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110TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 110-270

RAILROAD SAFETY ENHANCEMENT ACT OF
2007

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1889



MARCH 3, 2008.—Ordered to be printed

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SECOND SESSION

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

REPORT

[To accompany S. 1889]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1889) to amend title 49, United States Code, to improve railroad safety by reducing accidents and to prevent railroad fatalities, injuries, and hazardous materials releases, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 1889, the Railroad Safety Enhancement Act of 2007 (RSEA), is a bill to improve railroad safety by reducing railroad accidents and preventing railroad fatalities, injuries, and hazardous materials releases through enhanced Federal regulation of railroad operations and infrastructure and the development of new Federal and State railroad safety programs. To accomplish these purposes, S. 1889 would reauthorize the Federal Railroad Administration (FRA); require railroads to make changes in current operating, scheduling, and other practices to improve railroad safety; and authorize appropriations for FRA programs, research and development, and grants for fiscal year (FY) 2008 through FY 2013.

BACKGROUND AND NEEDS

The Federal Railroad Safety Act of 1970 granted the Secretary of Transportation (Secretary) regulatory authority over all areas of railroad safety. By regulation, the Secretary has delegated this authority to the FRA, and its primary mission is to establish and enforce safety regulations for the U.S. railroad industry. The FRA

also focuses on conducting research into safety issues through its research and development program and providing grants and loans to the railroad industry for infrastructure improvements and inter-city passenger rail service. During the past 37 years, several refinements have been made to the Federal Railroad Safety Act of 1970 and the FRA's programs through various pieces of legislation. The FRA's last authorization, the Federal Railroad Safety Authorization Act of 1994, expired in FY 1998, and the agency has since been operating without an authorization of its programs.

The FRA issues regulations that set forth standards for ensuring all aspects of railroad safety, including those governing railroad track, signals, equipment, and operating practices. Several of the FRA's regulations are developed through recommendations from the Railroad Safety Advisory Committee (RSAC), which was established in 1996 pursuant to the Federal Advisory Committee Act. The RSAC consists of approximately 40 members representing railroad management, labor groups, trade associations, and safety agencies at both the State and Federal levels. The FRA also enforces safety regulations regarding hazardous materials transported by rail that are promulgated by the Pipeline and Hazardous Materials Safety Administration (PHMSA).

The FRA employs approximately 780 employees, including 440 railroad safety inspectors, who operate from eight regional offices throughout the country and enforce compliance with FRA regulations by conducting routine inspections at railroads and facilities that ship hazardous materials by rail. Each of the FRA's inspectors normally specializes in one of five inspection disciplines: track, motive power and equipment, operating practices, signal and train control, and hazardous materials. The FRA also has employees who focus on grade-crossing safety, including the establishment of "quiet zones"¹ and railroad bridge safety engineering. In addition to Federal inspectors, approximately 160 State rail inspectors augment the FRA inspection force, providing supplemental inspections and referring violations of Federal laws and regulations to the FRA for appropriate action. FRA inspectors also conduct investigations into select derailments and accidents.

To support the FRA's safety mission, the FRA's research and development office conducts research in the following areas: railroad system issues, including safety, security, and the environment; human performance in railroad operations; rolling stock and components; track and structures; train control; hazardous materials transportation; and other areas affecting safety. The FRA also owns Transportation Technology Center, Incorporated (TTCI) near Pueblo, Colorado, which is operated under contract by a subsidiary of the Association of American Railroads (AAR). This facility is used for a variety of railroad technology, operations, safety, and security research. TTCI was also recently added as a member of the National Domestic Preparedness Consortium in the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law

¹A "quiet zone", as defined by the FRA in section 222.9 of title 49, Code of Federal Regulations, is a segment of a rail line, within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded. In general, a quiet zone may be established if grade crossing protection devices provide sufficient safety protection to warrant the restriction of the sounding of locomotive horns except in emergencies.

110-53) to identify, develop, test, and deliver training to local and State emergency response providers.

In addition to and often in coordination with the FRA, the National Transportation Safety Board (NTSB) investigates railroad accidents, determines their probable causes, and issues safety recommendations to various entities, including U.S. Department of Transportation (DOT) agencies. The Government Accountability Office (GAO) and the DOT Inspector General (DOT IG) periodically review the FRA's operations and make recommendations for the FRA to more efficiently direct its resources to improve railroad safety.

In general, railroad operations are significantly safer today than they were when the Federal Railroad Safety Act of 1970 was enacted. Between 1978 and 2005, the total number of rail-related accidents and incidents fell from approximately 91,000 to 14,000, representing a decline of 85 percent. In recent years, however, the number of rail-related fatalities and the train accident rate have begun to rise, likely due to an increase in train miles, which totaled 811,000,000 in 2006 compared to 677,000,000 in 1997. Additionally, trespasser deaths have recently surpassed highway-rail grade crossing incidents as the leading cause of railroad associated deaths. Together these trespasser and grade crossing incidents comprise 94 percent of all rail-related accidents, injuries, and fatalities. Projected increases in railroad and highway traffic could drive further increases in rail-related accidents, incidents, and fatalities.

The FRA categorizes reportable rail accidents into five general categories: human factors; track and structures; equipment; signal and train control; and miscellaneous. Human-factor caused accidents represent the largest percentage of railroad accidents at approximately 37 percent of all accidents. Track-caused accidents follow closely behind at approximately 34 percent. It is clear that the FRA's implementation of the railroad safety laws and initiatives has, in total, had extensive positive impacts on safety, but the FRA and the railroad industry need additional direction and authorization to implement new programs that will further reduce the number and rates of rail-related accidents, incidents and fatalities.

FATIGUE, HOURS OF SERVICE, AND HUMAN FACTORS

The FRA accident and injury statistics show that human factor-caused accidents account for the largest percentage of all rail accidents. Such accidents are those in which an employee error stemming from human capabilities, such as perception, attention, memory, or behavior, is determined to be the cause.

A major component of human factor-caused accidents is fatigue. Employee fatigue is suspected to be the cause of or a significant factor in many railroad accidents, although it is often difficult to prove fatigue as the direct cause of an accident. The NTSB has identified fatigue as a contributing cause of at least 18 significant railroad accidents since 1984. Recent examples include the accident in Anding, Mississippi, on July 10, 2005, where two trains collided after one of them failed to comply with a signal requiring it to stop. Six locomotives and 17 cars derailed, spilling diesel fuel that burned for over 15 hours. All four crew members were killed in the accident. The NTSB determined that one crew's inattentiveness to

the signal indication was likely a result of its employees being fatigued. In Macdona, Texas, on June 28, 2004, two trains collided resulting in the derailment of four locomotive and 36 cars, and the release of liquefied chlorine. Two local residents and one railroad employee were killed from inhalation of chlorine gas. The resulting damage was estimated at \$5.7 million. Again, the NTSB determined that the accident was caused by the crew's fatigue which resulted in its failure to observe a wayside signal.

The Hours of Service Act, enacted in 1907, which limits the number of hours railroad employees may work in an effort to reduce fatigue, is routinely criticized as no longer suitable for regulating employee work schedules. The current hours of service (HOS) law permits train, signal, and dispatching service employees to work a maximum of 12 hours on-duty in a 24 hour period. Off-duty periods must be at least 8 consecutive hours or, if the employee works 12 consecutive hours, the off-duty period must be at least 10 consecutive hours. Interpretations of this Act also allow employees to work additional hours beyond these limits where an employee has been "relieved but not released" from their job sites. This period is considered neither on-duty nor off-duty, and is known as "limbo time." Although it is uncertain whether this has ever occurred, the current HOS structure could permit an employee to work 400 hours in a 30-day period. Regardless of whether employees work the maximum hours permitted, the combination of long hours, irregular work and rest cycles, and lack of regular days off have been shown to have a deleterious effect on employee alertness.

Research conducted by the DOT, the FRA, and others has demonstrated that fatigue impairs mental acuity, judgment, and reaction times, but the cause of any specific human performance failure can be extremely difficult to pinpoint. The DOT, the FRA, and the NTSB are working with major railroads and labor organizations to determine how to manage fatigue. The FRA recently gathered more data about fatigue through the Switching Operations Fatality Analysis (SOFA) Working Group, which determined that fatigue largely related to biological rhythms or time of day was likely responsible for a large part of SOFA-analyzed accidents. The FRA also issued one study and two reports in late 2006 that confirmed that there is a reliable relationship between the time of day of human factor-caused accidents and the expected, normal circadian rhythm. These findings provide an enhanced foundation for fatigue management in railroad occupations. The North American Rail Alertness Partnership serves as an ongoing forum for dialogue regarding present challenges, current research, and the results of voluntary efforts to resolve fatigue in the railroad industries.

TRACK INSPECTION

Track-caused accidents are the second-largest cause of all train accidents, comprising 34 percent of all train accidents. The FRA determined that some of the leading causes of track related accidents, including broken rails and rail joint bars, are very hard to detect through normal track inspection procedures. The FRA and the industry are developing more sophisticated track inspection technology to better detect internal rail defects that could potentially be deployed at relatively low costs. For example, the FRA is developing an automated high-resolution video joint bar inspection sys-

tem that will have the capability of being deployed on a hi-rail vehicle to better detect visual cracks. This new system, as well as others, may also help reduce track inspection time.

In addition to methods of detecting track or rail defects, the increase of rail traffic has also made it more difficult for railroad and FRA track inspectors to get adequate time to properly inspect the track, also known as “track time.” Specifically, the NTSB, based on findings related to an accident in Home Valley, Washington, raised a concern that railroads are not permitting their own track inspectors enough track time or authority to occupy railroad tracks for maintenance and inspection purposes, especially on dense, shared freight and passenger routes. The NTSB attributed the cause of the accident, in part, to failure of the railroad to respond to reports of possible track problems with appropriate inspections. In similar instances, not only can the limitation of track time pose concerns regarding the adequacy of the inspections that occur under such time constraints but may also lead to instances where low-level defects are left unaddressed because track inspectors and maintenance personnel must use the limited time available to them to repair the most obvious and severe defects immediately. Such latent defects can develop, over time, into serious safety concerns but may never get appropriate attention.

POSITIVE TRAIN CONTROL (PTC) AND OTHER NEW TECHNOLOGY

The railroad industry is quickly developing and deploying new technology to improve the safety, security, and efficiency of operations, some of which were not fully contemplated when railroad safety laws and regulations were written. Therefore, laws and regulations related to this technology need to be updated to provide guidance to the industry for developing and deploying such technology in a manner consistent with safety. It is anticipated that a more certain regulatory regime for this new technology will motivate railroads and suppliers to develop and deploy such products.

The most advanced of this emerging technology is PTC, which is a generic term for integrated command, control, communications, and information systems that control train movements. Both the NTSB and the FRA agree that PTC systems can improve railroad safety by significantly reducing the probability of train-to-train collisions, overspeed derailments, and incursion into roadway worker work limits. Remote intervention capability, which allows the system to stop or slow a train should the locomotive crew become incapacitated or fail to respond in accordance with required actions, is central to all PTC systems. The use of PTC technology is a departure from the method governing most train movements today, which is generally conducted through the use of wayside signals and/or written operating authorities that grant track occupancy to trains, but provides for an equivalent or greater level of safety.

PTC has been on the NTSB’s list of “most-wanted” initiatives for national transportation safety since the NTSB created the list in 1990. The NTSB has estimated that approximately 40 to 60 accidents that could result in seven fatalities and 55 injuries could be prevented by PTC each year. In addition to providing a greater level of safety, PTC systems may also enable a railroad to improve scheduling of operations, running time, reliability, asset utilization, and track capacity. The operational transparency provided by PTC

should also assist railroads in measuring and managing costs and improving efficiency. Collisions like the one that occurred in Graniteville, South Carolina, on January 6, 2005, in which an employee's failure to properly line a track switch resulted in the derailment of several railroad cars and the release of chlorine gas, killing nine people, could have been prevented by a PTC system.

Several railroads, the AAR, the FRA, and various suppliers have been working on developing PTC systems for over 20 years. With over five active PTC systems currently being operated or tested, the cost, sophistication, and reliability of these systems are approaching or have reached deployable levels. On March 7, 2005, the FRA issued a final rule, *Standards for Development and Use of Processor-Based Signal and Train Control Systems*. To date, one railroad has obtained FRA approval of its PTC system, and the majority of the Class I railroads² have PTC systems under development. Amtrak also operates a PTC system on the Northeast Corridor and in Michigan; that system was grandfathered under the FRA's PTC final rule.

However, the deployment of PTC systems has not been as rapid or as widespread as it could be. The critical issues surrounding deployment of PTC are the development of standards for interoperability, cost-benefit calculations, and funding. While PTC can clearly enhance the safety of mainline operations, many railroads believe that under current operating practices, the benefits do not outweigh the estimated \$6 to \$8 billion cost of deployment for the entire U.S. railroad network. Railroads particularly note that the large majority of non-grade crossing and trespasser accidents and deaths occur in yards or terminals or are due to track defects and that PTC systems offer limited or no value in reducing or preventing such accidents. Mainline rail collisions make up only two percent of accidents and have been reduced by 82 percent since 1980. Many railroads feel that spending significant capital resources to address yard and track safety concerns, which are far more prevalent within the industry, would provide more safety benefits for their investment. However, the NTSB, the FRA, and others have suggested that the operational and productivity benefits, added to the safety enhancements, will make PTC a worthwhile investment for certain rail lines and operations, especially routes with dual passenger and freight operations and hazardous materials shipments.

Electronically controlled pneumatic (ECP) brakes are another innovation in the railroad industry that is expected to reduce human factor-caused accidents by improving train handling and eliminating misuse of automatic braking systems. ECP brakes have been proven to reduce stopping distances for trains by uniformly applying brakes throughout an entire train. This can help prevent train collisions. The FRA is currently preparing a rule to amend train air brake requirements to ensure that ECP brakes are deployed safely and, in the mean time, is working with railroads to encourage the use of this technology.

²U.S. Class I Railroads are line haul freight railroads with operating revenue in excess of \$277.7 million. In 2007, the U.S. Class I railroads were: BNSF Railway, CSX Transportation, Canadian National's Grand Trunk Corporation, Kansas City Southern Railway, Norfolk Southern Combined Railroad Subsidiaries, Canadian Pacific's Soo Line Railroad, and Union Pacific Railroad.

GRADE CROSSING AND TRESPASSER SAFETY

Grade crossing and trespasser incidents account for about 94 percent of all deaths related to train operations. The number of grade crossing deaths has declined substantially and steadily over the last decade. In the past few years, however, the number of grade crossing collisions has increased, which is likely due to the increase in rail and motor vehicle traffic.

The DOT IG has issued four reports, in 1999, 2004, 2005, and 2007, about the FRA's oversight of highway-rail grade crossing accidents. The reports found that the FRA had not identified collisions that the railroads were required to report to the National Response Center (NRC), had conducted investigations on less than one percent of grade crossing collisions, and had not taken strong actions to enforce the highway-rail grade crossing regulations. The latest report also found that the FRA has no assurance that sight obstructions at grade crossings are addressed in State laws.

In response to these audits, the FRA has issued a Safety Advisory that describes the roles of the Federal and State governments and the railroads in grade crossing safety and reemphasizes the requirements of the FRA regulations. In 2004, the FRA also issued an action plan for Highway-Rail Crossing Safety and Trespass Prevention, which sets forth a series of initiatives in the area of engineering, education and enforcement. The FRA also has begun reviewing private grade crossings, at which about 10 percent of grade crossing accidents occur, to determine what actions need to be taken to address safety at these crossings. The FRA has also issued several civil penalties against railroads that do not immediately report accidents to the NRC. However, the FRA has not yet addressed the sight obstruction issue. The DOT IG and the FRA recognize that more needs to be done to reduce grade crossing accidents and injuries.

