Calendar No. 358

108th Congress 1st Session	SENATE	REPORT 108–182

FEDERAL RAILROAD SAFETY IMPROVEMENT ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1402

OCTOBER 30, 2003.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 1402]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1402) to authorize appropriations for activities under the Federal railroad safety laws for fiscal years 2004 through 2008, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The primary purposes of S. 1402 are to authorize appropriations for the federal rail safety program for fiscal years (FYs) 2004 through 2008 and to improve railroad safety through several new safety initiatives.

BACKGROUND AND NEEDS

Railroad safety regulation dates from the late 19th century, when legislation was enacted to address high employee and passenger casualties. In 1905, 3,588 employees (in a work force of 1.4 million) and 369 passengers were killed in train-related accidents. Another 51,170 employees and 10,514 passengers were injured. Among the earliest railroad safety laws was the Accident Reports Act, passed in 1900, to require railroads to report accident data on injuries and fatalities and document accident causes. A modified version of this system is still used today. In 1907, Congress approved the Hours of Service Act, establishing the maximum number of hours certain classes of railroad employees may work. An amended version of the Hours of Service Act continues in effect.

Today, railroad safety laws and regulations are aimed at preventing injuries and loss of life to freight railroad employees, Amtrak and commuter rail employees and passengers, and the general public. Areas of concern include: train derailments and collisions with other trains; the safety of hazardous materials transportation and the threat to the general public of a release in the event of an accident or incident; grade crossing accidents; injuries and fatalities to trespassers on railroad property; and accidents involving railroad employees.

Jurisdiction over Federal rail safety regulation resides predominantly with the Federal Railroad Administration (FRA). The agency is charged with ensuring the safety of the nation's railroad industry which consists of nearly 600 railroads, more than 230,000 workers, over 170,000 route-miles of railroad track, 1.4 million freight cars, 20,000 locomotives, and more than 250,000 grade crossings.

CHART 1.—RAILROADS SUBJECT TO FRA SAFETY REGULATIONS

Railroad	Number	Miles operated	Employees	Revenue ($ billions)
Class 1 RRs [1]	[2] 8	[3] 97,631	162,160	$33.53
Regional RRs [1]	34	17,439	10,300	1.58
Local RRs [1]	529	27,563	12,000	1.47
Commuter RRs	20	6,685	23,207	[4] 1.3
Intercity [5]	2	1,341	25,548	2.217
Total	592	171,929	233,215	40.10

[1] Class 1 railroads in 2001 are those railroads that met the threshold operating revenue of $266.7 million, as established by the Surface Transportation Board for that year. Regional railroads are defined by AAR as line-haul railroads operating at least 350 miles of road and/or earning revenue between $40 million and the Class I revenue threshold. Local railroads are defined by AAR as line-haul railroads below the regional railroad criteria, plus switching and terminal railroads.

[2] Includes the Soo Line, now a part of the Canadian Pacific Railroad.

[3] Miles operated excludes doublecounting for trackage rights.

[4] Based on fare revenues.

[5] Consists of Amtrak and the Alaska Railroad. Miles operated reflects only owned track. Amtrak owns approximately 885 miles of track but operates over 21,000 miles of railroad lines owned by the freight railroads.

Sources: Association of American Railroads, Railroad Facts, 2002 Edition; American Public Transportation Association; Amtrak; and the Alaska Railroad.

Employee fatalities in the railroad industry have declined dramatically since the original safety laws were adopted, to a total of twenty fatalities in 2002. Passenger fatalities have similarly declined, to a total of seven fatalities in 2002. Most railroad-related fatalities today relate to grade crossing accidents and trespassing on railroad property. In 2002, 355 people were killed in highway-railroad grade crossing accidents, and there were 543 trespasser fatalities.

Safety improvements have been especially notable since the Staggers Rail Act (P.L. 96-448) partially deregulated the rail industry in 1980. According to FRA statistics, the rail industry reduced its overall train accident rate 68 percent from 1980 through 2002, and 22 percent from 1990 through 2002. The rate of employee casualties (injuries and fatalities per 200,000 hours worked) fell 74 percent from 1980 through 2002 and 62 percent from 1990 through 2002. Last year, the rate of employee injuries and fatalities was the lowest on record. Technology improvements such as automated switches, improved communication and signaling devices; the elimination of cabooses; and the reduction in size of train crews have also contributed to safety improvements in the industry.

Grade crossing accidents and fatalities also have fallen significantly. Between 1980 and the end of 2002, the number of grade crossing collisions fell 72 percent, injuries declined by 74 percent, and fatalities were down 57 percent, despite an increase in exposure due to increased highway and rail traffic. The decrease in grade crossing fatalities can be attributed in part to improvements made at such crossings through the Section 130 program (23 U.S.C. 130) which has provided $3.8 billion to improve grade crossing safety or eliminate grade crossings since 1974. In addition, public education efforts through organizations such as Operation Lifesaver have been credited with increasing awareness of the dangers of highway-rail grade crossings through driver education programs, public service announcements, and safety programs for law enforcement officials and emergency responders.

In recent years, trespasser deaths have eclipsed grade crossing fatalities and the number of trespasser deaths is growing. Trespasser fatalities in 2002 were 6 percent higher than the previous year.

FRA has broad jurisdiction to issue regulations to protect railroad safety. Among the issues FRA has addressed through regulation since its inception in 1967 are track safety standards, signal inspection, freight car safety, passenger car safety, locomotive safety, power brakes, alcohol and drug testing, operating rules and practices, accident reporting, hours of service record keeping, railroad communications, roadway worker and bridge worker protection, engineer qualifications, grade crossing signal maintenance, and passenger train emergency preparedness. The FRA is currently developing standards for processor-based signal and train control systems and the use of train horns at crossings. FRA also assists the Research and Special Programs Administration (RSPA) in developing safety standards for packaging and transportation of hazardous materials via rail.

FRA employs more than 415 Federal safety inspectors specializing in the areas of track, signal and train control, motive power and equipment, operating practices, and hazardous materials. The FRA also trains and certifies state safety inspectors to assist in enforcing Federal safety regulations. Currently, the State Rail Safety Participation Program consists of 30 States employing approximately 160 safety inspectors. Inspectors conduct on-site safety inspections of railroads and monitor their compliance with Federally-mandated safety standards. FRA investigates railroad accidents and incidents, including every accident involving an employee fatality and every grade crossing collision involving three or more fatalities. [1]

Current Safety Issues

Positive Train Control. Both FRA and the National Transportation Safety Board (NTSB) believe that train collisions could be avoided through the installation of Positive Train Control (PTC) technology. PTC refers to technology that can automatically control train movements to prevent train collisions (positive train separation), enforce speed restrictions, and provide protection for mainte-

[1] The National Transportation Safety Board (NTSB) is responsible for investigating railroad accidents. NTSB investigates rail-related accidents in which there is a fatality, substantial property damage, or which involve a passenger train.

nance of way workers and their equipment. A train equipped with PTC would automatically slow or stop if the engineer failed to obey a signal. More advanced versions of PTC also may be able to warn of damaged track or bridges, track obstructions, and other on-track equipment. Further, PTC may be able to increase effective track capacity through the use of flexible blocks that reflect the current position and speed of the train rather than the pre-established segmenting of the line between fixed signals.

