNITED STATES CODE**

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CHAPTER 1—FEDERAL-AID HIGHWAYS

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SUBCHAPTER I—REPEALED

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§ 130. Railway-highway crossings

(a) \* \* \*

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(l) NATIONAL CROSSING INVENTORY.—

(1) INITIAL REPORTING OF CROSSING INFORMATION.—Not later than 1 year after the date of enactment of the Federal Railroad Safety Improvement Act of 2007 or within 6 months of a new crossing becoming operational, whichever occurs later, each State shall report to the Secretary of Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported crossing located within its borders.

(2) PERIODIC UPDATING OF CROSSING INFORMATION.—On a periodic basis beginning not later than 3 years after the date of enactment of the Federal Railroad Safety Improvement Act of 2007 and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each State shall report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each crossing located within its borders.

(3) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this subsection. The Secretary may enforce each provision of the Department of Transportation’s statement of the national highway-rail crossing inventory policy, procedures, and instructions for States and railroads that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act of 2007, until such provision is superseded by a regulation issued under this subsection.

(4) DEFINITIONS.—In this subsection, the terms “crossing” and “State” have the meaning given those terms by section 20157(d)(1) and (2), respectively, of title 49.

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