Relying primarily on funding made available through the Federal Highway Administration (FHWA) pursuant to section 130 of title 23, United States Code, (Section 130) most States have gradually upgraded crossing warning devices, especially at the State's most dangerous crossings. Since its inception in 1974, the FHWA estimates that the Section 130 program has distributed \$3.8 billion in funds and been responsible for the construction of 30,000 active crossing warning devices that helped prevent more than 10,000 deaths and over 50,000 injuries. Nevertheless, scores of thousands of public and private crossings have only passive warning devices, and collisions continue to occur at crossings with fully operational active warning devices where motorists disregard the warnings. Supplementary safety measures such as traffic channelization devices or four-quadrant gate systems that would prevent such behavior have been installed on only a limited basis.

Reducing trespasser deaths remains a significant challenge facing railroads and the FRA. Since 1997, events involving trespassing have become the major cause of rail-related deaths, surpassing highway-rail grade crossing incidents. According to FRA data, through the first eight months of 2006, trespassing events represented 58 percent of all rail-related deaths, the highest percentage since 1975. While detection systems can be designed to detect actions by trespassers who tamper with structures and facili-

ties, many fatalities involve people trespassing on railroad rights of way that are often viewed by the public as convenient routes through communities. Additionally, a significant portion of trespasser fatalities are suicides. The FRA and railroads have come up with few solutions to this growing problem. In 2004, the Secretary instituted the Action Plan for Highway-Rail Crossing Safety and Trespass Prevention, which sets forth a series of initiatives in the fields of engineering, education, and enforcement. In 2005, the FRA instituted its National Rail Safety Action Plan as its strategic enforcement plan and part of which includes fostering further improvements in highway-rail grade crossing safety and trespassing accident prevention. Despite this initiative, the FRA reported that highway-rail grade crossing fatalities increased by 2.2 percent and trespasser fatalities increased by 13.6 percent in 2006.

SOLID WASTE

A loophole exists in Federal law that exempts railroads that conduct solid waste handling or processing from complying with State health, safety, and environmental laws with which other solid waste handling and processing facilities must comply. This loophole came to light within the past few years when a few companies in the Northeast began hauling municipal solid waste (MSW) and construction and demolition (C&D) debris by railroad and claimed that as "railroads" they were Federally protected from complying with local health, safety, and environmental laws. The Surface Transportation Board, which currently has Federal jurisdiction over railroad rate, service, and restructuring issues, including construction of new rail lines and facilities, has not actively exercised that jurisdiction over railroads that also handle and process solid waste, leaving many of these facilities wholly unregulated by any entity. The lack of regulation of these facilities has allowed certain rail waste transfer and processing facilities to engage in practices that are widely considered unsafe and detrimental to health, safety, and the environment. It is anticipated that due to increased demand for new solid waste disposal methods for densely populated regions of the United States that the business of processing and handling solid waste and shipping it via rail will increase throughout the nation in the future.

SUMMARY OF PROVISIONS

RAILROAD SAFETY STRATEGY AND RISK REDUCTION PROGRAMS

To refocus the Secretary's railroad safety programs and to further reduce the numbers and rates of accidents, injuries, and fatalities, the bill would require the Secretary to develop and submit with the President's budget a long-term strategy for improving railroad safety. The strategy would have to address several goals, including improving the consistency and effectiveness of enforcement programs, improving the identification of high-risk highway-rail grade crossings; preventing trespasser accidents, injuries, and fatalities; and improving the safety of railroad bridges and tunnels.

The bill would also authorize a railroad safety risk reduction program, which has proven successful in other industries and in other countries for reducing accidents and injuries. This type of program first requires an identification of root causes of accidents, injuries,

and fatalities, and then requires the development of a program to manage railroad operations and infrastructure, including human behavior, to prevent these root causes from occurring. To test this concept within the U.S. railroad industry, the bill would require the Secretary to develop, implement, and complete a railroad safety risk reduction pilot program within four years. The FRA has already begun to conduct research with the railroad industry in an effort to collect accident, incident, and fatality precursor data. The pilot program would be expected to be conducted in conjunction with this on-going research.

This pilot program would be geared at systematically identifying and evaluating railroad safety risks, including collecting data about precursors to accidents that may not be readily identifiable through traditional inspection methods. Based on the risks identified, the Secretary would develop a program to manage those risks to improve safety by reducing the numbers and rates of accidents, injuries, and fatalities. The pilot program would be voluntary and those choosing to participate would submit applications to the Secretary. Six months after the completion of the project, the Secretary would be required to submit a report to Congress evaluating the pilot program. The bill would authorize funds for a grant program for railroads and railroad facilities selected by the Secretary to implement the program.

Based on the evaluation and best practices gleaned from the pilot program, the Secretary would be required to develop regulations requiring each Class I railroad; railroad that the Secretary determines has inadequate safety performance; and railroad that provides intercity passenger or commuter rail passenger transportation to develop its own railroad safety risk reduction program. Similar to the risk reduction pilot program, railroads covered by these regulations would be required to perform system-wide safety analyses and develop an individualized program to address identified risks. If the identified risks could be reduced through the implementation of fatigue management methods or improved safety technology, the program would have to include a fatigue management plan and a technology implementation plan. If a PTC system is identified as an appropriate technology under the technology implementation plan, then a railroad would have to include a schedule for implementation of the PTC system by a date not later than December 31, 2018.

HOURS OF SERVICE REFORM

To further reduce incidents of fatigue-related accidents, injuries, and fatalities, the bill would change the current HOS laws to reduce the number of hours that employees may work and increase the amount of rest and off-duty time provided to employees. Most notably, the bill increases the amount of rest required for train and signal employees to 10 hours within a 24-hour period and institutes a new monthly cap that limits the amount of time that train employees may be on duty and the amount of time waiting for transportation to a place of final release from work (“deadhead transportation”) at the end of the 12 hour maximum on-duty period, known as “limbo time,” to 276 hours per month. The bill would also cap the total number of hours that an employee could spend on-duty and waiting for deadhead transportation on a train at 15 hours,

unless that train was delayed by an accident, a major equipment failure, or a delay resulting from a cause unknown and unforeseeable to a railroad carrier. Additionally, the bill would, for the first time, mandate rest days for train employees following long periods of consecutive days on-duty. The bill would require that such employees who work six days consecutively receive two consecutive days off at a home terminal, or alternatively, require that train employees who work seven days consecutively receive three consecutive days off at a home terminal, if such an arrangement is allowed under an existing collective bargaining agreement. The bill also would prohibit railroads from communicating with their employees during their 10 hours of time off-duty in a manner that could reasonably be expected to disrupt their rest, with the exception of notifying an employee of an emergency situation.

The changes in the bill are intended to provide significant flexibility for railroads and labor organizations, consistent with improving railroad safety. The Committee recognizes that scheduling practices included in current or future collective bargaining agreements may provide for levels of safety beyond what is achieved through simple compliance with the existing HOS statute. Additionally, the Committee is sensitive to the impacts on efficient railroad operations and the earning potential for employees that any changes to the existing system may cause. The bill is structured to provide sufficient flexibility by providing several safe alternate scenarios for compliance.

HIGHWAY-RAIL GRADE CROSSING AND PEDESTRIAN SAFETY AND TRESPASSER PREVENTION

The bill would target gaps in the area of highway-rail grade crossing safety and enforcement to help the FRA and States to better combat highway-rail grade crossing, pedestrian, and trespasser accidents, injuries, and fatalities. It also would require railroads and States to update information about warning devices and signage at highway-rail grade crossings in the National Crossing Inventory. The bill also would require the Secretary to identify on an annual basis the States receiving funds for Federal highway-rail grade crossing projects that had the most highway-rail grade crossing collisions in the previous year. As a condition of receiving future funds, each of the States identified by the Secretary would be required to develop a State Grade Crossing Action Plan that identifies solutions for improving safety at grade crossings.

The bill also would require the Secretary to issue guidance to railroads on strategies and methods to prevent pedestrian accidents; prescribe regulations to require railroads to improve sight distance at highway-rail grade crossings; develop regulations to require railroads to establish and maintain a telephone number to be posted at each highway-rail grade crossing for the public to report problems at highway-rail grade crossings; and to prevent trespassing.

The Committee notes that a significant proportion of the total highway-rail grade crossing accidents occur in the States with the 10 highest levels of such accidents, largely due to the high number of crossings, density of train traffic, and number or route miles within such States. Therefore, the Committee believes focusing ef-

forts on reducing accidents in these States will have a significant impact on the national total.

FEDERAL RAILROAD ADMINISTRATION

S. 1889 includes a number of provisions to improve upon and strengthen the FRA's railroad safety program. To emphasize the importance of railroad safety, the bill would establish safety as the FRA's highest priority and designate the Associate Administrator for Railroad Safety as the Chief Safety Officer. To ensure that the FRA has the necessary expertise to implement the provisions of this bill and generally increase the agency's safety regulatory capabilities, the bill would require the FRA to hire 200 additional employees by FY 2013, with a focus on hiring employees who are specifically trained in areas determined to be critical to enhancing railroad safety. The bill also would further enhance the FRA's enforcement program by increasing the maximum civil penalty to \$25,000 and the maximum civil penalty for a grossly negligent violation or a pattern of repeated violations that has caused an imminent hazard of death or injury to individuals, or has caused death or injury to \$100,000. Additionally, the bill would grant the FRA the authority to prohibit individuals from performing safety-sensitive functions if they are found to have committed a violation of hazardous materials transportation law and would enhance the FRA's railroad radio monitoring authority for the purpose of accident prevention and accident investigation. Finally, the bill would provide certain Federal railroad security officers with access to law-enforcement information for the purpose of carrying out the civil and administrative responsibilities of the FRA Administrator.

In response to lessons learned from recent natural disasters, including Hurricanes Katrina and Rita in 2005, S. 1889 would create a new emergency waiver process to assist railroads in quickly recovering after an emergency situation. The bill would grant the FRA the authority to issue to a requesting railroad an emergency waiver to Federal railroad safety regulations, without a public comment period, for a duration not exceeding nine months if the waiver is directly related to an emergency event or necessary to aid in a recovery effort related to such an event and if the granting of such a waiver is in the public interest and consistent with railroad safety. The FRA would be required to provide notice and an opportunity for a hearing subsequent to granting a waiver.

This bill also would improve transparency of the FRA's enforcement program by requiring the FRA to publish an annual report on enforcement actions that it has taken in the prior year, including the number of inspections it conducted; the amount of penalties assessed against railroads, hazardous materials shippers, and individuals; the amount of those penalties that were reduced; and a listing of compliance orders, emergency orders, and precursor agreements. The FRA also would be required to analyze the effect of its enforcement actions on the number and rates of reported accidents and incidents. The FRA also would be required to update its public website to include a mechanism for the public to report potential railroad safety and hazardous materials transportation violations.

In establishing safety as the FRA's highest priority, the Committee does not intend to diminish the railroad development and

other related work that does not directly impact railroad safety that is carried out by the agency. Instead, the Committee expects the FRA to continue, and in fact expand, those efforts as evidenced by a significant increase in the FRA's role in intercity passenger railroad development envisioned in S. 294, the Passenger Rail Investment and Improvement Act of 2007, which was reported by the Committee on April 25, 2007, and approved by the Senate on October 30, 2007.

RAILROAD SAFETY ENHANCEMENTS

Despite the generally safe nature of railroad operations, there are still areas that need significant improvement. To better ensure that all railroad carrier and railroad carrier contractor and subcontractor employees are fully trained to safely conduct their job functions, the bill would require the Secretary to issue regulations requiring railroad carriers and railroad carrier contractors and subcontractors to develop training plans for crafts and classes of employees. Employees would be required, at a minimum, to be trained on the requirements of Federal railroad safety laws, regulations, and orders and to be tested on their proficiency in the subject matter of the training. The railroad carriers and railroad carrier contractors and subcontractors would be required to submit the plans to the FRA for review and approval. The Secretary would have the authority to exempt railroad carriers or railroad carrier contractors and subcontractors from submitting training plans if the Secretary has issued training regulations prior to the bill's enactment.

S. 1889 also would authorize a series of studies and reports to further investigate railroad safety matters. One study would require the Secretary to determine whether the intervals of track inspections for each class of track should be amended, track remedial action requirements should be amended, and different track inspection and repair priorities or methods should be required. The Secretary would be required to issue and implement recommendations for changes to the Federal track safety standards based on the results of the study. Another study would evaluate the safest, most efficient, and cost-effective way to improve the safety of railroad passenger station platform gaps in order to increase compliance with the Americans with Disabilities Act (ADA)³ and its implementing regulations and to minimize the safety risks associated with such gaps for railroad passengers and employees. An additional study would require the Secretary to review the use of personal electronic devices, including cell phones, video games, and other distracting devices by safety related employees during the performance of such employees' duties and would grant the Secretary the authority to issue regulations to prohibit the use of such devices or to otherwise improve the safety of the locomotive cab environment after the report has been issued. The Secretary also would be required to complete a report to examine whether certification of certain crafts or classes of employees is necessary to reduce the number and rates of accidents and incidents or to improve railroad safety, and the bill would authorize the Secretary to issue

³Public Law 101-336

regulations requiring certification of certain crafts or classes of employees based on the findings in the report.

Recognizing that many of the provisions of S. 1889 could lead to the need for significant new safety investments by railroad carriers and that the Federal government and the nation has an interest in seeing such investments made promptly, the bill would authorize two grant programs for railroads, railroad suppliers, and State and local governments to improve railroad safety. The first program would authorize grants for the deployment of train control technologies, ECP brakes, rail integrity inspection systems, rail integrity warning systems, switch position indicators, remote control power switch technologies, track integrity circuit technologies, and other new or novel railroad safety technology. Grants would be available for projects that benefit the public by improving safety and railroad network efficiency, with priority given to projects that focus on deploying train control technologies within high-risk corridors, increasing technology interoperability, or benefitting both passenger and freight railroad operations. The bill would authorize \$20,000,000 for each of FY 2008 through FY 2013. The second grant program contained in the bill would authorize grants for safety improvements to railroad infrastructure and facilities, including track, bridges, tunnels, yards, buildings, passenger stations, facilities, and maintenance and repair shops. In awarding grants, the Secretary would be required to consider the age and condition of the rail infrastructure of the applicant, the railroad's safety record, the volume of hazardous materials transported by the railroad, the operation of passenger trains over the railroad, and whether the railroad has submitted a railroad safety risk reduction program. The bill would authorize \$15,000,000 for FY 2008 through FY 2013.

Because many new rail safety technologies are already in various stages of development and deployment, the bill would require the Secretary to issue standards, guidance, regulations or orders governing the development, use, and implementation of new rail safety technology in un-signalized, or "dark" territory. Such new technology, including switch position monitoring devices and remote control switches could significantly enhance the safety of train operations on un-signalized routes at costs significantly lower than the cost of full centralized traffic control (CTC) signalization.

RAIL PASSENGER DISASTER FAMILY ASSISTANCE

The bill would establish a process for the NTSB to provide assistance to families affected by rail passenger train disasters similar to the process now employed by the NTSB for providing assistance to families of aviation passenger disaster victims. The bill would require the Chairman of the NTSB to designate and publicize the name and phone number of a director of family support services and an independent non-profit organization to coordinate and provide services to families of passengers involved in railroad accidents. It would define the responsibilities of the NTSB and the designated non-profit organization in post-rail accident situations.

It also would require rail passenger carriers, not later than six months after the date of enactment of this Act, to submit to the Chairman of the NTSB, the Secretary, and the Secretary of the Department of Homeland Security, a plan for addressing the needs of

families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in loss of life. It would authorize \$500,000 for FY 2008 for the Secretary to carry out this new section.