While new technology for PTC is evolving, less sophisticated train control systems have existed since the 1920s and PTC has been maintained on the Northeast Corridor between New York and Washington, D.C., since the 1930s. The system is capable of slowing trains to a speed of 15 miles per hour, but cannot bring a train to a complete stop. Some form of train control is required on all passenger trains operating at speeds above 79 miles per hour.

Installation of PTC has been on the NTSB's "most wanted" list of safety improvements since 1990. While the NTSB supports the installation of PTC on all main line tracks, its highest priority is high-risk corridors such as those where commuter and intercity passenger railroads operate. This emphasis is based on the probable number of fatalities that occur when passenger trains are involved in collision accidents. The NTSB has investigated 16 major accidents and issued 38 safety recommendations that deal with PTC systems. In addition to these investigated major accidents, the NTSB also has documented since 1999 some 30 collision accidents involving trains without PTC systems.

FRA and the rail industry have worked cooperatively on the development and testing of PTC systems for more than a decade. FRA has issued several reports on the issue, including reports in 1991 and 1994 that concluded that the high cost of PTC makes its installation on all rail lines unrealistic. In 1999, a PTC working group established as part of the Railroad Safety Advisory Committee (RSAC) concluded that PTC cannot be justified on a large scale based on safety benefits alone. The study estimated the total cost industry-wide to install a "Level 1" system that would provide positive train separation and enforce speed restrictions would cost approximately $1.2 billion. A system with additional features for safety monitoring and enhanced traffic management was estimated to cost $7.8 billion. Even for the limited system, the RSAC study concluded that costs would be more than twice the expected benefits. However, as global communications systems, in general, become cheaper and more widespread, the cost of installing PTC systems on railroads could also decline. In addition, PTC could improve safety on the more than 80,000 (of the existing 167,511) track miles of unsignalized or "dark" territory.

In August 2001, the FRA initiated a rulemaking proceeding to facilitate development and implementation of the National Differential Global Positioning System (GPS) Network. PTC testing has proven that a properly augmented GPS can provide a viable, low-cost train-borne location determination system for PTC. GPS is currently operational with single-station coverage on about 85 percent of the land area of the United States, and could be fully operational with dual-redundant coverage by 2005. Again, these improvements to the national GPS network for defense, aviation, and other public needs, would further reduce the cost of PTC systems as essential

infrastructure and satellite communications are established and made available to other users at an incremental cost.

Further, the freight railroads and Amtrak have spent more than $225 million to date to develop and test PTC technology, including $26 million in government/industry joint demonstration projects. The industry's key objectives are to develop standards for the system, create a system that is interoperable among railroads, and ensure that the system is cost-effective. In addition, the States of Illinois and Michigan have contributed $25.7 million and technology contractors have contributed a total of $20 million to projects in those States. To date, FRA has spent $63.2 million to develop and test PTC. Several different PTC technologies are currently being tested under five separate pilot projects involving Amtrak and several freight railroads, including:

- The North American Joint PTC Project in Illinois, in which FRA, the AAR, and the State of Illinois are partnering to develop a high-speed PTC technology on the St. Louis-Chicago corridor. This project is the venue for the industry's development of standards for PTC interoperability;
- The Incremental Train Control System (ITCS) Project in Michigan, a joint project by FRA, Amtrak and the State of Michigan to install ITCS on high-speed operations that include highway-rail grade crossing signals;
- The Dark Territory PTC Demonstration Project in Wisconsin;
- The Burlington Northern Santa Fe (BNSF) Signal Comparator/Compliance System Project; and
- The establishment of a test ground for wireless communication at the Transportation Technology Center in Pueblo, Colorado.

Other PTC development projects include:

- The development of a universal networking and computer platform to facilitate interoperability among PTC systems;
- The development of a portable roadway worker communication system; and
- The development of on-board locomotive PTC.

By way of example, BNSF and CSX are conducting train control pilot programs. The BNSF is demonstrating the Electronic Train Management System (ETMS) on 50 locomotives operating on a 300-mile corridor between St. Louis, Missouri and Beardstown, Illinois. The CSX project is demonstrating a Communications-Based Train Management (CBTM) system in revenue service over a 150-mile corridor between Athens, Georgia and Spartanburg, South Carolina. Both the ETMS and CBTM supply movement-related information, such as authority limits, speed limits, and work zones, to a computer screen inside the locomotive cab. Using a global positioning system, the onboard computer warns, then automatically initiates braking, if the engineer fails to respond appropriately to movement and speed limit information. The two-year-old CSX pilot has confirmed CBTM's ability to positively impact railroad safety, productivity and costs.

Employee Fatigue. Worker fatigue is suspected to have played a role in a number of recent train accidents and incidents. Fatigue is primarily an issue for railroad employees who do not have regular duty schedules. For example, although train crews operate

over a defined territory for which they have qualified, train schedules may vary daily.

Under current law, a train employee must have at least eight consecutive hours off duty during the prior 24 hours before the employee may remain or go on duty. In addition, an employee who has been on duty for more than 12 consecutive hours may not return for duty until that employee has had at least 10 consecutive hours off duty. It is common practice in the rail industry to transport road crews by cab from a train or terminal to a motel. If the crew is at a remote location, it may take an hour or more for the crew to reach its rest location. Because crews are called at least two hours before they are to report for duty, a crew member may actually have only five hours or less of uninterrupted rest.

Similar hours of service restrictions apply to signal employees with the additional proviso that after an employee has been on duty a total of 12 hours during a 24-hour period, or after the end of that 24-hour period, the employee must be given eight consecutive hours off duty. In addition, signal employees may remain on duty for not more than four additional hours in any 24-hour period when an emergency exists and the work of that employee is related to the emergency. Hours of service limitations for dispatching service employees provide that an employee may not be allowed to remain or go on duty for more than a total of nine hours during a 24-hour period where at least two shifts are employed, or a total of 12 hours during a 24-hour period where only one shift is employed.

Neither the rail carriers nor the unions have an incentive to reduce the number of hours that employees may work. Limiting hours of service would force the railroads to hire additional workers, and employees would suffer a reduction in earning power. The railroads and rail labor have worked cooperatively on several initiatives to address fatigue, but a consensus has not been reached on an overall approach.

The FRA is planning a study in which respondents will complete a background survey and daily log to convey specific information about the work schedule-related fatigue issues for signal workers. Also in FY 2002, the FRA awarded a contract to the University of Denver to work with rail and management representatives from BNSF and CSX to develop, implement, and validate actigraph measures designed to change the culture and perception of railroad employees regarding fatigue and its effect on safety.

Worker fatigue with respect to all transportation workers has been on NTSB's "most wanted" list of recommended safety improvements since 1990. In 1999, NTSB recommended that 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. FRA, however, has proposed no statutory changes to the existing hours of service requirements.

Grade crossing and trespasser accidents. The success in reducing grade crossing accidents and fatalities is attributable to a combination of the installation of protective devices (gates and lights) at crossings and Operation Lifesaver, a program long supported by the railroads and the Federal government to educate the public about both crossing safety and railroad safety generally. The Fed-

eral Highway Administration (FHWA) estimates that through the Section 130 program, 30,000 active warning devices have been installed that have helped prevent more than 10,000 deaths and over 50,000 injuries.

FRA and the railroads have cooperated to close crossings and prevent the establishment of new crossings, both public and private. However, the authority to establish or close crossings rests with State and local governments, who are often hostile to reducing access in their communities.

SUMMARY OF MAJOR PROVISIONS

The Federal Railroad Safety Improvement Act renews the Committee's commitment to a strong rail safety program. The legislation would authorize $166 million for rail safety in FY 2004, the amount requested by the Administration, rising to $200 million by FY 2008. Included in these authorizations would be additional funds to continue initiatives to test and install PTC systems on passenger and freight railroad rights-of-way. Funds would be made available through grants, with a 50 percent match requirement. Authorizations for PTC grants would total $16 million for FY 2004, $18 million for FY 2005, and $20 million for FY 2006, FY 2007, and FY 2008.

The legislation also would make several improvements to grade crossing safety. First, the bill would formally establish a national crossing inventory. Such information has been maintained in a national database called the "United States Department of Transportation (DOT) National Crossing Inventory File" (Inventory) since 1975. However, the information has been supplied voluntarily, and thus, some crossing information has not been reported at all or not adequately updated by the states and the railroads.

The Inventory serves as a uniform computerized database on crossings throughout the country that can be merged with other data, including FRA's accident/incident database, and used to promote crossing safety. States, railroads, and other entities analyze information in the Inventory for planning and implementation of crossing improvement programs such as the Section 130 program, which provides Federal funds to the States to install or improve warning devices at crossings or to eliminate crossings altogether. The Inventory also is used by law enforcement personnel to identify especially hazardous crossings on which to focus inspection and enforcement efforts. Additionally, the Inventory is used extensively for crossing safety studies.

The bill would direct DOT to develop a plan for a joint initiative with States and municipalities to close 1 percent of all public and private grade crossings each year for a 10-year period. This is an ambitious goal but one that would clearly save lives. While closure of any crossing improves safety, the bill would specifically direct the Secretary to consider (1) crossings that have been identified as high-risk, (2) crossings that are located on railroad lines used for intercity or commuter passenger service, and (3) the existing level of protection at a given crossing in prioritizing crossings for closure. The bill includes provisions for the plan to take into account local concerns about the loss of access and the impact of closure on emergency responders.

The legislation would require the DOT to develop model State legislation providing penalties for motorists who violate crossing signs, signals, and gates. A uniform approach to penalties for driving around gates and ignoring crossing signals and signs can be more effective in achieving compliance.

The bill would reauthorize Operation Lifesaver at $1.25 million in FY 2004, rising to $1.46 million by FY 2008. Operation Lifesaver, Inc. is a nationwide, nonprofit public education and awareness program dedicated to ending collisions, fatalities, and injuries at highway-rail grade crossings and on railroad property. The organization is active in all 50 States, delivering 40,000 safety presentations to 2.5 million Americans each year. DOT credits the organization with helping to reduce grade crossing deaths by 11,000 and injuries by 54,000.

The legislation also would address long-standing concerns about employee fatigue in the rail industry by requiring that a working group be convened within FRA's RSAC to consider what legislative or other changes may be appropriate to address fatigue management and to report back to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 24 months following enactment. While the railroads and rail labor organizations have initiated a number of discrete pilot projects to address fatigue, it is unclear whether real progress is being made. If a consensus cannot be reached by the working group, the DOT would be required to submit its own recommendations within 36 months following enactment.

The bill would require that the Secretaries of Transportation and Homeland Security execute a memorandum of agreement (MOA) regarding railroad transportation security matters within 60 days of enactment. It was anticipated that following the establishment of the Department of Homeland Security (DHS) and the transfer to DHS of the Transportation Security Administration (TSA) and the Coast Guard, DOT and DHS would enter into an MOA to clarify their respective roles and responsibilities. To date, however, MOA's have only been executed between DOT and DHS with respect to the Coast Guard and the Federal Aviation Administration. A report issued in June 2003, by the General Accounting Office (GAO) recommends that the roles of DOT and the TSA with respect to rail and other modes of transportation be clarified through MOA's.

Many security issues have a safety component. Actions by TSA to improve railroad security affect safety matters regulated by FRA. For example, TSA proposed that placards be removed from railroad tank cars so that placard information about the type of hazardous material in the cars could not be used to perpetrate a terrorist act. FRA contended that placards should remain on tank cars for safety reasons. In the event of a train accident or incident, placards are often the first source of information used in evaluating the danger of an unidentified shipment of hazardous materials. After further analysis, the agencies agreed placards should remain on tank cars for the foreseeable future.

The bill also would permit DOT to monitor and record railroad radio communications and to use those communications and the information they contain for the purpose of accident prevention, including accident investigations. FRA access to railroads' radio com-

munications would likewise help ascertain that federal railroad safety rules are being followed.

Railroads use their dedicated radio frequencies to control and promote the safety of various types of operations. While the railroads are authorized to monitor the communications of its employees to determine whether safety rules and operations are being followed, current law arguably precludes FRA inspectors from unilaterally monitoring these communications. FRA inspectors may monitor radio communications in the presence of an authorized railroad employee. However, when an FRA inspector arrives on railroad property, railroad users of radio often are informed by their coworkers to be guarded in their radio transmissions. Thus, it is difficult for safety inspectors to determine if behavior is changed simply because FRA is present. Access to candid communications from off-site would yield a truer picture of compliance levels.

Radio monitoring would not apply to railroads' communications by cellular or cordless telephones. It would also require that the monitoring of railroad radio communications be conducted "at reasonable times", defined as whenever the railroad being inspected or investigated is performing its rail transportation business. Information obtained through radio monitoring would be admissible into evidence in any administrative or judicial proceeding only as it pertains to rail operations, and only to impeach evidence offered by a party other than the Federal government and then only if the monitoring was not done solely for the purpose of accident investigation.

LEGISLATIVE HISTORY

S. 1402 was introduced by Senators McCain and Hollings on July 14, 2003 and was referred to the Committee on Commerce, Science, and Transportation.

On July 17, 2003, the Committee ordered S. 1402 to be favorably reported to the Senate with two amendments.

By voice vote, the Committee adopted an amendment offered by Senator Boxer to require the Secretary of Transportation to conduct a study of the impact of blocked railroad crossings on emergency response efforts and to submit a report with recommendations for addressing identified impacts within one year following enactment.

Also by voice vote, the Committee adopted a second amendment offered by Senator Boxer to require the Secretary of Transportation, within 120 days following enactment, to issue procedures for railroads to use to notify affected communities in the event of a runaway train. The amendment also would require that the railroads report any incidence of a runaway train to DOT.