The Secretary, in cooperation with the NTSB, also would be required to create a task force, which includes rail passenger carriers and families who have been involved in rail accidents, to develop a model plan and recommendations on how passenger railroad carriers can provide assistance and notification to families of those passengers involved in railroad accidents.

CLARIFICATION OF JURISDICTION OVER SOLID WASTE FACILITIES

The bill would make changes to the Solid Waste Disposal Act and the jurisdiction of the Surface Transportation Board to clarify what environmental, health, and safety laws, regulations, and orders are applicable to railroad carriers that also process or store solid waste. The changes would require solid waste rail transfer facilities, within one year, to submit a completed application for permits from State and local jurisdictions in order continue to operate. The Committee approved this provision with the basic understanding that State and local governments are best equipped to regulate such facilities and that these facilities should generally be treated in a similar manner to other solid waste transfer facilities that are not associated with rail transportation. The Committee continues to work to refine this provision.

LEGISLATIVE HISTORY

S. 1889 was introduced on July 26, 2007, by Senator Lautenberg and co-sponsored by Senators Smith, Clinton, Schumer, and Kerry and was referred to the Senate Committee on Commerce, Science, and Transportation. A hearing on safety issues facing the railroad industry and a hearing on RSEA were held by the Commerce Committee's Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security on May 22, 2007, and July 26, 2007, respectively. On September 27, 2007, the Committee met in open executive session and, by voice vote, ordered S. 1889 reported favorably, as amended, with an amendment in the nature of a substitute.

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:

NOVEMBER 30, 2007.

Hon. DANIEL K. INOUE,
*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. 1889, the Railroad Safety Enhancement Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

PETER R. ORSZAG

Enclosure.

S. 1889—Railroad Safety Enhancement Act of 2007

Summary: CBO estimates that S. 1889 would authorize the appropriation of about \$1.9 billion over the 2008–2012 period. Those amounts include funds for:

- Operating the Federal Railroad Administration (FRA);
 - Building a rail facility in Pueblo, Colorado;
 - Providing grants to increase safety throughout the rail system;
- and
- Implementing National Transportation Safety Board (NTSB) programs to assist the families of passengers who are in rail accidents.

Assuming appropriation of the amounts authorized and estimated to be necessary, CBO estimates that implementing the bill would cost about \$1.3 billion over the 2008–2012 period and about \$600 million after 2012.

CBO estimates that additional penalties of \$60 million over the 2008–2017 period would be collected under the bill. Penalty collections are classified as revenues in the budget. Enacting S. 1889 could increase direct spending, but CBO estimates that any increase in direct spending would be insignificant.

S. 1889 contains several intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would require railroads to limit the number of hours worked by employees, certify and train employees, carry out safety procedures, and report certain information. It also would preempt certain state laws. The total cost to comply with those mandates is uncertain and would depend in part on regulations that have not yet been established. Due to the small number of public entities involved, however, CBO estimates that compliance costs for those entities would not exceed the annual threshold established in UMRA for intergovernmental mandates (\$66 million in 2007, adjusted annually for inflation). Depending on future regulations, the cost to comply with some of the safety requirements could be substantial for private entities. However, because the cost for private entities to comply with those requirements is uncertain, CBO has no basis for determining whether the aggregate costs of mandates in the bill would exceed the annual threshold established in UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1889 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

Basis of estimate: For this estimate, CBO assumes that S. 1889 will be enacted near the start of calendar year 2008, that the authorized and necessary amounts will be appropriated each year, and that outlays will follow the historical rate of spending for similar programs.

SPENDING SUBJECT TO APPROPRIATION

S. 1889 would reauthorize the programs of FRA through 2013. The current authorization for FRA expired at the end of fiscal year 1998 (although the agency has received appropriations in the intervening years). The legislation would specifically authorize the appropriation of about \$1.9 billion over the next six years for FRA programs, including grants to improve the safety of rail operations. Of that total, DOT could use up to \$271 million for research and development. In addition, title 5 would require the NTSB to provide assistance to the families of passengers involved in rail accidents that result in a loss of life. CBO estimates that provision would cost \$1 million annually.

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ^a					
Federal Rail Administration Programs:					
Authorization Level	245	260	270	280	290
Estimated Outlays	172	219	253	275	285
Pueblo, Colorado, Facility:					
Authorization Level	18	0	0	0	0
Estimated Outlays	11	4	2	1	0
Grants for Programs to Increase Rail Safety:					
Authorization Level	37	38	38	37	37
Estimated Outlays	5	17	28	34	36
NTSB Assistance after Rail Accidents:					
Estimated Authorization Level	1	1	1	1	1
Estimated Outlays	1	1	1	1	1
Total Spending Under S. 1889:					
Estimated Authorization Level	301	299	309	318	328
Estimated Outlays	189	241	284	310	322
CHANGES IN REVENUES ^b					
Estimated Revenues	6	6	6	6	6

^a. For 2008, a full-year appropriation has not yet been provided to the Department of Transportation; 2007 appropriations for programs that would be authorized by S. 1889 totaled about \$200 million.

^b. CBO estimates that additional revenues of \$6 million would be collected each year over the 2013–2017 period.

Federal Rail Administration (FRA)—The bill would require railroad operators to comply with new safety requirements in the bill and would require FRA to establish a chief safety officer. Under the provisions of the bill, FRA would:

- Administer new safety grants;
- Establish pilot programs to evaluate and manage risks to safety on railroads and reduce fatigue of rail employees;
- Hire new employees;
- Issue studies and reports with respect to rail safety;
- Review and approve plans submitted by railroad operators;
- Create model legislation for states regarding the safety of grade crossings and the prevention of vandalism to railroad safety measures; and
- Establish and enforce regulations regarding the safety and certification requirements in the bill.

The bill would authorize the appropriation of about \$1.6 billion over the 2008–2012 period, and \$337 million in 2013 for support of those programs. CBO estimates that implementing those provisions would cost \$1.3 billion over the 2008–2012 period, and about \$600 million thereafter.

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

Grants for Programs to Increase Rail Safety.—S. 1889 would direct FRA to administer three new grant programs. Assuming appropriation of the specified amounts, CBO estimates that grants would cost \$120 million over the 2008–2012 period and \$104 million thereafter. The grants would support the increased use of technologies and the construction, improvement, and rehabilitation of infrastructure to increase rail safety. The grants also would support Operation Lifesaver—a nonprofit organization with the mission to end accidents at grade crossings.

Grants for the Deployment of Railroad Safety Technology.—Section 406 would authorize the appropriation of funds to support the deployment of several technologies intended to increase the safety of rail operations. The bill would authorize the appropriation of \$20 million annually over the 2008–2013 period for such grants.

Grants for Operation Lifesaver.—Section 206 would direct FRA to make additional grants to Operation Lifesaver—a nonprofit organization with the mission to end accidents at places where roadways cross train tracks and on railroad rights-of-way. Under the current authorization for highway programs (Public Law 109–59), Operation Lifesaver receives \$560,000 a year of contract authority (budget authority that is subject to annual obligation limitations) through fiscal year 2009. The bill would specifically authorize the appropriation of an additional \$2 million annually over the 2008–2010 period and \$1.5 million annually over the 2011–2013 period for Operation Lifesaver.

NTSB Assistance After Rail Accidents.—Title 5 would require the NTSB to provide assistance to the families of passengers who are in rail accidents on Amtrak that result in a major loss of life. The bill also would require DOT to establish a task force that would recommend ways to improve family assistance and to more accurately determine the number of passengers on board a train involved in an accident. Based on information from the NTSB and assuming appropriation of the necessary amounts, CBO estimates that implementing this provision would cost \$1 million a year.

DIRECT SPENDING AND REVENUES

S. 1889 would establish new civil penalties on railroads that fail to comply with reporting requirements regarding grade crossings and increase penalties for general violations of safety laws addressed by the bill. Collections of civil fines are recorded as revenues and deposited in the Treasury. The bill would increase the maximum penalty for violations of the law from \$10,000 to 25,000 and would raise the maximum penalty for violations that are grossly negligent or that represent a repeating pattern of offenses from \$20,000 to \$100,000. According to FRA, under current law, such civil fines generate about \$15 million in revenues annually. CBO expects that an increase in the fines would decrease the number

of violations, but we expect that the increased penalties would generate additional revenues of \$6 million a year.

Intergovernmental and private-sector impact: S. 1889 contains several intergovernmental and private-sector mandates as defined in UMRA because it would require railroads to comply with new safety standards and procedures. It also would preempt certain state laws. The total cost to comply with those mandates is uncertain and would depend, in part, on regulations that have not yet been established. Due to the small number of public entities involved, however, CBO estimates that the aggregate costs for those entities to comply with the bill's mandates would not exceed the annual threshold established in UMRA for intergovernmental mandates (\$66 million in 2007, adjusted annually for inflation). Depending on future regulations, the cost to comply with some of the safety requirements could be substantial for private entities. However, because the cost for private entities to comply with those requirements is uncertain, CBO has no basis for determining whether the aggregate costs of mandates in the bill would exceed the annual threshold established in UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

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

MANDATES THAT AFFECT BOTH THE PUBLIC AND PRIVATE SECTOR

By requiring railroads to carry out safety procedures, limit the number of hours worked by employees, report certain information, and certify and train employees, and by preempting certain state laws, S. 1889 would impose both intergovernmental and private-sector mandates as defined in UMRA.

Mandates with Uncertain Costs. CBO cannot estimate the total costs of several mandates in the bill because we do not have sufficient information about how railroads would choose to adjust their employees' schedules to comply with the restrictions, and because costs would depend upon future actions of the Secretary of Transportation. Those mandates would:

- Require railroads to submit plans to address technology improvements, railroad worker fatigue, and infrastructure safety;
- Increase restrictions on the number of hours that signalmen and train crews are allowed to work over certain time periods;
- Require that railroads report information on the status of grade crossings;
- Require railroads to certify train conductors and carmen, establishing minimum training standards for each craft of railroad employees as well as track and railroad equipment inspectors;
- Increase restrictions on the use of personal electronic devices by certain railroad employees;
- Require freight railroads, and any other railroads deemed appropriate, to submit plans to address the needs of employees that are involved in accidents; and
- Require railroads to use rail safety technology in certain areas.

Mandates with Minimal Costs. The bill would require railroads to carry out procedures to prevent accidents and to enhance recovery efforts. It also would establish new protections for railroad em-

ployees. Those mandates would impose minimal additional costs on railroads because compliance likely would involve only a small adjustment in current procedures, or because railroads or individuals would be unlikely to engage in the prohibited activities. Additionally, the bill would establish a grant program for state and local governments and the private sector to address some of these requirements.

MANDATES THAT AFFECT ONLY THE PUBLIC SECTOR

The bill would preempt state laws that require railroads to use certain technology at highway-rail crossings. It also would preempt state laws that require operators of solid waste facilities to secure a permit before operating such facilities. The bill also would give the Administrator of the FRA the right to (1) access criminal justice data maintained by the states, (2) use state or local radio, data links, or warning systems that provide public safety information, and (3) receive communications from state or local police officers.

CBO estimates that the additional costs to state, local, and tribal governments of complying with the preemptions and the other mandates in the bill would be small.

MANDATES THAT AFFECT ONLY THE PRIVATE SECTOR

The bill would impose additional mandates that affect only private rail carriers. If rail carriers provide sleeping quarters for their employees, those quarters must be equipped with toilet facilities, potable water, and other features that would protect the health of their employees. According to industry sources, most sleeping quarters are already equipped with similar features. Because compliance with this mandate would involve only a small adjustment in current procedures, CBO estimates the cost to those entities would be small relative to the annual threshold.

The bill also would require the Secretary of Transportation to regulate the use of camp cars by railroads, which may include the prohibition of camp cars. Camp cars are mostly used by railroad carriers operating in remote areas where sleeping accommodations are not readily available. Given that few railroad carriers use camp cars as sleeping quarters, CBO estimates that the cost to comply with this mandate also would likely be small.

OTHER IMPACTS: GRANTS

The bill would establish a grant program for passenger and freight railroad carriers and state and local governments to install train controls, switch-position indicators, and other component technologies. Any costs those entities might incur would result from complying with conditions of federal assistance.

Previous CBO Estimate: On July 3, 2007, CBO transmitted a cost estimate for H.R. 2095, the Federal Railroad Safety Improvement Act of 2007, as ordered reported by the House Committee on Transportation and Infrastructure. That bill would authorize appropriations over the 2008–2011 period for FRA operations and would reorganize that agency, changing its name to the Federal Rail Safety Administration. The differences in CBO's estimates reflect differences between the two bills.

Estimate prepared by: Federal Spending: Sarah Puro; Federal Revenues: Zachary Epstein; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Jacob Kuipers.

Estimate approved by: Peter H. Fontaine, 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

S. 1889 is intended to reauthorize the FRA, require railroads to make changes to improve railroad safety, authorize appropriations for FRA programs, research and development, and grants for 6 years. The bill affects the DOT, the FRA, and other entities already subject to DOT and FRA rules and regulations, and, therefore, the number of persons covered should be relatively consistent with the current levels of individuals impacted under existing laws and regulations.

ECONOMIC IMPACT

S. 1889 is not expected to have an adverse impact on the U.S. economy. While certain provisions would require new or additional safety expenditures by railroad carriers and may reduce the number of hours that individual railroad employees may work, in total, it is anticipated that much of these costs will be offset by positive public and private economic benefits stemming from decreased rail-related accidents, injuries, and fatalities, and increased productivity. For further analysis of the economic impact on the private sector, see page — of the CBO estimate.

PRIVACY

S. 1889 would have minimal to no effect on the privacy rights of individuals.

PAPERWORK

The Committee anticipates an increase in paperwork burden requirements for private individuals or businesses. In those areas where the bill does require additional paperwork, it is aimed at collecting information from the industry to assist in further identifying safety problems.

Sections 103 and 104 would require certain railroads to develop railroad safety risk reduction programs. The programs would have to be submitted to the FRA for review and approval and, once approved, would be required to be implemented by the covered railroad. The bill also would make grants available to develop and implement such programs as part of a pilot project and participants would be required to submit relevant paperwork to request such a grant.

Section 106 would require railroads to report instances when an employee exceeded the permissible HOS law, which would include different requirements than those under the HOS laws in place

prior to enactment of the bill. Railroads are already required to report hours in excess of the requirements so the additional reporting requirements would be minimal.

Under section 202, certain States identified by the DOT would be required to submit grade crossing action plans to the DOT and to revise any deficiencies in those plans.

Section 204 would require railroads and States to report information about grade crossings to the DOT National Grade Crossing Inventory to identify protections provided at highway-rail grade crossings. Many of these entities already report information to the Inventory on a voluntary basis. The updated information would assist the DOT in better addressing grade crossing issues.

Section 401 would require that the Secretary issue regulations to require railroad carriers and railroad carrier contractors and subcontractors to develop and submit training plans for certain crafts and classes of employees.

Section 412 would require any group of commonly controlled railroad carriers that want to be treated as a single carrier for the purposes of one or more provisions of subtitle V, part A of title 49, United States Code, to send a petition to the Secretary requesting such treatment. Initially, this would be a minimal burden on a group of railroad carriers to provide documents regarding their operations and corporate structure; however, in the long term, the provision could significantly reduce paperwork burdens under various other statutes and regulations.

Section 415 would require that the Secretary mandate that certain railroad carriers develop a critical incident stress plan. Some railroads have similar, although informal, plans currently in place. Updating such plans should be of minimal consequence.

Section 602 would require solid waste rail transfer facilities to submit applications for proper permits to operate the facility.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; Table of Contents; Amendment of Title 49.

The short title would be the “Railroad Safety Enhancement Act of 2007.” This section would provide a table of contents and would state that an amendment or repeal made by this Act is to title 49, United States Code, unless expressly stated otherwise.

Section 2. Definitions.

This section would provide definitions for certain terms for the purpose of this Act. Included in these definitions would be a slightly narrower definition of the term “crossing” than exists in other statutes. This definition of “crossing” would not supersede definitions of crossing in existing statutes, and would only apply to this term as it is used in this Act. Additionally, this section would provide a definition of “safety-related” employees that would cover the traditional “frontline” employees of a railroad whose jobs are clearly related to railroad safety and who either directly impact, or are directly impacted by, railroad operations. This definition may also include other employees that are not typically considered “frontline” employees if the Secretary determines that such employees directly affect railroad safety.

Section 3. Authorization of Appropriations.

This section would authorize appropriations for existing FRA rail safety programs and responsibilities; new programs and responsibilities required under this Act; rail safety-related research and development; the purchasing of track inspection vehicles or other comparable track inspection technologies; the construction of a railroad station and tunnel testing and training facility at the TTCI facility in Pueblo, Colorado; and the salaries and benefits of existing FRA employees and the hiring of new rail safety and security personnel.

The Committee expects that the authorization of funding for the station and tunnel facility at TTCI would significantly expand the training and research value of the facility for passenger and commuter rail safety and security. This enhancement of this facility would complement the recent addition of TTCI to the National Domestic Preparedness Consortium in the Implementing Recommendations of the 9/11 Commission Act of 2007. The Committee also notes that in authorizing the purchase of gage restraint measurement system and track geometry vehicles that these technologies may be overtaken by advancements in track safety technologies or may otherwise no longer be needed or appropriate. Because of this, the bill would allow the Secretary to purchase “other comparable technology” if another technology would be more appropriate in helping the FRA improve track safety. The Committee expects that the Secretary would use, in part, the results of the study required under section 403 to help determine what technologies would be most appropriate to purchase under this authorization.

TITLE I. RAILROAD RISK REDUCTION AND STRATEGY

Section 101. Establishment of Chief Safety Officer.

This section would amend section 103 of title 49, United States Code, to include a provision that establishes safety as the FRA’s highest priority. It would also designate the Associate Administrator for Railroad Safety as the Chief Safety Officer.

Section 102. Railroad Safety Strategy.

This section would require the Secretary to develop and submit, together with the President’s annual budget submission, a long-term strategy and annual plan for improving railroad safety. The strategy would identify ways to:

- Reduce the number and rates of accidents, injuries, and fatalities involving railroads including train collisions, train derailments, and human factors-related accidents;
- Improve the consistency and effectiveness of the DOT’s enforcement and compliance programs;
- Improve the identification of high-risk highway-rail grade crossings, strengthen enforcement, and make other safety improvements to increase grade crossing safety;
- Improve research efforts to enhance and promote railroad safety and performance;
- Prevent railroad trespasser accidents, injuries, and fatalities; and
- Improve the safety of railroad bridges, tunnels, and related infrastructure to prevent accidents, injuries, and fatalities

caused by catastrophic failures and other bridge and tunnel failures.

The strategy and plan would be required to include estimates of funds and resources, including staff skills and training required, to accomplish each goal set. The Secretary would be required, annually, to assess and report to Congress the Administration's progress toward meeting the strategic goals set.

Section 103. Railroad Safety Risk Reduction Pilot Program.

This section would require that the Secretary develop a four-year railroad safety risk reduction pilot program to systematically evaluate and manage railroad safety risks with the goal of reducing the numbers and rates of railroad accidents and injuries. In developing the railroad safety risk reduction pilot program, the Secretary would select railroads or railroad facilities to participate in the program through a voluntary application process. The Secretary would select the railroads or railroad facilities to participate based on a number of criteria and should, to the extent possible, try to select a range of railroads or facilities that represents the various types and sizes of railroads within the U.S. industry, including shortlines. The Committee is providing latitude to the Secretary to determine exactly what appropriately constitutes a "railroad facility" under this provision but intends this term to mean a major terminal or route; region, division, or subdivision; repair facility; or other substantial railroad facility of sufficient size to provide meaningful data about the risk reduction program process.

After selecting the participating railroads or railroad facilities, the Secretary would then, in coordination with selected railroads, railroad facilities, and the nonprofit employee labor organizations that represent safety-related railroad employees employed at such railroad or railroad facility, at a minimum:

- Identify the aspects of a selected railroad or railroad facility, including operating practices, infrastructure, equipment, employee levels and schedules, safety culture, management structure, employee training, and other matters, including those not covered by railroad safety regulations or other Federal regulations, that impact railroad safety;
- Evaluate how these aspects of a selected railroad or railroad facility increase or decrease risks to railroad safety.
- Develop a safety risk reduction program to improve the safety of a selected railroad or railroad facility by reducing the numbers and rates of accidents and injuries through the mitigation of the aspects of a selected railroad or railroad facility that increase risks to railroad safety and through the enhancement of aspects of a selected railroad or railroad facility that decrease risks to railroad safety; and
- Incorporate into the program the consideration and use of existing, new, or novel technology, operating practices, risk management practices, or other behavior-based practices that could improve railroad safety at the selected railroad or railroad facility.

The selected railroad or railroad facility would be required to implement the comprehensive safety risk reduction program developed and ensure that all employees at the selected railroad or railroad facility have received training on the program. The Secretary

would be required to evaluate the pilot project and submit a report to relevant Congressional Committees on the results. Additionally, the Secretary would be required to establish a grant program to encourage participation in the pilot program, particularly participation by smaller railroad carriers that might not have the financial means to otherwise participate in such a program. This section would authorize \$1 million annually for FY 2009 and FY 2010 for the purpose of making such grants and otherwise carrying out this section. If no funds were to be appropriated pursuant to the authorization within this section, the Committee would expect the FRA to fund this pilot program through the authorized amounts under section 3 of the Act and make grants for the purposes of this section using such amounts.

Section 104. Railroad Safety Risk Reduction Program.

Using the knowledge and experience gained under the pilot program required under section 103 of the Act, this section would direct the Secretary to issue regulations requiring certain railroads to develop and implement railroad safety risk reduction plans no later than 5 years after enactment of the Act. Each Class I railroad, each railroad that the Secretary determines has inadequate safety performance, and each railroad that provides intercity passenger or commuter rail passenger transportation would be required to develop and implement a railroad safety risk reduction program that systematically evaluates railroad safety risks and manages those risks in order to reduce the numbers and rates of railroad accidents and injuries. Each covered railroad would be required to conduct a system-wide risk analysis covering all safety-critical railroad operations and develop a program to mitigate aspects that increase identified risks and enhance aspects that decrease identified risks. Each program would be required to be submitted to and approved by the FRA. The chief official responsible for safety of each railroad required to submit a program would be required to certify that the contents of the program are correct and that the railroad will fully implement the program. The Secretary would have the authority to waive compliance with all or part of this section, as appropriate. Railroads not subject to this section would also be permitted to voluntarily comply with this section.

Each program would be required to contain a technology implementation plan that describes the railroad's ten-year plan for development, adoption, implementation, and use of current, new, or novel technologies on its system to reduce safety risks identified under the railroad safety risk reduction program. The plan would analyze the safety impact, feasibility, and costs and benefits of implementing technologies that could mitigate risks to railroad safety identified in the risk analysis required under this section and would contain a prioritized implementation schedule for the development, adoption, implementation, and use of current, new, or novel technologies on its system to reduce identified safety risks.

Each program for which fatigue has been shown to be a significant source of risk also would be required to contain a fatigue management plan designed to reduce the fatigue experienced by railroad employees engaged in safety-sensitive service and to reduce the likelihood of accidents and injuries caused by fatigue. Each fatigue management plan would be required to take into account the

varying circumstances of operations by the railroad carrier on different parts of its system and prescribe appropriate fatigue countermeasures to address those varying circumstances.

In developing its program, each railroad carrier would be required to consult with, employ good faith, and use its best efforts to reach agreement by consensus with all of its directly affected employee groups on the contents of the safety risk reduction program. If consensus cannot be reached, labor organizations representing employees affected may file a statement with the Secretary explaining their views on the plan on which consensus was not reached. The Committee expects the Secretary to consider opposing views filed with the Secretary under this provision when deciding whether to approve a plan or to impose conditions when approving a plan.

The Secretary would have the authority to assess civil penalties pursuant to chapter 213 of title 49, United States Code, for a violation of this section, including but not limited to failure to submit, certify, or comply with a safety risk reduction program, technology implementation plan, or fatigue management plan.

The Committee intends for the Secretary to use the waiver process under section 20103 of title 49, United State Code, when considering requests by a railroad to waive compliance with all or part of this section or regulations developed pursuant to this section. The Committee explicitly included this waiver authority because it could contemplate various instances when compliance with all or part of this section would be not necessary to achieve the aims of improving rail safety or such compliance could needlessly disrupt existing successful risk reduction strategies or programs employed by railroads.

Section 105. Positive Train Control System Implementation.

This section would require that the Secretary ensure that each railroad required to submit a railroad safety risk reduction program under section 104 that includes in its technology implementation plan a schedule for implementation of a PTC system complies with that schedule and implements its PTC system no later than December 31, 2018.

Section 106. Hours of Service Reform.

This section would modify, one year after the date of enactment of the Act, the current HOS limits for train and signal employees and provide the Secretary rule-making authority over HOS. Under this section, monthly hours for train employees would be capped at 276 hours. This 276-hour cap would include both time on duty and time spent waiting for transportation, or in deadhead transportation, to a point of final release, known as “limbo time.” Train employees would not be permitted to remain on duty for more than 12 consecutive hours, or remain or go on duty unless the employee has had 10 consecutive hours off-duty in the prior 24 hours. A train employee who initiates an on-duty period for 6 consecutive days would need to be given 48 consecutive hours of rest at the employee’s home terminal before returning to work; a train employee who initiates an on-duty period for 7 consecutive days, if permitted by a collective bargaining agreement, would need to be given 72 consecutive hours of rest at the employee’s home terminal before re-

turning to work. The Secretary would be permitted to waive these requirements for consecutive days off, consistent with the procedural requirements of section 20103, if a collective bargaining agreement provided a different arrangement and such an arrangement would be in the public interest and consistent with railroad safety. This section would further require the railroad to provide train employees, at the employees' election, with additional time off duty equal to the time an employee spends in limbo time beyond 12 consecutive hours.

This section would also limit the time an employee may be made to wait in "limbo" for deadhead transportation on a train to 3 hours after the employee worked the maximum number of hours on duty within a 24-hour period. Exceptions to this limitation would be provided if the train was directly delayed by a casualty, an accident, an act of God, a derailment, a major equipment failure that prevents the train from advancing, or a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal. A "major equipment failure" is intended to address significant situations such as a broken brake pipe that are not quickly or easily repaired rather than something that could reasonably be repaired by the train crew or other railroad personnel such as broken coupler knuckle or faulty air hose.

Additionally, this section would prohibit railroads from communicating with train employees during rest hours, unless necessary to notify an employee of an emergency situation, as defined by the Secretary. This prohibition is not intended to change current railroad practices provided for by statute, implementing regulations, or case law that has interpreted what constitutes a disruption of an off-duty period. The term "emergency situation" is intended to include situations that would pose a risk to the employee's health, safety, or security. It would also encompass situations when the employee would need to be notified about a situation involving the health, safety, or security of the employee's family. It would include situations where the railroad may need to contact the employee about an emergency situation on the railroad about which the employee would have exclusive knowledge, as well. For example, the railroad could contact the employee to obtain information about a leaking tank car found on the train the employee had just tied up about which the employee may have critical information. It is not intended to include contacting an employee about derailments or accidents that occur somewhere on the railroad property and in which the employee was in no way involved. The Secretary would be permitted to waive this prohibition on communicating with employees during the rest period for commuter or intercity passenger service railroads if it is necessary to maintain that railroad's efficient operations and on-time performance of trains. The Committee recognizes that such passenger operations have significantly different operating practices, work schedules, work environments, and safety records than that of freight railroads, and as such, this added protection of employee rest periods may not be necessary to ensure safe operations.

This section would also amend section 21102 of title 49, United States Code, to permit a railroad carrier and its directly affected employees or a non-profit employee labor organization that rep-

resents such employees to jointly develop and submit for approval to the Secretary an alternate HOS regime to that provided in chapter 211 of title 49, United States Code, that would increase the maximum hours an employee may be required or allowed to go or remain on duty or decrease the minimum hours an employee may be required to rest. This section would become effective no earlier than one year following the date of enactment of this Act, so as to coincide with the amendments made to the HOS statute by this section. The Secretary could consider such a request anytime following the date of enactment of this Act and could approve such a request only after providing an opportunity for public notice and comment and determining that the proposed HOS regime is in the public interest and will not adversely affect railroad safety. The exemption would be for a specific period of time and would be subject to review upon a schedule determined appropriate by the Secretary.

The Committee expects that railroads seeking waiver requests will promptly submit their waiver requests to the FRA prior to one year after the date of enactment of this Act. The Committee also expects that the FRA will consider the waiver requests in a timely manner to ensure, to the maximum extent possible, that railroads will not have to restructure their existing operations to comply with the new HOS regime to then only return to their prior practices after a waiver is granted.

The definition of signal employee would be expanded to include signal contractors. Section 21103 of title 49, United States Code, would be modified to state that signal employees may not remain or go on duty for more than 12 consecutive hours, and must have at least 10 consecutive hours of rest in a 24-hour period. This section would also prohibit signal employees from going on duty under the emergency authority provision to conduct routine repairs, routine maintenance, or routine inspection of signal systems. This section would prohibit railroads from communicating with signal employees during rest hours, unless necessary to notify an employee of an emergency situation, as defined by the Secretary. This section also would clarify that signal employees' HOS are governed exclusively by this chapter, and not by other hours of service rules, duty hours, or rest periods promulgated under any Federal authority.

In addition to amending the existing statute governing HOS, this section would, for the first time, authorize the Secretary to issue regulations that make additional changes to the HOS provisions provided that they provide for an equivalent level of safety as that provided under the provisions of this chapter, as amended. This authority is provided to the Secretary so that the statutory limits may be modified as changes in railroad safety, operations, and technology require. In developing new regulations governing HOS, the Secretary may request that the RSAC accept the task of developing, within 18 months, such new regulations and would require the Secretary to prescribe appropriate regulations within eighteen months should the RSAC not reach consensus. If the RSAC does not accept the task upon the request of the Secretary, the Secretary would be required to issue regulations within three years.

The Secretary also would conduct two pilot projects to analyze specific practices which may be used to reduce fatigue for train engine and other railroad employees.

The bill also would provide further flexibility by granting the Secretary regulatory authority over certain aspects of the HOS laws to improve safety and reduce employee fatigue.

Section 107. Protection of Railroad Safety Risk Analyses Information.

This section would amend section 20118 of title 49, United States Code, to prohibit the Secretary from disclosing publicly any information obtained as part of a railroad's risk reduction program or pilot program. The Secretary would be permitted to disclose such information otherwise available to the public if the Secretary believes that disclosure would be consistent with the confidentiality needed for that safety risk reduction program or pilot program. No information compiled under the risk reduction program or pilot program would be admissible in any court proceeding, unless that information is otherwise available to the public. This provision is not intended to protect information that is already submitted to the FRA and available to the public.

TITLE II. HIGHWAY-RAIL GRADE CROSSING AND PEDESTRIAN SAFETY
AND TRESPASSER PREVENTION

Section 201. Pedestrian Crossing Safety.