In addition, Senator Lautenberg offered an amendment to address the authority of railroad police with respect to enforcing corporate policies or collective bargaining agreements. Senator McCain offered to work with Senator Lautenberg on language to address this matter prior to floor consideration of the bill and the amendment was withdrawn by the sponsor.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 22, 2003.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1402, the Federal Railroad Safety Improvement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Rachel Milbert (for federal costs), Gregory Waring (for the state and local impact), and Jean Talarico (for the private-sector impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1402—Federal Railroad Safety Improvement Act

Summary: S. 1402 would authorize the appropriation of $919 million over the 2004–2008 period for the Federal Railroad Administration's (FRA's) safety and research programs. The bill also would require FRA to recommend ways to lessen railroad workers' fatigue, survey the condition of railroad bridges, study the impact that blocked highway-railroad crossings have on the ability of emergency responders to perform their duties, and develop regulations to require railroads to immediately notify emergency medical, fire, and law enforcement personnel that their communities lie in the path of a runaway train.

Assuming appropriation of the authorized amounts, CBO estimates that implementing the bill would cost $865 million over the 2004–2008 period. Enacting S. 1402 would have no effect on direct spending or revenues.

S. 1402 would impose both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the direct costs of those mandates would not exceed the annual threshold established in UMRA for intergovernmental or private-sector mandates ($59 million and $117 million in 2003, respectively, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetry impact of S. 1402 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION						
FRA Safety and Research Spending Under Current Law:						
Budget Authority [1]	145	0	0	0	0	0
Estimated Outlays	149	36	5	3	0	0
Proposed Changes:						
Estimated Authorization Level	0	168	176	185	192	200
Estimated Outlays	0	131	167	179	190	198
FRA Safety and Research Spending Under S. 1402:						
Estimated Authorization Level [1]	145	168	176	185	192	200
Estimated Outlays	149	167	172	182	190	198

[1] The 2003 level is the amount appropriated for that year for FRA safety and research activities.

Basis of estimate: For this estimate, CBO assumes that S. 1402 will be enacted near the end of fiscal year 2003 and the authorized amounts will be appropriated each year. Estimates of outlays are based on information from FRA and historical spending patterns of similar programs.

Based on information from FRA, CBO estimates that preparing the reports and regulations required by the bill would cost about $2 million. For this estimate, CBO assumes that such funds would be appropriated in 2004. Those costs are in addition to the $919 million that the bill would authorize for the agency's safety and research programs over the next five years.

Intergovernmental and private-sector impact: S. 1402 would impose both intergovernmental and private-sector mandates as defined in UMRA. CBO estimates that the direct costs of those mandates would not exceed the annual threshold established in UMRA for intergovernmental or private-sector mandates ($59 million and $117 million in 2003, respectively, adjusted annually for inflation).

Joint mandate

The Department of Transportation (DOT) maintains information collected from states and railroad carriers on the location, physical characteristics, and other features of highway-railroad crossings in the National Crossing Inventory. Currently, state governments and railroad carriers provide this information voluntarily. Section 201 would make such reporting mandatory. State governments and railroad carriers would be required to submit initial reports to the Inventory about new and previously unreported crossings and provide periodic updates and change-of-ownership reports, if applicable, for all crossings. Based on information from government and industry sources, CBO estimates that the incremental costs to submit the information required under the bill would be small.

States would benefit from other provisions of the bill, including an increase in the federal aid states can distribute to local governments for the highway-rail safety program.

Additional private-sector mandate

The bill would impose an additional mandate on the private sector. Section 305 would require railroad carriers to immediately notify first responders (including fire, emergency medical service, and law enforcement personnel) that their communities lie in the path of a runaway train. Railroad carriers also would be required to report each incident of a runaway train to DOT. In addition the bill would require railroad carriers to submit to DOT for approval their

plans for providing the required notices of an occurrence of a runaway train.

According to industry sources, most railroad carriers currently have procedures in place to notify first responders and provide such notices as soon as possible. Further, few trains are involved in runaway incidents annually. Thus, CBO estimates that the cost to comply with this mandate would be small.

Estimate prepared by: Federal Costs: Rachel Milberg; Impact on State, Local, and Tribal Governments: Gregory Waring; and Impact on the Private Sector: Jean Talarico.

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

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

Because the legislation reauthorizes existing programs without expanding the scope of persons subject to railroad safety regulation, the number of persons covered should be consistent with current levels.

ECONOMIC IMPACT

S. 1402 authorizes appropriations of $166 million for FY 2004, rising to $200 million in FY 2008. These funding levels are not expected to have an inflationary impact on the nation's economy.

PRIVACY

Section 207 of the bill would impact the privacy of railroad employees who communicate by radio. The section would give DOT the authority to monitor and record railroad radio communications, without being in the presence of authorized railroad employees, and to use information from such activities to prevent and investigate accidents.

PAPERWORK

Section 210 of the legislation would create a grant program for Positive Train Control technology which may lead to additional paperwork for applicants and for DOT in administering the program.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title

The section would provide that the title of the Act is the "Federal Railroad Safety Improvement Act".

Sec. 2. Amendments to title 49

The section would clarify that unless otherwise indicated, the legislation amends title 49, United States Code.

Sec. 3. Table of Contents

The section would contain the table of contents for the legislation.

Sec. 101. Authorization of Appropriations

This section would authorize the following appropriations for the FRA: $166 million in FY 2004; $176 million in FY 2005; $185 million in FY 2006; $192 million in FY 2007; and $200 million in FY 2008.

Sec. 201. National Crossing Inventory

Section 201 would require railroads and states to supply information necessary for risk analysis of the country's more than 250,000 highway-rail crossings and pedestrian crossings. The section would require railroads to submit with three kinds of reports on railroad grade crossings:

- Initial reports on previously unreported crossings, including new crossings. The reports would be due within six months after enactment of this bill or within six months of a new crossing becoming operational, whichever occurs later;
- Updates to the Inventory on a periodic basis beginning no later than 18 months after enactment, and continuing on a schedule no less often than by September 30 of every third year thereafter, or as otherwise specified by the Secretary; and
- For crossings that are transferred to other ownership, notice to the Secretary from the seller within three months of the sale or within 18 months after enactment, whichever occurs later, or as otherwise specified by the Secretary.

Further, each State would be required to provide information on crossings within its borders, with initial reports to the Inventory and periodic updates on the same schedule as the railroads. The Secretary would be authorized to determine which crossing data would be supplied by the railroad and which would be supplied by the State.

Sec. 202. Grade Crossing Elimination and Consolidation

This section would require the Secretary, within two years after enactment, to submit a plan to Congress for a joint initiative with States and municipalities to systematically reduce the number of public and private grade crossings by 1 percent per year in each of the succeeding 10 years. The plan would have to prioritize crossings for elimination or consolidation based on considerations such as whether the crossing has been identified by FRA as a high-risk crossing, whether the crossing is on a designated high-speed rail corridor, and the existing level of protective equipment at the crossing. Further, the plan would suggest guidelines for the establishment of new crossings, with the goal of avoiding unnecessary new crossings through careful traffic, zoning, and land use planning. The plan also would provide an estimate of the costs to implement the plan.

In developing the plan, the Secretary would be directed to consult with state and local authorities, who have jurisdiction over the establishment and closure or consolidation of crossings. The Secretary and state officials would be directed to consider the feasibility of closing and improving a group of crossings in a single com-

munity; the impact of closure on access by emergency vehicles, traffic delays, and public inconvenience; and the willingness of a municipality to participate in the elimination or consolidation of crossings. As a practical matter, crossings cannot be closed without the support or at least acquiescence of the affected municipality, so community support will be essential to the success of this effort.

The section also would require that FRA update and reissue the publication "A Guide to Crossing Consolidation and Closure" within one year after enactment and increase the incentive payment that can be made to a community to close a crossing (subject to an equal match by the freight railroad(s) involved) from $7,500 to $15,000 per crossing. The incentive is paid from Section 130 crossing funds.

The section would specify that $500,000 of the sums authorized by section 101 of the legislation for FY 2004 be used to complete the plan.

Sec. 203. Model Legislation on Driver Behavior

This section would require DOT, within one year after the date of enactment, to assess local, State, and Federal laws with respect to trespassing and vandalism on railroad property and update model prevention strategies and enforcement laws for the consideration of State and local governments. The sections also would require DOT to develop, within two years after the date of enactment, model State legislation providing for civil or criminal penalties, or both, for violations of grade crossing signals.

Sec. 204. Operation Lifesaver

From the sums authorized by section 101, section 204 would authorize funding of $1.25 million for FY 2004, $1.3 million for FY 2005, $1.35 million for FY 2006, $1.4 million for FY 2007, and $1.46 million for FY 2008 for Operation Lifesaver.

Sec. 205. Transportation Security

The section would require that the Secretaries of Transportation and Homeland Security execute an MOA regarding railroad transportation security matters within 60 days of enactment. The section also would provide that DOT's authority to issue regulations and orders governing "every area of railroad safety" includes "security". Clarification of FRA's jurisdiction is necessary to ensure that any regulations and orders which may have some carryover into the security arena will withstand legal challenge and protracted litigation by outside parties. The Homeland Security Act of 2002 supports the conclusion that "safety" includes "security", by defining "safety" for purposes of the Railroad Safety State Participation Program as including security.

Sec. 206. Railroad Accident and Incident Reporting

Section 206 would eliminate the statutory requirement that railroad accidents and incidents reports to FRA be made under oath and notarized. The oath and notarization requirement causes unnecessary expense and delay, and is an obstacle to filing reports electronically.

The section also would give DOT more flexibility to determine the frequency with which accident and incident reports must be filed. Currently, reports must be submitted monthly. The legisla-

tion would require that reports be submitted no less frequently than quarterly.

Sec. 207. Railroad Radio Monitoring Authority

The section would permit DOT to monitor and record railroad radio communications and to use those communications and the information they contain for the purpose of accident prevention, including accident investigations. In connection with road train and switching operations, radio communications are used in at least six major ways: 1) to transmit movement authorities from the dispatcher directly to locomotive crew; 2) to communicate intra-crew directives; 3) to relay information from one crew to another crew; 4) to transmit wayside detector information; 5) to transmit information from wayside employees to crews or dispatchers regarding defects on passing trains; and 6) to provide a way for trains in distress to summon help.

Information obtained through monitoring and recording of radio communications would be admissible into evidence in any administrative or judicial proceeding only for the six types of railroad safety proceedings listed above, and only to impeach evidence offered by a party other than the Federal government, and then only in the governments monitoring was *not* done solely for the purpose of accident investigation. If the monitoring was done solely for accident investigation, then the information would not be admissible for any purpose in an Administrative or judicial proceeding in which commercial or civil penalties might be imposed. In situations in which the information intercepted would not itself be admissible into evidence in a proceeding, it would constitute background material, which might suggest further investigation and ultimately lead to the discovery of admissible evidence. Other information that results from the intercepted information would be admissible (if otherwise admissible under applicable procedural rules). Such admissible evidence might include a tape recording or transcript of the communication made by the railroad or the testimony of a participant in the communication.

Further, the proposal would provide a mechanism for ensuring confidentiality, when appropriate, of intercepted communications introduced in rail safety proceedings as impeachment evidence. It also would take the intercepted communications outside the scope of the Freedom of Information Act, thereby effectuating the agency's intent to assure that it does not release the communications to railroad carriers. Finally, the proposed legislation would preserve unaffected other statutory authorities for interception of communications.

Sec. 208. Recommendations On Hours Of Service Changes

Section 208 would require that a working group be convened within FRA's RSAC to consider what legislative or other changes may be appropriate to address fatigue management and report back to Congress within 24 months. While the railroads and rail labor organizations have initiated a number of discrete pilot projects to address fatigue, it is unclear whether real progress is being made. If a consensus cannot be reached by the working group, FRA would be required to submit its own recommendations to the Senate Commerce Committee and the House Transportation

and Infrastructure Committee within 36 months following enactment.

Sec. 209. Positive Train Control

In 2001, FRA initiated a rulemaking proceeding to facilitate the introduction of PTC technology by establishing performance-based standards for new signal and train control systems. The rulemaking was the result of several years' work within FRA's RSAC. This section would require that a final rule in the proceeding be issued within 6 months following enactment.

Sec. 210. Positive Train Control Implementation

Section 210 would require DOT to submit a progress report on ongoing and completed PTC projects to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within three months after completion of the project to install PTC between Chicago, Illinois, and St. Louis, Missouri. The section also would provide that of the sums authorized by section 101, the following sums are available for grants for PTC testing and installation: $16 million in FY 2004; $18 million in FY 2005; $20 million in FY 2006, $20 million in FY 2007, and $20 million in FY 2008. Grants would be subject to a 50 percent matching requirement.

Sec. 211. Survey Of Rail Bridge Structures

Many railroad bridges in the United States were constructed early in the last century. Although the bridges were engineered to withstand the weight of heavy steam locomotives, today's freight cars are significantly heavier as is total train weight. FRA last conducted a survey of railroad bridges in 1992 and found railroad bridges to be generally sound. This section would require DOT to conduct a new survey to obtain a more up-to-date assessment of the general condition of railroad bridges and the need, if any, for further action.

Sec. 212. Railroad Police

Under current law, railroad police officers may enforce the law only on the property of the railroad by whom they are employed. This amendment would allow railroad police officers to exercise jurisdiction on the property of any railroad, enabling officers in pursuit near an interchange point to continue the pursuit on another railroad.

Sec. 213. Federal Railroad Administration Employee Training

From sums authorized under section 101 for FY 2004, $300,000 would be authorized for use by FRA to conduct a demonstration project utilizing centralized training for its employees.

Section 214. Study on the Impact of Blocked Highway-Railroad Grade Crossings on Emergency Responders

The section would require the Secretary of Transportation, in consultation with state and local officials, to conduct a study of the impact of blocked highway-railroad grade crossings on the ability of emergency responders to perform their safety and security duties. A report and recommendations would be due to the Senate

Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within one year following enactment.