This section would require the Secretary to issue guidance to passenger railroads on methods and strategies to prevent pedestrian accidents, injuries, and fatalities on or near passenger stations.

Section 202. State Action Plans.

This section would require the Secretary to annually identify the ten States receiving Federal funds for highway-rail grade crossing safety projects that have had the highest number of highway-rail grade crossing accidents in the preceding fiscal year and require those States to develop a grade crossing action plan that identifies specific solutions for improving the safety at highway-rail grade crossings.

Section 203. Improvements to Sight Distance at Highway-Rail Grade Crossings.

This section would require the Secretary to prescribe regulations that require each railroad to remove grass, shrubbery, trees, and other vegetation, with the exception of "protected vegetation," which may materially obstruct the view of a pedestrian or a vehicle operator for a reasonable distance, as determined by the Secretary, in either direction of a train's approach, from its right-of-way at all public highway-rail grade crossings and at all private highway-rail grade crossings open to unrestricted public access. The Secretary, in consultation with the FRA, the FHWA, and States, also would be required to develop and make available to States model legislation to improve safety by addressing sight obstructions at highway-rail grade crossings equipped with solely passive warning devices, as recommended by the DOT IG.

Section 204. National Crossing Inventory.

This section would require that the Secretary issue regulations requiring each railroad and State, within one year after enactment of this Act, to report to the Secretary current information about warning devices and signage for each previously unreported highway-rail grade crossing, or ensure that another carrier that operates through the crossing has reported information about the crossing to the Secretary. It also would require each railroad and State to annually report current information about all grade crossings to the Secretary. Both section 20160 of title 49, United States Code, and section 130 of title 23, United States Code, would be amended by this section.

Section 205. Telephone Number to Report Grade Crossing Problems.

This section would require the Secretary to issue regulations requiring each railroad carrier to establish and maintain a telephone service for the public to report malfunctions of signals, crossing gates, and other devices to promote safety at highway-rail grade crossings, disabled vehicles blocking crossings, or other safety warning devices and signage information about highway-rail grade crossings. Upon receiving a report, each railroad would be required to contact trains operating near the crossing, contact public safety officials, investigate the report, and, if necessary, correct the malfunction or remove the obstruction. Signs posting the phone number and its purpose would be required to be appropriately located near the crossing. In carrying out this section, the Committee provided flexibility for the Secretary to determine whether the telephone number that a railroad is required to post under this section should be a toll-free number or not. Because some railroads' operating territory covers a small geographical area, a toll-free number may not be necessary in order to provide the community members with a low-cost and simple opportunity to report grade crossing problems to a railroad.

Section 206. Operation Lifesaver.

This section would require the FRA to make a grant or grants to Operation Lifesaver to carry out a public information and education program to help prevent and reduce pedestrian, motor vehicle, and other incidents, injuries, and fatalities, and to improve awareness along railroad rights-of-way. It also would authorize funds to be used for a pilot program to address the need for targeted, sustained community outreach in one or more States identified by section 202.

The Committee expects Operation Lifesaver to expand the scope of its public education information and education programs to cover information that the public can use to identify safety conditions which are the responsibility of the railroads, particularly unsafe or malfunctioning highway grade crossings or grade crossing safety devices, and how to report such conditions to the appropriate officials, including railroad officials, local law enforcement, State railroad safety officials, and the FRA, as applicable.

Section 207. Trespasser Prevention and Highway-Rail Crossing Safety.

This section would update existing section 20151 of title 49, United States Code, by requiring the Secretary to evaluate and review the laws and regulations regarding trespassing on railroad property, vandalism affecting railroad property, and highway-rail grade crossing warning sign violations. It also would require the Secretary to extend the DOT's outreach program and to create model State legislation providing for civil and criminal penalties for violations of highway-rail grade crossing warning signs. This section also would authorize the Secretary to buy and distribute to the public small items, such as coloring books, key chains, lapel pins, pencils, and calendars, as part of the DOT's message on railroad crossing safety and railroad trespass prevention.

Section 208. Fostering Introduction of New Technology to Improve Safety at Highway-Rail Grade Crossings.

This section would preempt any State law concerning the adequacy of new technology in providing warning to highway users at highway-rail grade crossings, if that new technology has been submitted to the Secretary for review and approval, in accordance with the FRA's existing process for approving train control systems. A railroad that installs new technology approved by the Secretary would not be held liable if it inspects and maintains the new technology in accordance with the approval issued by the Secretary. The Committee expects that protecting railroads from potential liability will incentivize the development and implementation of new technology that will greatly improve safety in an area that currently plagues the nation.

TITLE III. FEDERAL RAILROAD ADMINISTRATION

Section 301. Human Capital Increases.

This section would require the Secretary to increase the number of FRA employees by 200 between FY 2008 and FY 2013, with a focus on employees to implement certain provisions of this Act, investigate highway-rail grade crossing accidents, to conduct routine compliance inspections, and otherwise support the FRA's safety mission.

Section 302. Civil Penalty Increases.

This section would increase the maximum civil penalty from \$10,000 to \$25,000 and the civil penalty for a grossly negligent violation or a pattern of repeated violations that causes a imminent hazard of death or injury to individuals or has caused death or injury from \$20,000 to \$100,000.

Section 303. Enforcement Report.

In an effort to increase the transparency of the FRA enforcement process, this section would require that the Secretary annually make publicly available and publish on the FRA's public website a report that provides summaries of the various enforcement actions the FRA has taken.

Section 304. Prohibition of Individuals from Performing Safety-Sensitive Functions for a Violation of Hazardous Materials Transportation Law.

This section would broaden the provision in section 20111(c) of title 49, United States Code, to allow the existing enforcement tool of disqualification to be directed against violators of the hazardous materials regulations and hazardous materials transportation law. Section 304 of the bill would expand the basis for issuing disqualification orders to allow not only a rail safety violation, but also a hazardous materials violation, to be used to establish unfitness for safety-sensitive service in the railroad industry.

Section 305. Railroad Radio Monitoring Authority.

This section would permit the Secretary to authorize officers, employees, or agents of the Secretary, in circumstances the Secretary finds reasonable, to carry out the Secretary's responsibilities to:

- Intercept radio communications;
- Communicate the existence, contents, substance, purport, effect, or meaning of intercepted communications;
- Receive or assist in receiving intercepted communications;
- Disclose the contents, substance, purport, effect, or meaning of intercepted communications or use the communications;
- and
- Record communications by any means, including writing and tape recording.

This authority may only be engaged in for the purposes of accident prevention and accident investigation. Information obtained may not be admitted into evidence in any administrative or judicial proceeding except in a prosecution of a felony under State or Federal law, or to impeach a non-Federal government party.

Section 306. Emergency Waivers.

This section would require the Secretary to issue procedures concerning requests for waivers of regulations or orders in emergency situations without first providing an opportunity for public comment. The Secretary would be required to, after issuing the emergency waiver, provide an opportunity for a hearing on the waiver. An emergency waiver issued under this section would not extend beyond 9 months.

Section 307. Federal Rail Security Officers' Access to Information.

This section would authorize the Administrator of the FRA to access certain criminal history and other law enforcement records, systems, and communications to carry out the Administrator's civil and administrative duties to promote the safety, including security, of railroad operations and for other purposes authorized by law, including the National Crime Prevention and Privacy Compact. The Administrator would be authorized to designate FRA employees whose primary responsibility is rail security to carry out the Administrator's authority. The authority would not be used to conduct criminal investigations.

Section 308. Update of Federal Railroad Administration's Website.

This section would require the Secretary to update the FRA's public website to better facilitate the ability of the public, including

those individuals who are not regular users of the public website, to find current information regarding the FRA's activities. It also would require that FRA's public website be updated to provide a mechanism for the public to submit written reports of potential violations of Federal railroad safety and hazardous materials transportation laws, regulations, and orders to the FRA. The Committee expects the FRA to develop a process to respond to and pursue, if appropriate, reports received under this section.

TITLE IV. RAILROAD SAFETY ENHANCEMENTS

Section 401. Employee Training.

This section would require the Secretary to issue regulations no later than one year after the enactment of this Act requiring railroad carriers and railroad carrier contractors and subcontractors to develop training plans for crafts and classes of employees, as the Secretary determines appropriate. Each training plan would be required to clearly identify the class or craft of employees to which the plan applies; to require that employees be trained on the requirements of relevant Federal railroad safety laws, regulations, and orders; to require employees to be tested or otherwise demonstrate their proficiency in the subject matter of the training; and to contain any other relevant information that the Secretary deems appropriate. Each plan would be required to be submitted to and approved by the Secretary. If the Secretary has previously issued regulations requiring the training of certain crafts or classes of employees, the Secretary could exempt railroads or contractors and subcontractors of railroads from submitting plans covering those employees.

The Committee recognizes that all railroads have existing training programs for most railroad employees and that many of these programs are currently sufficient. However, the Committee believes that regulations that govern the basic elements of these training programs and that establish a clear and consistent curriculum that is appropriate for each class or craft of employees would help to ensure that all employees are properly trained for their assigned duties, would promote safe operating practices and behaviors throughout the industry, and would enhance compliance with Federal law.

Section 402. Certification of Certain Crafts or Classes of Employees.

This section would require the Secretary to issue a report to relevant Congressional Committees about whether the certification of certain crafts or classes of railroad carrier or railroad carrier contractor or subcontractor employees, such as conductors, car repair and maintenance employees, on-board service workers, rail welders, dispatchers, signal repair and maintenance employees, or any other craft or class of employees that the Secretary determines appropriate, is necessary to reduce the number and rate of accidents and incidents or to improve railroad safety. This section also would authorize the Secretary to issue regulations to require the certification of certain crafts or classes of employees, as determined necessary in the study. The FRA currently has in place a regulation governing the qualification and certification of locomotive engineers. This regulation was mandated in the Rail Safety Improve-

ment Act of 1988 and was intended to resolve deficiencies in locomotive engineer training that were uncovered after the passenger rail accident in Chase, Maryland, that killed 16 people. Under the regulation, the burden of certifying and recertifying employees is relatively hefty, but the associated benefits are essential to safe locomotive operations. Similar to the locomotive engineer qualification and certification rule, any incremental safety benefits to be gained from certifying additional classes or crafts of employee should be weighed against the costs of certification.

Section 403. Track Inspection Time Study.

This section would require the Secretary to complete a study to determine whether the required intervals of track inspections for each class of track and track remedial action requirements should be amended and whether different track inspection and repair priorities or methods should be required. It would require the Secretary to issue recommendations for changes to the Federal track safety standards in part 213 of title 49 of the Code of Federal Regulations based on the results of the study. The study would consider the most current rail flaw, rail defect growth, rail fatigue, and other relevant track- or rail-related research and studies; the availability and feasibility of developing and implementing new or novel rail inspection technology for routine track inspections; information from NTSB or FRA accident investigations where track defects were the cause or a contributing cause; and other relevant information, as determined by the Secretary. The Secretary would be required to issue regulations implementing the recommendations of this study.

Section 404. Study of Methods to Improve or Correct Station Platform Gaps.

Not later than 2 years after the enactment of this Act, the Secretary would be required to complete a study to determine the most safe, efficient, and cost effective way to improve the safety of railroad passenger station platforms gaps in order to increase compliance with the requirements under the ADA and to minimize the safety risks associated with such gaps for railroad passengers and employees.

Section 405. Locomotive Cab Studies.

Not later than one year after the enactment of this Act, the Secretary would be required to complete a study on the impact on safety and the prevalence of the use of personal electronic devices, including cell phones, video games, and other distracting devices, by safety-related railroad employees during the performance of such employees' duties. The Secretary also would be able to study other elements of the locomotive cab environment and their effect on an employee's health and safety. No later than 6 months after the completion of any study conducted under this section, the Secretary would be required to issue a report on the study to relevant Congressional Committees. The Secretary would be given the authority to issue regulations prohibiting the use of such devices, unless those devices are being used according to railroad operating rules or for other work purposes, or to improve the locomotive cab environment to protect an employee's health and safety.

Section 406. Railroad Safety Technology Grants.

This section would require the Secretary to establish a grant program for the deployment of train control technologies, train control component technologies, processor-based technologies, ECP brakes, rail integrity inspection systems, rail integrity warning systems, switch position indicators, remote control power switch technologies, track integrity circuit technologies, and other new or novel railroad safety technology. Grants would be made under this section to eligible passenger and freight railroad carriers, railroad suppliers, and State and local governments for projects described in paragraph (a) that have a public benefit of improved safety and network efficiency. Priority would be given to projects that: focus on making technologies interoperable between railroad systems, such as train control technologies; hasten the deployment of train control technology deployment on high risk corridors, such as those that have high volumes of hazardous materials shipments or over which commuter or passenger trains operate; or benefit both passenger and freight safety and efficiency. Grants would not be awarded to entities who fail to develop and submit to the Secretary a technology implementation plan as required by section 104 of this Act. This section would authorize \$20 million to the Secretary for each of the fiscal years 2008 through 2013 to carry out this section.

Section 407. Railroad safety infrastructure improvement grants.

The Secretary would be required to establish a grant program for safety improvements to railroad infrastructure, including the acquisition, improvement, or rehabilitation of intermodal or rail equipment or facilities, including track, bridges, tunnels, yards, buildings, passenger stations, facilities, and maintenance and repair shops. In awarding grants the Secretary would consider, at a minimum, the age and condition of the rail infrastructure of the railroad; the railroad's safety record, including accident and incident numbers and rates; the volume of hazardous materials transported by the railroad; the operation of passenger trains over the railroad; and whether the railroad has submitted a railroad safety risk reduction program, as required by section 104 of this Act. This section would authorize \$15 million to the Secretary for each of the fiscal years 2008 through 2013 to carry out this section.

Section 408. Movement for Repair.

This section would amend section 20303 of title 49, United States Code, to clarify the statutory provision that governs whether and how a railroad may move a car or locomotive with a safety appliance defect or insecurity to make repairs, without becoming liable for a civil penalty. It would foster the use of mobile repair trucks at locations on an occasional basis, by eliminating the need for back hauls of defective vehicles for repairs, and by explicitly authorizing the prescription of additional regulatory conditions for hauling defective vehicles for repair.

Section 409. Development and Use of Rail Safety Technology.

This section would require the Secretary, no later than 1 year after enactment of this Act, to issue standards, guidance, regulations, or orders governing the development, use, and implementation of rail safety technology in dark territory, in arrangements not

defined in section 20501 of title 49, United States Code, or otherwise not covered by Federal standards, guidance, regulation, or orders that ensures its safe operation such as switch position monitoring devices; radio, remote control or other power-assisted switches; hot box, high water, or earthquake detectors; remote control locomotive zone limiting devices; slide fences; grade crossing video monitors; track integrity warning systems; or other similar rail safety technologies, as determined by the Secretary.

Section 410. Employee Sleeping Quarters.

This section would amend section 21106 of title 49, United States Code, to require that a railroad carrier provide sleeping quarters for its employees that provide indoor toilet facilities, potable water, and other features to protect the health of employees. Within one year after the date of enactment, the Secretary, in consultation with the Secretary of Labor, would be required to issue regulations governing the use of camp cars for employees and any individuals employed to maintain the right of way of a railroad carrier. The Secretary would also have the authority to prohibit the use of camp cars if necessary to protect the health and safety of the employees.

Section 411. Employee Protections.

This section would amend section 20109 of title 49, United States Code, to add as a protected act an employee's "request that a railroad carrier provide first aid, medical treatment, or transportation to a medical facility or hospital after being injured during the course of employment, or to comply with treatment prescribed by a physician or licensed health care professional consistent with the carrier's medical standards for fitness for duty."

Section 412. Unified Treatment of Families of Railroad Carriers.

This section would amend the definition of "railroad carrier" in section 20102(3) of title 49, United States Code, to include in the definition, upon petition and order issued by the Secretary, a group of commonly controlled railroad carriers that the Secretary determines is operating within the United States as a single, integrated rail system to be treated as a single railroad carrier for the purposes of part A, subtitle V of title 49, United States Code, and of any implementing regulations or orders, subject to any conditions imposed by the Secretary. This provision is not intended to apply to railroad holding companies that own multiple and separate properties that are not operated as a physically integrated system.

Section 413. Repeal of Conrail Provision.

This section would require that, within one year after enactment, the Secretary study the impacts of repealing section 711 of the Regional Rail Reorganization Act of 1973 which preempts State laws in the former operating territory of the Consolidated Rail Corporation (Conrail) related to crew requirements. Within 6 months after the study is completed, the Secretary would transmit a report to appropriate Congressional Committees on the findings, results, and recommendations of the study.

Section 414. Limitations on Non-Federal Alcohol and Drug Testing by Railroad Carriers.

This section would require that any non-Federal alcohol and drug testing program of a railroad carrier provide that all post-employment tests of the specimens of employees who are subject to both the program and chapter 211 of title 49, United States Code, be conducted using a scientifically recognized method of testing capable of determining the presence of the specific analyte at a level above the cut-off level established by the carrier. It would also require that each railroad carrier that has a non-Federal alcohol and drug testing program provide a redress process to its employees who are subject to both the alcohol and drug testing program and chapter 211 of title 49, United States Code, for such an employee to petition for, and receive, a carrier hearing to review his or her specimen test results that were determined to be in violation of the program. A dispute or grievance arising raised by a railroad carrier or its employee, except a probationary employee, in connection with the carrier's alcohol and drug testing program and the application of this section would be subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). The Committee expects this provision to rectify concerns in the industry that corporate drug testing policies allow for testing limits that cannot be adequately detected by current technology and that such tests have been used discriminatorily to discipline employees.

Section 415. Critical Incident Stress Plan.

This section would require the Secretary in consultation with the Secretary of Labor and the Secretary of Health and Human Services, as appropriate, to require each Class I railroad, and any other railroad that the Secretary determines appropriate, to develop and submit for approval to the Secretary a critical incident stress plan that provides for debriefing, counseling, guidance and other appropriate support services to be offered to an employee affected by a critical incident. Additionally, the provision would require that the plan allow for the immediate relief of service of an employee involved in a critical incident and, upon the employee's request, relief for an employee who witnessed a critical incident as soon as feasible.

TITLE V. RAIL PASSENGER DISASTER FAMILY ASSISTANCE

Section 501. Assistance by National Transportation Safety Board to Families of Passengers Involved in Rail Passenger Accidents.

This section would require the Chairman of the NTSB to designate and publicize the name and phone number of a director of family support services and an independent non-profit organization to coordinate and provide services to families of passengers involved in rail accidents. It would define the responsibilities of the NTSB and the designated non-profit organization in post-rail accident situations.

The Committee recognizes that the NTSB's limited resources do not permit it to provide services to families impacted by every rail accident resulting in a fatality, and therefore, expects that the Board will focus its assistance to families impacted by accidents that result in a major loss of life. However, the NTSB should not

interpret this expectation as a restriction in offering services to families impacted by less severe accidents if the Board has the ability and adequate resources to do so.

Section 502. Rail Passenger Carrier Plans to Address the Needs of Families of Passengers Involved in Rail Passenger Accidents.

This section would require rail passenger carriers, not later than 6 months after the date of enactment of this Act, to submit to the Chairman of the NTSB, the Secretary, and the Secretary of the Department of Homeland Security, a plan for addressing the needs of families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in loss of life. This section would authorize \$500,000 for FY 2008 for the Secretary to carry out this new section.

Section 503. Establishment of Task Force.

This section would require the Secretary, in cooperation with the NTSB, to create a task force, which includes rail passenger carriers and families who have been involved in rail accidents, to develop a model plan and recommendations on how passenger rail carriers can provide assistance and notification to families of those passengers involved in rail accidents.

TITLE VI. CLARIFICATION OF FEDERAL JURISDICTION OVER SOLID WASTE FACILITIES

Section 601. Short Title.

This section would provide that title VI could be cited as the Clean Railroads Act of 2007.

Section 602. Regulation of Solid Waste Rail Transfer Facilities.

This section would amend subtitle A of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and would permit a State or political subdivision thereof to enforce State solid waste environmental laws at a solid waste rail transfer facility. Within 180 days after the date of enactment of the bill, a solid waste rail transfer facility would have to comply with all State solid waste environmental laws other than those requiring permits. Within one year after the date of enactment, a railroad carrier that owns or operates a solid waste rail transfer facility that was not required to possess a permit for the first 180 days after enactment would continue not to be required to possess a permit provided that the facility had submitted a complete application for all permits required by a State's environmental laws to a solid waste facility permitting agency and until that solid waste facility permitting agency has either approved or denied the railroad carrier's application for a permit.

A solid waste rail transfer facility would only include the portion of a facility owned or operated by or on behalf of a railroad carrier where solid waste, as a commodity to be transported in commerce, is collected, stored, separated, processed, treated, managed, disposed of, or transferred outside of original sealed shipping containers. It would not include a facility to the extent that activities taking place at such a facility were comprised of the railroad transportation of solid waste after the solid waste is placed on or in a railroad car, including transportation for the purpose of inter-

changing railroad cars containing sealed solid waste shipments. For the purposes of this section, State solid waste environmental laws would include the following: (1) the substantive and procedural aspects of statutes, regulations, and orders of a State or its subdivisions that establish public health and safety or environmental standards concerning the generation, storage, treatment, handling, management, or disposal of solid waste; and (2) the substantive and procedural aspects of statutes, regulations, and orders of a State or its subdivisions which govern the processes and procedures by which permits, licenses, or other approvals or credentials from such State or subdivision are required in order to generate, store, treat, handle, manage, or dispose of solid waste. It would not include the statutes, regulations or orders of a state or its subdivisions which govern land use, including land use restrictions or zoning ordinances. This section also would amend section 10501(c)(2) of title 49, United States Code, to remove from the jurisdiction of the Surface Transportation Board activities subject to the Clean Railroads Act of 2007 (i.e., this title).

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 49. TRANSPORTATION

SUBTITLE I. DEPARTMENT OF TRANSPORTATION

CHAPTER 1. ORGANIZATION

§ 103. Federal Railroad Administration

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

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

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

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

[(c)] (e) The Administrator shall carry out—

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

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

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

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

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SUBTITLE II—OTHER GOVERNMENT AGENCIES

CHAPTER 11. NATIONAL TRANSPORTATION SAFETY BOARD

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

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

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

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

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

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

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

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

(B) Government agencies; and

(C) the rail passenger carrier involved,

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

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

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

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

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

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

(d) PASSENGER LISTS.—

(1) REQUESTS FOR PASSENGER LISTS.—

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

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

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

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

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

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

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

(g) PROHIBITED ACTIONS.—

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

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

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

(h) *DEFINITIONS.*—In this section:

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

- (A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or
- (B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation, regardless of its cause or suspected cause.

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

- (A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or
- (B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation, except that such term does not include a tourist, historic, scenic, or excursion rail carrier.

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

- (A) an employee of a rail passenger carrier aboard a train;
- (B) any other person aboard the train without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the rail transportation; and
- (C) any other person injured or killed in the accident.

(i) *LIMITATION ON STATUTORY CONSTRUCTION.*—Nothing in this section may be construed as limiting the actions that a rail pas-

passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.

(j) *RELINQUISHMENT OF INVESTIGATIVE PRIORITY.*—

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

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

(k) *SAVINGS CLAUSE.*—Nothing in this section shall be construed to abridge the authority of the Board or the Secretary of Transportation to investigate the causes or circumstances of any rail accident, including development of information regarding the nature of injuries sustained and the manner in which they were sustained for the purposes of determining compliance with existing laws and regulations or for identifying means of preventing similar injuries in the future, or both.

SUBTITLE IV—INTERSTATE TRANSPORTATION

PART A. RAIL

CHAPTER 105. JURISDICTION

§ 10501. General jurisdiction

(a)(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is—

(A) only by railroad; or

(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in—

(A) a State and a place in the same or another State as part of the interstate rail network;

(B) a State and a place in a territory or possession of the United States;

(C) a territory or possession of the United States and a place in another such territory or possession;

(D) a territory or possession of the United States and another place in the same territory or possession;

(E) the United States and another place in the United States through a foreign country; or

(F) the United States and a place in a foreign country.

(b) The jurisdiction of the Board over—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (includ-

ing car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

(c)(1) In this subsection—

(A) the term “local governmental authority”—

(i) has the same meaning given that term by section 5302(a) of this title; and

(ii) includes a person or entity that contracts with the local governmental authority to provide transportation services; and

(B) the term “mass transportation” means transportation services described in section 5302(a) of this title that are provided by rail.

(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part **over mass transportation provided by a local governmental authority.** *over—*

(A) *mass transportation provided by a local government authority; or*

(B) *a solid waste rail transfer facility (as defined in section 1009 (c)(2) of the Solid Waste Disposal Act (42 U.S.C. 6909(c)(2))).*

(3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to—

(i) safety;

(ii) the representation of employees for collective bargaining; and

(iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

(B) The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996. The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.

SUBTITLE V. RAIL PROGRAMS

PART A. SAFETY

CHAPTER 201. GENERAL

SUBCHAPTER I. GENERAL

§ 20102. Definitions

In this part—

(1) *“Class I railroad” means a railroad carrier that has annual carrier operating revenues that meet the threshold amount for Class I carriers, as determined by the Surface Transportation Board under section 1201.1-1 of title 49, Code of Federal Regulations.*

[(1)] (2) “railroad”—

(A) means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—

(i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but

(B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

[(2) “railroad carrier” means a person providing railroad transportation.]

(3) *“railroad carrier” means a person providing railroad transportation, except that, upon petition by a group of commonly controlled railroad carriers that the Secretary determines is operating within the United States as a single, integrated rail system, the Secretary may by order treat the group of railroad carriers as a single railroad carrier for purposes of one or more provisions of part A, subtitle V of this title and implementing regulations and order, subject to any appropriate conditions that the Secretary may impose.*

(4) *“safety-related railroad employee” means—*

(A) *a railroad employee who is subject to chapter 211;*

(B) *another operating railroad employee who is not subject to chapter 211;*

(C) *an employee who maintains the right of way of a railroad carrier;*

(D) *an employee of a railroad carrier who is a hazmat employee as defined in section 5102(3) of this title;*

(E) *an employee who inspects, repairs, or maintains locomotives, passenger cars or freight cars; and*

(F) *any other employee of a railroad who directly affects railroad safety, as determined by the Secretary.*

§ 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.

(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.]

(e) HEARINGS.—Except as provided in subsection (g) of this section, 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.

(g) EMERGENCY WAIVERS.—

(1) IN GENERAL.—The Secretary shall prescribe procedures concerning the handling of requests for waivers of regulations prescribed or orders issued under this chapter in emergency situations and may prescribe temporary emergency waiver procedures without first providing an opportunity for public comment. The Secretary may grant a waiver request if the waiver is directly related to the emergency event or necessary to aid in any recovery efforts and is in the public interest and consistent with railroad safety. The relief shall not extend for a period of more than 9 months, including the period of the relief granted

under any renewal of the waiver pursuant to the emergency waiver procedures. For matters that may impact the missions of the Department of Homeland Security, the Secretary of Transportation shall consult and coordinate with the Secretary of Homeland Security as soon as practicable.

(2) *WAIVER BEFORE HEARING.—If, under the emergency waiver procedures established under paragraph (1) of this subsection, the Secretary determines the public interest would be better served by addressing a request for waiver prior to providing an opportunity for a hearing under section 553 of title 5 and an oral presentation, the Secretary may act on the waiver request and, if the request is granted, the Secretary shall subsequently provide notice and an opportunity for a hearing and oral presentation pursuant to procedures prescribed under paragraph (1) of this subsection. Should the Secretary receive comment or a request for oral presentation on a waiver request after granting the waiver, the Secretary may take any necessary action with regard to that waiver (including rescission or modification) based on the newly acquired information.*

(3) *EMERGENCY SITUATION; EMERGENCY EVENT.—In this subsection, the terms “emergency situation” and “emergency event” mean a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, explosive, or biological material, or a war-related activity, that poses a risk of death, serious illness, severe injury, or substantial property damage. The disaster may be local, regional, or national in scope.*

§ 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 subpoenas, 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 in circumstances the Secretary finds to be reasonable:*

(A) *Intercepting a radio communication, with or without the consent of the sender or other receivers of the commu-*

nication, but only where such communication is broadcast or transmitted over a radio frequency which is—

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

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

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

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

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

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

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

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

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

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

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

(D) Information obtained through activities set forth in paragraphs (1) and (2) shall not be subject to publication or disclo-

sure, or search or review in connection therewith, under section 552 of title 5.

(E) Nothing in this subsection shall be construed to impair or otherwise affect the authority of the United States to intercept a communication, and collect, retain, analyze, use, and disseminate the information obtained thereby, under a provision of law other than this subsection.

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

§ 20109. Employee protections

(a) IN GENERAL.—A railroad carrier engaged in interstate or foreign commerce, a contractor or a subcontractor of such a railroad carrier, or an officer or employee of such a railroad carrier, may not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done—

(1) to provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to railroad safety or security, or gross fraud, waste, or abuse of Federal grants or other public funds intended to be used for railroad safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by—

(A) a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95-452));

(B) any Member of Congress, any committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

(2) to refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to railroad safety or security;

(3) to file a complaint, or directly cause to be brought a proceeding related to the enforcement of this part or, as applicable to railroad safety or security, chapter 51 or 57 of this title, or to testify in that proceeding;

(4) to notify, or attempt to notify, the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee;

(5) to request that a railroad carrier provide first aid, prompt medical treatment, or transportation to an appropriate medical facility or hospital after being injured during the course of employment, or to comply with treatment prescribed by a physician or licensed health care professional consistent with the carrier's medical standards for fitness for duty;

[(5)] (6) to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board;

[(6)] (7) to furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with railroad transportation; or

[(7)] (8) to accurately report hours on duty pursuant to chapter 211.

(b) HAZARDOUS SAFETY OR SECURITY CONDITIONS.—

(1) A railroad carrier engaged in interstate or foreign commerce, or an officer or employee of such a railroad carrier, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee for—

(A) reporting, in good faith, a hazardous safety or security condition;

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

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

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

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

(B) a reasonable individual in the circumstances then confronting the employee would conclude that—

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

(ii) the urgency of the situation does not allow sufficient time to eliminate the danger without such refusal; and (C) the employee, where possible, has notified the railroad carrier of the existence of the hazardous condition and the intention not to perform further work, or not to authorize the use of the hazardous equipment, track, or structures, unless the condition is corrected immediately or the equipment, track, or structures are repaired properly or replaced.

(3) In this subsection, only paragraph (1)(A) shall apply to security personnel employed by a railroad carrier to protect individuals and property transported by railroad.

(c) ENFORCEMENT ACTION.—

(1) IN GENERAL.—An employee who alleges discharge, discipline, or other discrimination in violation of subsection (a) or (b) of this section, may seek relief in accordance with the provisions of this section, with any petition or other request for re-

lief under this section to be initiated by filing a complaint with the Secretary of Labor.

(2) PROCEDURE.—

(A) IN GENERAL.—Any action under paragraph (1) shall be governed under the rules and procedures set forth in section 42121(b), including:

(i) Burdens of proof. Any action brought under (c)(1) shall be governed by the legal burdens of proof set forth in section 42121(b).