Sec. 215. Runaway Trains Emergency Response

The section would require the Secretary of Transportation to issue regulations within 120 days following enactment to establish procedures for railroads to follow in notifying first responders in communities in the path of a runaway train. Within 60 days after the issuance of the regulations, each railroad would be required to submit, for the Secretary's approval, procedures the railroad will use to comply with the regulations. Finally, the section would require the railroads to report any instance of a runaway train to DOT.

Sec. 301. Technical Amendments Regarding Enforcement by the Attorney General

The section would clarify that the Federal district courts have jurisdiction to entertain three types of civil actions brought by the Attorney General at the request of the Secretary of Transportation:

- Injunctions against a violation of a rail safety statute. The Attorney General is already authorized to sue in Federal district court to enjoin a violation of rail safety regulations, but not rail safety statutes. The new section would permit suits for these injunctions except for those dealing with employee protections against discrimination for whistleblower activities or for reasonably refusing to work in the face of an imminent danger of death or serious injury, rights that would continue to be enforced under the Railway Labor Act.
- Enforcement of requests for production of documents or other tangible things and requests for testimony by deposition under the rail safety laws. The existing rail safety laws lack an explicit provision for enforcement of these discovery devices.
- Collection of civil penalty settlements and the enforcement of administrative subpoenas.

Sec. 302. Technical Amendments to Civil Penalty Provisions

The section has a dual purpose. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, maximum civil penalties are required to be adjusted for inflation. That statute did not directly amend the civil penalty provisions of the substantive laws affected, but rather required the Federal agencies charged with enforcing those laws to issue regulations revising the penalty amounts. This new proposal would cross-reference the appropriate provisions of that Act. Although inflation adjustments have been and will continue to be made by regulation, this provision in the railroad statutes would provide further notice to the regulated public of this requirement and prevent having to search through related statutes to determine a respondent's maximum liability.

Second, the section would revise the civil penalty provisions to make them more uniform. Under the 1970 rail statute, the government may deduct the amount of any unpaid penalty or settlement owed by a respondent from any funds (such as tax refunds) owed by the government to the respondent. These technical amendments

would put enforcement of the pre-1970 safety statutes on an equal footing with enforcement of the 1970 statute.

Sec. 303. Technical Amendments to Eliminate Unnecessary Provisions

The section would eliminate several provisions of the rail safety laws that are unnecessary because they have been executed or become obsolete. First, the proposal would strike as executed the following three provisions that require the Secretary to submit reports to Congress: the second sentence of section 20103(f) (report on tourist railroads); section 20145 (report on detection of bridge displacement); and section 20150 (report on PTC). Second, the proposal would repeal section 20146, a provision to establish and authorize appropriations to fund an Institute for Railroad Safety at $1 million per year for fiscal years 1996–2000. Congress did not appropriate funds for the institute, and the authorization of appropriations for fiscal years 1996–2000 has expired.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 23, UNITED STATES CODE, HIGHWAYS

CHAPTER 1. FEDERAL-AID HIGHWAYS

SUBCHAPTER I. GENERAL PROVISIONS

§ 130. Railway-highway crossings

(a) Subject to section 120 and subsection (b) of this section, the entire cost of construction of projects for the elimination of hazards of railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings, may be paid from sums apportioned in accordance with section 104 of this title. In any case when the elimination of the hazards of a railway-highway crossing can be effected by the relocation of a portion of a railway at a cost estimated by the Secretary to be less than the cost of such elimination by one of the methods mentioned in the first sentence of this section, then the entire cost of such relocation project, subject to section 120 and subsection (b) of this section, may be paid from sums apportioned in accordance with section 104 of this title.

(b) The Secretary may classify the various types of projects involved in the elimination of hazards of railway-highway crossings, and may set for each such classification a percentage of the costs of construction which shall be deemed to represent the net benefit to the railroad or railroads for the purpose of determining the railroad's share of the cost of construction. The percentage so determined shall in no case exceed 10 per centum. The Secretary shall determine the appropriate classification of each project.

(c) Any railroad involved in a project for the elimination of hazards of railway-highway crossings paid for in whole or in part from

sums made available for expenditure under this title, or prior Acts, shall be liable to the United States for the net benefit to the railroad determined under the classification of such project made pursuant to subsection (b) of this section. Such liability to the United States may be discharged by direct payment to the State transportation department of the State in which the project is located, in which case such payment shall be credited to the cost of the project. Such payment may consist in whole or in part of materials and labor furnished by the railroad in connection with the construction of such project. If any such railroad fails to discharge such liability within a six-month period after completion of the project, it shall be liable to the United States for its share of the cost, and the Secretary shall request the Attorney General to institute proceedings against such railroad for the recovery of the amount for which it is liable under this subsection. The Attorney General is authorized to bring such proceedings on behalf of the United States, in the appropriate district court of the United States, and the United States shall be entitled in such proceedings to recover such sums as it is considered and adjudged by the court that such railroad is liable for in the premises. Any amounts recovered by the United States under this subsection shall be credited to miscellaneous receipts.

(d) SURVEY AND SCHEDULE OF PROJECTS.—Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railway-highway crossings.

(e) FUNDS FOR PROTECTIVE DEVICES.—At least ½ of the funds authorized for and expended under this section shall be available for the installation of protective devices at railway-highway crossings. Sums authorized to be appropriated to carry out this section shall be available for obligation in the same manner as funds apportioned under section 104(b)(1) of this title.

(f) APPORTIONMENT.—Twenty-five percent of the funds authorized to be appropriated to carry out this section shall be apportioned to the States in the same manner as sums are apportioned under section 104(b)(2) of this title, 25 percent of such funds shall be apportioned to the States in the same manner as sums are apportioned under section 104(b)(6) of this title, and 50 percent of such funds shall be apportioned to the States in the ratio that total railway-highway crossings in each State bears to the total of such crossings in all States. The Federal share payable on account of any project financed with funds authorized to be appropriated to carry out this section shall be 90 percent of the cost thereof.

(g) ANNUAL REPORT.—Each State shall report to the Secretary not later than December 30 of each year on the progress being made to implement the railway-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary shall submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives not later than April 1 of each year, on the

progress being made by the State in implementing projects to improve railway-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d) and include recommendations for future implementation of the railroad highway crossings program.

(h) USE OF FUNDS FOR MATCHING.—Funds authorized to be appropriated to carry out this section may be used to provide a local government with funds to be used on a matching basis when State funds are available which may only be spent when the local government produces matching funds for the improvement of railway-highway crossings.

(i) INCENTIVE PAYMENTS FOR AT-GRADE CROSSING CLOSURES.—

(1) IN GENERAL.—Notwithstanding any other provision of this section and subject to paragraphs (2) and (3), a State may, from sums available to the State under this section, make incentive payments to local governments in the State upon the permanent closure by such governments of public at-grade railway-highway crossings under the jurisdiction of such governments.

(2) INCENTIVE PAYMENTS BY RAILROADS.—A State may not make an incentive payment under paragraph (1) to a local government with respect to the closure of a crossing unless the railroad owning the tracks on which the crossing is located makes an incentive payment to the government with respect to the closure.