(ii) Statute of limitations. An action under paragraph (1) shall be commenced not later than 180 days after the date on which the alleged violation of subsection (a) or (b) of this section occurs.

(iii) Civil actions to enforce.

If a person fails to comply with an order issued by the Secretary of Labor pursuant to the procedures in section 42121(b), the Secretary of Labor may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred, as set forth in 42121.

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

(3) DE NOVO REVIEW.—With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(4) APPEALS.—Any person adversely affected or aggrieved by an order issued pursuant to the procedures in section 42121(b), may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. The review shall conform to chapter 7 of title 5. The commencement of proceedings under this paragraph shall not, unless ordered by the court, operate as a stay of the order.

(d) REMEDIES.—

(1) IN GENERAL.—An employee prevailing in any action under subsection (c) shall be entitled to all relief necessary to make the employee whole.

(2) DAMAGES.—Relief in an action under subsection (c) (including an action described in subsection (c)(3)) shall include—

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

(B) any backpay, with interest; and

- (C) compensatory damages, including compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.
- (3) POSSIBLE RELIEF.—Relief in any action under subsection (c) may include punitive damages in an amount not to exceed \$250,000.
- (e) ELECTION OF REMEDIES.—An employee may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the railroad carrier.
- (f) NO PREEMPTION.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.
- (g) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.
- (h) DISCLOSURE OF IDENTITY.—
- (1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or the Secretary of Homeland Security may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this part or, as applicable to railroad safety or security, chapter 51 or 57 of this title, or a regulation prescribed or order issued under any of those provisions.
- (2) The Secretary of Transportation or the Secretary of Homeland Security shall disclose to the Attorney General the name of an employee described in paragraph (1) if the matter is referred to the Attorney General for enforcement. The Secretary making such disclosures shall provide reasonable advance notice to the affected employee if disclosure of that person's identity or identifying information is to occur.
- (i) PROCESS FOR REPORTING SECURITY PROBLEMS TO THE DEPARTMENT OF HOMELAND SECURITY.—
- (1) ESTABLISHMENT OF PROCESS.—The Secretary of Homeland Security shall establish through regulations, after an opportunity for notice and comment, a process by which any person may report to the Secretary of Homeland Security regarding railroad security problems, deficiencies, or vulnerabilities.
- (2) ACKNOWLEDGMENT OF RECEIPT.—If a report submitted under paragraph (1) identifies the person making the report, the Secretary of Homeland Security shall respond promptly to such person and acknowledge receipt of the report.
- (3) STEPS TO ADDRESS PROBLEM.—The Secretary of Homeland Security shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps to address any problems or deficiencies identified.

§ 20111. Enforcement by the Secretary of Transportation

(a) EXCLUSIVE AUTHORITY.—The Secretary of Transportation has exclusive authority—

(1) to impose and compromise a civil penalty for a violation of a railroad safety regulation prescribed or order issued by the Secretary;

(2) except as provided in section 20113 of this title, to request an injunction for a violation of a railroad safety regulation prescribed or order issued by the Secretary; and

(3) to recommend appropriate action be taken under section 20112(a) of this title.

(b) COMPLIANCE ORDERS.—The Secretary may issue an order directing compliance with this part or with a railroad safety regulation prescribed or order issued under this part.

[(c) ORDERS PROHIBITING INDIVIDUALS FROM PERFORMING SAFETY-SENSITIVE FUNCTIONS.—If an individual's violation of this chapter or any of the laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e)(1), (2), and (6)(A) of section 6 of the Department of Transportation Act, as in effect on June 1, 1994, or a regulation prescribed or order issued by the Secretary under this chapter is shown to make that individual unfit for the performance of safety-sensitive functions, the Secretary, after notice and opportunity for a hearing, may issue an order prohibiting the individual from performing safety-sensitive functions in the railroad industry for a specified period of time or until specified conditions are met. This subsection does not affect the Secretary's authority under section 20104 of this title to act on an emergency basis.]

(c) *ORDERS PROHIBITING INDIVIDUALS FROM PERFORMING SAFETY-SENSITIVE FUNCTIONS.—*

(1) *If an individual's violation of this part, chapter 51 of this title, or a regulation prescribed, or an order issued, by the Secretary under this part or chapter 51 of this title is shown to make that individual unfit for the performance of safety-sensitive functions, the Secretary, after providing notice and an opportunity for a hearing, may issue an order prohibiting the individual from performing safety-sensitive functions in the railroad industry for a specified period of time or until specified conditions are met.*

(2) *This subsection does not affect the Secretary's authority under section 20104 of this title to act on an emergency basis.*

(d) REGULATIONS REQUIRING REPORTING OF REMEDIAL ACTIONS.—

(1) The Secretary shall prescribe regulations to require that a railroad carrier notified by the Secretary that imposition of a civil penalty will be recommended for a failure to comply with this part, chapter 51 or 57 of this title, or a regulation prescribed or order issued under any of those provisions, shall report to the Secretary, not later than the 30th day after the end of the month in which the notification is received—

(A) actions taken to remedy the failure; or (B) if appropriate remedial actions cannot be taken by that 30th day, an explanation of the reasons for the delay.

(2) The Secretary—

(A) not later than June 3, 1993, shall issue a notice of a regulatory proceeding for proposed regulations to carry out this subsection; and

(B) not later than September 3, 1994, shall prescribe final regulations to carry out this subsection.

§ 20117. Authorization of appropriations

[(a) GENERAL.—

[(1) Not more than the following amounts may be appropriated to the Secretary of Transportation to carry out this chapter:

[(A) \$68,283,000 for the fiscal year ending September 30, 1993.

[(B) \$71,690,000 for the fiscal year ending September 30, 1994.

[(C) \$68,289,000 for fiscal year 1995.

[(D) \$75,112,000 for fiscal year 1996.

[(E) \$82,563,000 for fiscal year 1997.

[(F) \$90,739,000 for fiscal year 1998.

[(2) Not more than \$5,000,000 may be appropriated to the Secretary for the fiscal year ending September 30, 1993, to carry out section 20105 of this title.]

(a) IN GENERAL.—

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

(A) \$245,000,000 for fiscal year 2008;

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

(C) \$270,000,000 for fiscal year 2010;

(D) \$280,000,000 for fiscal year 2011;

(E) \$290,000,000 for fiscal year 2012; and

(F) \$300,000,000 for fiscal year 2013.

(2) With amounts appropriated pursuant to paragraph (1), the Secretary may designate the following amounts for research and development:

(A) \$40,000,000.

(B) \$42,000,000.

(C) \$44,000,000.

(D) \$46,000,000.

(E) \$48,000,000.

(F) \$51,000,000.

(3) With amounts appropriated pursuant to paragraph (1), the Secretary shall purchase Gage Restraint Measurement System vehicles and track geometry vehicles or other comparable technology as needed to assess track safety, consistent with the results of the track inspection study required by section 403 of the Railroad Safety Enhancement Act of 2007.

(4) There are authorized to be appropriated to the Secretary \$18,000,000 for the period encompassing fiscal years 2008 through 2011 to design, develop, and construct the Facility for Underground Rail Station and Tunnel Testing and Training at the Transportation Technology Center, Inc., in Pueblo, Colorado. The facility shall be used to test and evaluate the safety

and security vulnerabilities of above-ground and underground rail tunnels to prevent accidents and incidents in such tunnels, to mitigate and remediate the consequences of any such accidents or incidents, and to provide a realistic scenario for training emergency responders.

(5) Such sums as may be necessary from the amount appropriated pursuant to paragraph (1) for each of the fiscal years 2008 through 2013 shall be made available to the Secretary for personnel in regional offices and in Washington, D.C., whose duties primarily involve rail security.

(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.

§ 20118. Prohibition on public disclosure of required railroad safety analyses records

(a) **IN GENERAL.**—Notwithstanding section 552 of title 5 or any other provision of law, except as necessary for the Secretary of Transportation or another Federal agency to enforce or carry out any provision of Federal law, the Secretary shall not disclose publicly any part of any record (including, but not limited to, a railroad carrier's analysis of its safety risks and its statement of the mitigation measures it has identified with which to address those risks) that the Secretary has obtained pursuant to a provision of, or regulation or order under, this chapter related to the establishment, implementation, or modification of a railroad safety risk reduction program or pilot program if the record is—

(1) supplied to the Secretary pursuant to that safety risk reduction program or pilot program; or

(2) made available for inspection and copying by an officer, employee, or agent of the Secretary pursuant to that safety risk reduction program or pilot program.

(b) **EXCEPTION.**—Notwithstanding subsection (a), the Secretary may disclose any part of any record comprised of facts otherwise available to the public if, in the Secretary's sole discretion, the Sec-

retary determines that disclosure would be consistent with the confidentiality needed for that safety risk reduction program.

(c) **DISCRETIONARY PROHIBITION OF DISCLOSURE.**—The Secretary may prohibit the public disclosure of risk analyses or risk mitigation analyses that the Secretary has obtained under other provisions of, or regulations or orders under, this chapter if the Secretary determines that the prohibition of public disclosure is necessary to promote railroad safety.

§ 20119. Discovery and admission into evidence of certain reports and surveys

Notwithstanding any other provision of law, no part of any report, survey, schedule, list, or data compiled or collected for the purpose of evaluating, planning, or implementing a railroad safety risk reduction program or other risk or risk mitigation analysis designated by the Secretary of Transportation under section 20118(c) pursuant to a provision of, or regulation or order under, this chapter (including a railroad carrier's analysis of its safety risks and its statement of the mitigation measures with which it will address those risks) shall be subject to discovery or admitted into evidence in a Federal or State court proceeding, or considered for another purpose, in any action by a private party or parties for damages against the carrier, or its officers, employees, or contractors. The preceding sentence does not apply to any report, survey, list, or data otherwise available to the public.

§ 20120. Enforcement Report.

(a) **IN GENERAL.**—Not later than December 31, 2008, the Secretary of Transportation shall make available to the public and publish on its public website an annual report that—

(1) provides a summary of railroad safety and hazardous materials compliance inspections and audits that Federal or state inspectors conducted in the prior fiscal year organized by type of alleged violation, including track, motive power and equipment, signal, grade crossing, operating practices, accident and incidence reporting, and hazardous materials;

(2) provides a summary of all enforcement actions taken by the Secretary or the Federal Railroad Administration during the prior fiscal year, including—

(A) the number of civil penalties assessed against railroad carriers, hazardous material shippers, and individuals;

(B) the initial amount of civil penalties assessed against railroad carriers, hazardous materials shippers, and individuals;

(C) the number of civil penalty cases settled against railroad carriers, hazardous material shippers, and individuals;

(D) the final amount of civil penalties assessed against railroad carriers, hazardous materials shippers, and individuals;

(E) the difference between the initial and final amounts of civil penalties assessed against railroad carriers, hazardous materials shippers, and individuals;

- (F) the number of administrative hearings requested and completed related to hazardous materials transportation law violations or enforcement actions against individuals;
- (G) the number of cases referred to the Attorney General for civil or criminal prosecution;
- (H) the number and subject matter of all compliance orders, emergency orders or precursor agreements;
- (3) analyzes the effect of the number of inspections conducted and enforcement actions taken on the number and rate of reported accidents and incidents and railroad safety;
- (4) identifies the number of locomotive engineer certification denial or revocation cases appealed to and the average length of time it took to be decided by—
- (A) the Locomotive Engineer Review Board;
- (B) an Administrative Hearing Officer or Administrative Law Judge; or
- (C) the Administrator of the Federal Railroad Administration;
- (5) provides any explanation regarding changes in the Secretary's or the Federal Railroad Administration's enforcement programs or policies that may substantially affect the information reported; and
- (6) includes any additional information that the Secretary determines is useful to improve the transparency of its enforcement program.

SUBTITLE V. RAIL PROGRAMS

PART A. SAFETY

CHAPTER 201. GENERAL

SUBCHAPTER II. PARTICULAR ASPECTS OF SAFETY

§ 20134. Grade crossings and railroad rights of way

(a) GENERAL.—To the extent practicable, the Secretary of Transportation shall maintain a coordinated effort to develop and carry out solutions to the railroad grade crossing problem and measures to protect pedestrians in densely populated areas along railroad rights of way. To carry out this subsection, the Secretary may use the authority of the Secretary under this chapter and over highway, traffic, and motor vehicle safety and over highway construction. *The Secretary may purchase items of nominal value and distribute them to the public without charge as part of an educational or awareness program to accomplish the purposes of this section and of any other sections of this title related to improving the safety of highway-rail crossings and to preventing trespass on railroad rights of way, and the Secretary shall prescribe guidelines for the administration of this authority.*

(b) SIGNAL SYSTEMS AND OTHER DEVICES.—Not later than June 22, 1989, the Secretary shall prescribe regulations and issue orders to ensure the safe maintenance, inspection, and testing of signal systems and devices at railroad highway grade crossings.

(c) DEMONSTRATION PROJECTS.—

(1) The Secretary shall establish demonstration projects to evaluate whether accidents and incidents involving trains would be reduced by—

(A) reflective markers installed on the road surface or on a signal post at railroad grade crossings;

(B) stop signs or yield signs installed at grade crossings; and

(C) speed bumps or rumble strips installed on the road surfaces at the approaches to grade crossings.

(2) Not later than June 22, 1990, the Secretary shall submit a report on the results of the demonstration projects to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

* * * * *

【§20151. Railroad trespassing and vandalism prevention strategy】

【(a) EVALUATION OF EXISTING LAWS.—In consultation with affected parties, the Secretary of Transportation shall evaluate and review current local, State, and Federal laws regarding trespassing on railroad property and vandalism affecting railroad safety, 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 Secretary shall revise such model prevention strategies and enforcement codes periodically.】

§20151. Railroad trespassing, vandalism, and highway-rail grade crossing warning sign violation prevention strategy

(a) EVALUATION OF EXISTING LAWS.—In consultation with affected parties, the Secretary of Transportation shall evaluate and review current local, State, and Federal laws regarding trespassing on railroad property, vandalism affecting railroad safety, and violations of highway-rail grade crossing warning signs and develop model prevention strategies and enforcement laws to be used for the consideration of State and local legislatures and governmental entities. The first such evaluation and review concerning violations of grade crossing signals shall be completed within 1 year after the date of enactment of the Railroad Safety Enhancement Act of 2007. The Secretary shall revise the model prevention strategies and enforcement codes periodically.

(b) OUTREACH PROGRAM FOR TRESPASSING AND VANDALISM PREVENTION.—The Secretary shall develop and maintain a comprehensive outreach program to improve communications among Federal railroad safety inspectors, State inspectors certified by the Federal Railroad Administration, railroad police, and State and local law enforcement officers, for the purpose of addressing trespassing and vandalism problems on railroad property, and strengthening relevant enforcement strategies. This program shall be designed to increase public and police awareness of the illegality of, dangers in-

herent in, and the extent of, trespassing on railroad rights-of-way, to develop strategies to improve the prevention of trespassing and vandalism, and to improve the enforcement of laws relating to railroad trespass, vandalism, and safety.

(c) MODEL LEGISLATION.—(1) Within 18 months after November 2, 1994, the Secretary, after consultation with State and local governments and railroad carriers, shall develop and make available to State and local governments model State legislation providing for—

[(1)] (A) civil or criminal penalties, or both, for vandalism of railroad equipment or property which could affect the safety of the public or of railroad employees; and

[(2)] (B) civil or criminal penalties, or both, for trespassing on a railroad owned or leased right-of-way.