(3) AMOUNT OF STATE PAYMENT.—The amount of the incentive payment payable to a local government by a State under paragraph (1) with respect to a crossing may not exceed the lesser of—

(A) the amount of the incentive payment paid to the government with respect to the crossing by the railroad concerned under paragraph (2); or

(B) **[**$7,500.**]** *$15,000.*

(4) USE OF STATE PAYMENTS.—A local government receiving an incentive payment from a State under paragraph (1) shall use the amount of the incentive payment for transportation safety improvements.

(j) BICYCLE SAFETY.—In carrying out projects under this section, a State shall take into account bicycle safety.

(k) NATIONAL CROSSING INVENTORY.—

(1) INITIAL REPORTING OF CROSSING INFORMATION.—Not later than 6 months after the date of enactment of the Federal Railroad Safety Improvement Act or within 6 months of a new crossing becoming operational, whichever occurs later, each State shall report to the Secretary of Transportation current information, 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 18 months after the date of enactment of the Federal Railroad Safety Improvement Act

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, 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 section. The Secretary may enforce each provision of the Federal Railroad Administration's Highway-Rail Crossing Inventory Instructions and Procedures Manual that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act, 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 20154(d)(1) and (2), respectively, of title 49.

TITLE 49, UNITED STATES CODE, TRANSPORTATION

SUBTITLE V. RAIL PROGRAMS

PART A. SAFETY

CHAPTER 201. GENERAL

SUBCHAPTER I. GENERAL

§ 20103. General authority

[(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970. When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.]

(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety, including security, supplementing laws and regulations in effect on October 16, 1970. When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary of Transportation.

(b) REGULATIONS OF PRACTICE FOR PROCEEDINGS.—The Secretary shall prescribe regulations of practice applicable to each proceeding under this chapter. The regulations shall reflect the varying nature of the proceedings and include time limits for disposition of the proceedings. The time limit for disposition of a proceeding may not be more than 12 months after the date it begins.

(c) CONSIDERATION OF INFORMATION AND STANDARDS.—In prescribing regulations and issuing orders under this section, the Secretary shall consider existing relevant safety information and standards.

(d) WAIVERS.—The Secretary may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety. The Secretary shall make public the reasons for granting the waiver.

(e) HEARINGS.—The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided.

(f) TOURIST RAILROAD CARRIERS.—In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or other factors that may be unique to such railroad carriers. [The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.]

* * * * * * *

§ 20107. Inspection and investigation

(a) GENERAL.—To carry out this part, the Secretary of Transportation may take actions the Secretary considers necessary, including—

(1) conduct investigations, make reports, issue subpenas, require the production of documents, take depositions, and prescribe recordkeeping and reporting requirements; and

(2) delegate to a public entity or qualified person the inspection, examination, and testing of railroad equipment, facilities, rolling stock, operations, and persons.

(b) ENTRY AND INSPECTION.—In carrying out this part, an officer, employee, or agent of the Secretary, at reasonable times and in a reasonable way, may enter and inspect railroad equipment, facilities, rolling stock, operations, and relevant records. When requested, the officer, employee, or agent shall display proper credentials. During an inspection, the officer, employee, or agent is an employee of the United States Government under chapter 171 of title 28.

(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 at reasonable times:

(A) Intercepting a radio communication that is broadcast or transmitted over a frequency authorized for the use of one or more railroad carriers by the Federal Communications Commission, with or without making their presence known to the sender or other receivers of the communication and with or without obtaining the consent of the sender or other receivers of the communication.

(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) LIMITATION.—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, including, but not limited to, accident investigation.

(3) USE OF INFORMATION.—

(A) Except as provided in subparagraph (F), information obtained through activities authorized by paragraphs (1) and (2) shall not be admitted into evidence in any administrative or judicial proceeding except 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 sections 5122, 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) 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.

(D) 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).

(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.

(F) No information obtained by an activity authorized by paragraph (1)(A) that was undertaken solely for the purpose of accident investigation may be introduced into evidence in any administrative or judicial proceeding in which civil or criminal penalties may be imposed.

(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.

(d) REASONABLE TIME DEFINED.—In this section, the term "at reasonable times" means at any time that the railroad carrier being in-

spected or investigated is performing its rail transportation business.

* * * * * * *

§ 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, except for section 20109 of this title, 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] *subpena, request for production of documents or other tangible things, or request for testimony by deposition* issued by the Secretary under this [chapter.] *part.*

(b) VENUE.—

(1) Except as provided in paragraph (2) of this subsection, a civil action under this section may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If an action to collect a penalty is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action to enforce a subpena issued by the Secretary or a compliance order issued under section 20111(b) of this title may be brought in the judicial district in which the defendant resides, does business, or is found.

* * * * * * *

§ 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) GENERAL.—There are authorized to be appropriated to the Secretary of Transportation to carry out this chapter—

(1) $166,000,000 for the fiscal year ending September 30, 2004;

(2) $176,000,000 for the fiscal year ending September 30, 2005;

(3) $185,000,000 for the fiscal year ending September 30, 2006;

(4) $192,000,000 for the fiscal year ending September 30, 2007; and

(5) $200,000,000 for the fiscal year ending September 30, 2008.

(b) GRADE CROSSING SAFETY.—Not more than $1,000,000 may be appropriated to the Secretary for improvements in grade crossing safety, except demonstration projects under section 20134(c) of this title. Amounts appropriated under this subsection remain available until expended.

(c) RESEARCH AND DEVELOPMENT, AUTOMATED TRACK INSPECTION, AND STATE PARTICIPATION GRANTS.—Amounts appropriated under this section for research and development, automated track inspection, and grants under section 20105(e) of this title remain available until expended.

(d) MINIMUM AVAILABLE FOR CERTAIN PURPOSES.—At least 50 percent of the amounts appropriated to the Secretary for a fiscal year to carry out railroad research and development programs under this chapter or another law shall be available for safety research, improved track inspection and information acquisition technology, improved railroad freight transportation, and improved railroad passenger systems.

[(e) OPERATION LIFESAVER.—In addition to amounts otherwise authorized by law, there are authorized to be appropriated for railroad research and development $300,000 for fiscal year 1995, $500,000 for fiscal year 1996, and $750,000 for fiscal year 1997, to support Operation Lifesaver, Inc.**]**

(e) OPERATION LIFESAVER.—In addition to amounts otherwise authorized by law, from the amounts authorized to be appropriated under subsection (a), there shall be available for railroad research and development $1,250,000 for fiscal year 2004, $1,300,000 for fiscal year 2005, $1,350,000 for fiscal year 2006, $1,400,000 for fiscal year 2007, and $1,460,000 for fiscal year 2008 to support Operation Lifesaver, Inc.

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SUBCHAPTER II. PARTICULAR ASPECTS OF SAFETY

[§ 20145. Report on bridge displacement detection systems

[Not later than 18 months after November 2, 1994, the Secretary of Transportation shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report concerning any action that has been taken by the Secretary on railroad bridge displacement detection systems.**]**

[§ 20146. Institute for Railroad Safety

[The Secretary of Transportation, in conjunction with a university or college having expertise in transportation safety, shall establish, within one year after November 2, 1994, an Institute for Railroad Safety. The Institute shall research, develop, fund, and test measures for reducing the number of fatalities and injuries relevant to railroad operations. There are authorized to be appropriated to the Secretary $1,000,000 for each of the fiscal years 1996 through 2000 to fund activities carried out under this section by the Institute, which shall report at least once each year on its use

of such funds in carrying out such activities and the results thereof to the Secretary of Transportation and the Congress.]

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[§ 20150. Positive train control system progress report

[The Secretary of Transportation shall submit a report to the Congress on the development, deployment, and demonstration of positive train control systems by December 31, 1995.]

[§ 20151. Railroad trespassing and vandalism prevention strategy]

§ 20151. Strategy to prevent railroad trespassing and vandalism and violation of grade crossing signals

(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,] *safety and violations of highway-rail 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 shall be completed within 1 year after November 2, 1994.] *The evaluation and review shall be completed not later than 1 year after the date of enactment of the Federal Railroad Safety Improvement Act.* The Secretary shall revise such model prevention strategies and enforcement codes periodically.

(b) OUTREACH PROGRAM.—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.—Within 18 months after November 2, 1994, the] *LEGISLATION FOR VANDALISM AND TRESPASSING PENALTIES.—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) 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) civil or criminal penalties, or both, for trespassing on a railroad owned or leased right-of-way.

(d) MODEL LEGISLATION FOR GRADE-CROSSING VIOLATIONS.—Within 2 years after the date of the enactment of the Federal Railroad Safety Improvement Act, the Secretary, after consultation with State and local governments and railroad carriers, shall develop and make available to State and local governments model State leg-

islation providing for civil or criminal penalties, or both, for violations of highway-rail grade crossing signals.

(e) VIOLATION DEFINED.—In this section, the term "violation of highway-rail grade crossing signals" includes any action by a motorist, unless directed by an authorized safety officer—

(1) to drive around or through 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 determining 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.

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§ 20154. National crossing inventory

(a) INITIAL REPORTING OF INFORMATION ABOUT PREVIOUSLY UNREPORTED CROSSINGS.—Not later than 6 months after the date of enactment of the Federal Railroad Safety Improvement Act 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, 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 18 months after the date of enactment of the Federal Railroad Safety Improvement Act 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, 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 on or after the date of enactment of the Federal Railroad Safety Improvement Act, shall, not later than the date that is 18 months after the date of enactment of the 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.

(c) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Federal Railroad Administration's Highway-Rail Crossing Inventory Instructions and Procedures Manual that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act, 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 dedicated pedestrian pathway 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 Puerto Rico.

CHAPTER 209. ACCIDENTS AND INCIDENTS

§ 20901. Reports

[(a) GENERAL REQUIREMENTS.—Not later than 30 days after the end of each month, a railroad carrier shall file a report with the Secretary of Transportation on all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during the month. The report shall be under oath and shall state the nature, cause, and circumstances of each reported accident or incident. If a railroad carrier assigns human error as a cause, the report shall include, at the option of each employee whose error is alleged, a statement by the employee explaining any factors the employee alleges contributed to the accident or incident.]

(a) GENERAL REQUIREMENTS.—On a periodic basis specified by the Secretary of Transportation but not less frequently than quarterly, a railroad carrier shall file a report with the Secretary on all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during the specified period. The report shall state the nature, cause, and circumstances of each reported accident or incident. If a railroad carrier assigns human error as a cause, the report shall include, at the option of each employee whose error is alleged, a statement by the employee explaining any factors the employee alleges contributed to the accident or incident.

(b) MONETARY THRESHOLD FOR REPORTING.—

(1) In establishing or changing a monetary threshold for the reporting of a railroad accident or incident, the Secretary shall base damage cost calculations only on publicly available information obtained from—

(A) the Bureau of Labor Statistics; or

(B) another department, agency, or instrumentality of the United States Government if the information has been collected through objective, statistically sound survey methods or has been previously subject to a public notice and comment process in a proceeding of a Government department, agency, or instrumentality.

(2) If information is not available as provided in paragraph (1)(A) or (B) of this subsection, the Secretary may use any other source to obtain the information. However, use of the in-

formation shall be subject to public notice and an opportunity for written comment.

CHAPTER 213. PENALTIES

SUBCHAPTER I. CIVIL PENALTIES

§ 21301. Chapter 201 general violations

(a) PENALTY.—

(1) A person may not fail to comply *with section 20154 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 20154 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 20154 of this title.* The amount of the penalty shall be at least $500 but not more than **[**$10,000.**]** *$10,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).* 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.**]** *$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).*

(3) The Secretary may compromise the amount of a civil penalty imposed under this subsection to not less than $500 before referring the matter to the Attorney General for collection. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(b) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) DEPOSIT IN TREASURY.—A civil penalty collected under this section or section 20113(b) of this title shall be deposited in the Treasury as miscellaneous receipts.

§ 21302. Chapter 201 accident and incident violations and chapter 203-209 violations

(a) PENALTY.—

(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued under chapter 201 of

this title related to accident and incident reporting or investigation, or violating chapters 203–209 of this title or a regulation or requirement prescribed or order issued under chapters 203-209, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. A separate violation occurs for each day the violation continues.

(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.**]** *$10,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).* 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.**]** *$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).*

(3) The Secretary may compromise the amount of the civil penalty under section 3711 of title 31. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(4) If the Secretary does not compromise the amount of the civil penalty, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

(c) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(d) DEPOSIT IN TREASURY.—A civil penalty collected under this section shall be deposited in the Treasury as miscellaneous receipts.

§ 21303. Chapter 211 violations

(a) PENALTY.—

(1) Subject to section 21304 of this title, a person violating chapter 211 of this title, or violating any provision of a waiver applicable to that person that has been granted under section 21108 of this title, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. For a violation of section 21106 of this title, a separate violation occurs for each day a facility is not in compliance.

(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.] *$10,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).* 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.] *$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note).*

(3) The Secretary may compromise the amount of the civil penalty under section 3711 of title 31. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(4) If the Secretary does not compromise the amount of the civil penalty, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—

(1) The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section after satisfactory information is presented to the Attorney General. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action under this subsection must be brought not later than 2 years after the date of the violation unless administrative notification under section 3711 of title 31 is given within that 2-year period to the person committing the violation. However, even if notification is given, the action must be brought within the period specified in section 2462 of title 28.

(c) IMPUTATION OF KNOWLEDGE.—In any proceeding under this section, a railroad carrier is deemed to know the acts of its officers and agents.

(d) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(e) DEPOSIT IN TREASURY.—A civil penalty collected under this section shall be deposited in the Treasury as miscellaneous receipts.

PART E. MISCELLANEOUS

CHAPTER 281. LAW ENFORCEMENT

§ 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

(4) personnel, equipment, and material moving by rail that are vital to the national defense.

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