(2) *Within 18 months after the date of enactment of the Railroad Safety Enhancement Act of 2007, 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 civil or criminal penalties, or both, for violations of highway-rail grade crossing warning signs.*

(d) DEFINITION.—*In this section, the term ‘violation of highway-rail grade crossing warning signs’ includes any action by a motorist, unless directed by an authorized safety officer—*

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

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

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

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

【§ 20152. Emergency notification of grade crossing problems

[(a) PILOT PROGRAMS.—The Secretary of Transportation shall conduct a pilot program to demonstrate an emergency notification system utilizing a toll free telephone number that the public can use to convey to railroad carriers, either directly or through public safety personnel, information about malfunctions or other safety problems at railroad-highway grade crossings. The pilot program, at a minimum—

[(1) shall include railroad-highway grade crossings in at least 2 States;

[(2) shall include provisions for public education and awareness of the program; and

[(3) shall require information to be posted at the railroad-highway grade crossing describing the emergency notification system and instructions on how to use the system. The Secretary may, by grant, provide funding for the expense of information signs and public awareness campaigns necessary to demonstrate the notification system.

[(b) REPORT.—The Secretary shall complete the pilot program not later than 24 months after November 2, 1994, and shall submit to the Congress not later than 30 months after November 2, 1994,

an evaluation of the pilot program, together with findings as to the effectiveness of such emergency notification systems. The report shall compare and contrast the structure, cost, and effectiveness of the pilot program with other emergency notification systems in effect within other States. Such evaluation shall include analyses of the safety benefits derived from the programs, cost effectiveness, and the burdens on participants, including railroad carriers and law enforcement personnel.】

§20152. Notification of grade crossing problems

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

(1) establish and maintain a telephone service, which may be required to be a toll-free telephone for specific railroad carriers as determined by the Secretary to be appropriate, for rights-of-way over which it dispatches trains, to directly receive calls reporting—

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

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

(C) obstructions to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach; or

(D) other safety information involving such grade crossings;

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

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

(4) upon receiving a report pursuant to paragraph (1)(C) or (D), timely investigate the report, remove the obstruction if possible, or correct the unsafe circumstance; and

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

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

(B) an explanation of the purpose of that telephone number; and

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

* * * * *

§20156. Railroad safety risk reduction pilot program

(a) **PILOT PROGRAM.**—

(1) **IN GENERAL.**—*In conjunction with ongoing behavior-based safety research at the Department of Transportation, the Secretary shall develop a 4-year railroad safety risk reduction pilot program to systematically evaluate and manage railroad safety risks with the goal of reducing the numbers and rates of railroad accidents, injuries, and fatalities. Not later than 1 year after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary shall, in coordination with selected railroads, railroad facilities, nonprofit employee labor organizations that represent safety-related railroad employees employed at such railroad or railroad facility, and any other entities that the Secretary determines to be relevant, at a minimum—*

(A) *identify the aspects of a selected railroad or railroad facility, including operating practices, infrastructure, equipment, employee levels and schedules, safety culture, management structure, employee training, and other matters, including those not covered by railroad safety regulations or other Federal regulations, that impact railroad safety;*

(B) *evaluate how these aspects of a selected railroad or railroad facility increase or decrease risks to railroad safety;*

(C) *develop a safety risk reduction program to improve the safety of a selected railroad or railroad facility by reducing the numbers and rates of accidents, injuries, and fatalities through—*

(i) *the mitigation of the aspects of a selected railroad or railroad facility that increase risks to railroad safety; and*

(ii) *the enhancement of aspects of a selected railroad or railroad facility that decrease risks to railroad safety; and*

(D) *incorporate into the program the consideration and use of existing, new, or novel technology, operating practices, risk management practices or other behavior-based practices that could improve railroad safety at the selected railroad or railroad facility.*

(2) **IMPLEMENTATION DEADLINE.**—*Not later than 2 years after the date of enactment of the Railroad Safety Enhancement Act of 2007, the selected railroad or railroad facility shall implement the safety risk reduction program developed under paragraph (1)(C) on the selected railroad or railroad facility and ensure that all employees at the selected railroad or railroad facility have received training related to the program.*

(b) **SELECTION OF RAILROAD OR RAILROAD FACILITY FOR PILOT PROGRAM.**—*Not later than 6 months after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary shall develop a voluntary application process to select 1 or more railroad or railroad facilities where the pilot project will be implemented. The application process shall include criteria for rating applicants, such as safety performance, accident and incident history, existence of risk management or behavior-based practices at the railroad or*

railroad facility, number of employees employed at the railroad or railroad facility, and other relevant criteria determined by the Secretary. If more than 1 railroad or railroad facility is selected, the Secretary shall select railroads and railroad facilities that are representative of the railroad industry as a whole, if possible.

(c) *EVALUATION.*—Not later than 6 months after the completion of the safety risk reduction program pilot program, the Secretary shall submit a report to Congress evaluating the pilot program, which shall include—

(1) a summary of the railroad safety risk reduction pilot program and description of the actions taken by the Secretary and selected railroad or railroad facilities during the program;

(2) an analysis of the difference in the number and rates of accidents, injuries, and fatalities at a selected railroad or railroad facility before and after the implementation of the risk reduction pilot program at a selected railroad or railroad facility; and

(3) guidelines on the preparation and implementation of railroad safety risk reduction program for the railroad carriers required to develop such plans under section 20157 that reflect that best practices developed during the pilot program.

(d) *GRANTS.*—The Secretary shall establish a grant program for implementation of the railroad safety risk reduction pilot program. Railroads and railroad facilities selected by the Secretary shall be eligible for grants.

(e) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Secretary of Transportation \$1,000,000 for fiscal years 2009 and 2010 to carry out this section.

§ 20157. Railroad safety risk reduction program

(a) *IN GENERAL.*—

(1) *PROGRAM REQUIREMENT.*—Not later than 5 years after the date of enactment, the Secretary, by regulation, shall require each railroad carrier that is a Class I railroad, a railroad carrier that has inadequate safety performance (as determined by the Secretary), or a railroad that provides intercity passenger or commuter rail passenger transportation—

(A) to develop a railroad safety risk reduction program under subsection (d) that systematically evaluates system-wide railroad safety risks and manages those risks in order to reduce the numbers and rates of railroad accidents, injuries, and fatalities;

(B) to submit its program, including any required plans, to the Federal Railroad Administration for its review and approval; and

(C) to implement the program and plans approved by the Federal Railroad Administration.

(2) *RELIANCE ON PILOT PROGRAM.*—The Secretary shall use the information and experience gathered through the pilot program under section 20156 in developing regulations under this section.

(3) *WAIVERS.*—The Secretary may grant a waiver under section 20103(d) to a railroad carrier from compliance with all or a part of the requirements of this section if the Secretary deter-

mines that the safety performance of the railroad carrier is sufficient to warrant the waiver.

(4) *VOLUNTARY COMPLIANCE.*—A railroad carrier that is not required to submit a railroad safety risk reduction program under this section may voluntarily submit a program that meets the requirements of this section to the Federal Railroad Administration. The Federal Railroad Administration shall approve or disapprove any program submitted under this paragraph.

(b) *CERTIFICATION.*—The chief official responsible for safety of each railroad carrier required to submit a railroad safety risk reduction program under subsection (a) shall certify that the contents of the program are accurate and that the railroad will implement the contents of the program as approved by the Federal Railroad Administration.

(c) *RISK ANALYSIS.*—In developing its railroad safety risk reduction program each railroad required to submit such a program under subsection (a) shall identify and analyze the aspects of its railroad, including operating practices, infrastructure, equipment, employee levels and schedules, safety culture, management structure, employee training, and other matters, including those not covered by railroad safety regulations or other Federal regulations, that impact railroad safety.

(d) *PROGRAM ELEMENTS.*—

(1) *IN GENERAL.*—Each railroad required to submit a railroad safety risk reduction program under subsection (a) shall develop a comprehensive safety risk reduction program to improve safety by reducing the number and rates of accidents, injuries, and fatalities that is based on the risk analysis required by subsection (c) through—

(A) the mitigation of aspects that increase risks to railroad safety; and

(B) the enhancement of aspects that decrease risks to railroad safety.

(2) *REQUIRED COMPONENTS.*—Each railroad's safety risk reduction program shall include a technology implementation plan that meets the requirements of subsection (e) and a fatigue management plan that meets the requirements of subsection (f).

(e) *TECHNOLOGY IMPLEMENTATION PLAN.*—

(1) *IN GENERAL.*—As part of its railroad safety risk reduction program, a railroad required to submit a railroad safety risk reduction program under subsection (a) shall develop a 10-year technology implementation plan that describes the railroad's plan for development, adoption, implementation, and use of current, new, or novel technologies on its system over a 10-year period to reduce safety risks identified under the railroad safety risk reduction program.

(2) *TECHNOLOGY ANALYSIS.*—A railroad's technology implementation plan shall include an analysis of the safety impact, feasibility, and cost and benefits of implementing technologies, including processor-based technologies, positive train control systems (as defined in section 20158(b)), electronically controlled pneumatic brakes, rail integrity inspection systems, rail integrity warning systems, switch position indicators, trespasser

prevention technology, highway rail grade crossing technology, and other new or novel railroad safety technology, as appropriate, that may mitigate risks to railroad safety identified in the risk analysis required by subsection (c).

(3) *IMPLEMENTATION SCHEDULE.*—A railroad’s technology implementation plan shall contain a prioritized implementation schedule for the development, adoption, implementation, and use of current, new, or novel technologies on its system to reduce safety risks identified under the railroad safety risk reduction program.

(f) *FATIGUE MANAGEMENT PLAN.*—

(1) *IN GENERAL.*—As part of its railroad safety risk reduction program, a railroad required to submit a railroad safety risk reduction program under subsection (a) for which the analysis under subsection (c) has shown fatigue to be a significant source of risk shall develop a fatigue management plan that is designed to reduce the fatigue experienced by safety-related railroad employees and to reduce the likelihood of accidents, injuries, and fatalities caused by fatigue.

(2) *TARGETED FATIGUE COUNTERMEASURES.*—A railroad’s fatigue management plan shall take into account the varying circumstances of operations by the railroad on different parts of its system, and shall prescribe appropriate fatigue countermeasures to address those varying circumstances.

(3) *ADDITIONAL ELEMENTS.*—A railroad shall consider the need to include in its fatigue management plan elements addressing each of the following items, as applicable:

(A) *Employee education and training on the physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue, based on the most current scientific and medical research and literature.*

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

(C) *Effects on employee fatigue of an employee’s short-term or sustained response to emergency situations, such as derailments and natural disasters, or engagement in other intensive working conditions.*

(D) *Scheduling practices for employees, including innovative scheduling practices for employees, including scheduling procedures, on-duty call practices, work and rest cycles, increases in consecutive days off for employees, changes in shift patterns, appropriate scheduling practices for varying types of work, and other aspects of employee scheduling that would reduce employee fatigue and cumulative sleep loss.*

(E) *Methods to minimize accidents and incidences that occur as a result of working at times when scientific and medical research have shown increased fatigue disrupts employees’ circadian rhythm.*

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

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

(H) The increase of the number of consecutive hours of off-duty rest, during which an employee receives no communication from the employing railroad carrier or its managers, supervisors, officers, or agents.

(I) Avoidance of abrupt changes in rest cycles for employees.

(J) Additional elements that the Secretary considers appropriate.

(g) CONSENSUS.—

(1) *IN GENERAL.*—Each railroad required to submit a railroad safety risk reduction program under subsection (a) shall consult with, employ good faith and use its best efforts to reach agreement with, all of its directly affected employees, including any non-profit labor organization representing a class or craft of directly affected employees of the railroad carrier, on the contents of the safety risk reduction program.

(2) *STATEMENT.*—If the railroad carrier and its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the railroad carrier, cannot reach consensus on the proposed contents of the plan, then directly affected employees and such organization may file a statement with the Secretary explaining their views on the plan on which consensus was not reached. The Secretary shall consider such views during review and approval of the program.

(h) *ENFORCEMENT.*—The Secretary shall have the authority to assess civil penalties pursuant to chapter 213 for a violation of this section, including the failure to submit, certify, or comply with a safety risk reduction program, technology implementation plan, or fatigue management plan.

§20158. Positive train control system implementation

(a) *IN GENERAL.*—The Secretary of Transportation shall ensure that each railroad required to submit a railroad safety risk reduction program pursuant to section 20157 that includes in its technology implementation plan a schedule for implementation of a positive train control system complies with that schedule and implements its positive train control system by December 31, 2018, unless the Secretary determines that a railroad shall implement its positive train control system by an earlier date.

(b) *POSITIVE TRAIN CONTROL SYSTEM DEFINED.*—The term “positive train control system” means a system designed to prevent train-to-train collisions, overspeed derailments, and incursions into roadway worker work limits.

§20159. Roadway user sight distance at highway-rail grade crossings

(a) *IN GENERAL.*—Not later than 18 months after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary of Transportation shall prescribe regulations that require each railroad carrier to remove from its active rights-of-way at all

public highway-rail grade crossings, and at all private highway-rail grade crossings open to unrestricted public access (as declared in writing by the holder of the crossing right), grass, brush, shrubbery, trees, and other vegetation which may materially obstruct the view of a pedestrian or a vehicle operator for a reasonable distance, as specified by the Secretary, in either direction of the train's approach, and to maintain its rights-of-way at all such crossings free of such vegetation. In prescribing the regulations, the Secretary shall take into consideration to the extent practicable—

(1) the type of warning device or warning devices installed at such crossings;

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

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

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

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

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

§ 20160. National crossing inventory

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

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

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

(b) **UPDATING OF CROSSING INFORMATION.**—

(1) On a periodic basis beginning not later than 2 years after the date of enactment of the Railroad Safety Enhancement Act

of 2007 and on or before September 30 of every year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall—

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

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

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

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

(d) **DEFINITIONS.**—In this section:

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

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

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

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

§20161. Fostering introduction of new technology to improve safety at highway-rail grade crossings

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

(b) **SUBMISSION OF NEW TECHNOLOGY PROPOSALS.**—Railroad carriers and railroad suppliers may submit for review and approval to

the Secretary such new technology designed to improve safety at highway-rail grade crossings. The Secretary shall approve the new technology designed to improve safety at highway-rail grade crossings in accordance with Federal Railroad Administration standards for the development and use of processor-based signal and train control systems and shall consider the effects on safety of highway-user interface with the new technology.

(c) EFFECT OF SECRETARIAL APPROVAL.—If the Secretary approves new technology to provide warning to highway users at a highway-rail grade crossing and such technology is installed at a highway-rail grade crossing in accordance with the conditions of the approval, this determination preempts any State law concerning the adequacy of the technology in providing warning at the crossing. Under no circumstances may a person (including a State, other public authority, railroad carrier, system designer, or supplier of the technology) be held liable for damages for any harm to persons or property because of an accident or incident at the crossing protected by such technology based upon the carrier's failure to properly inspect and maintain such technology, if the carrier has inspected and maintained the technology in accordance with the terms of the Secretary's approval.

§20162. Employee training

(a) IN GENERAL.—Not later than 1 year after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary of Transportation shall issue regulations requiring railroad carriers and railroad carrier contractors and subcontractors to develop training plans for crafts and classes of employees, as the Secretary determines appropriate.

(b) CONTENTS.—The Secretary shall require that each training plan—

- (1) clearly identify the class of craft of employees to which the plan applies;*
- (2) require that employees be trained on the requirements of relevant Federal railroad safety laws, regulations, and orders;*
- (3) require employees to be tested or otherwise demonstrate their proficiency in the subject matter of the training; and*
- (4) contain any other relevant information that the Secretary deems appropriate.*

(c) SUBMISSION FOR APPROVAL.—The Secretary shall require each railroad carrier, railroad carrier contractor, and railroad carrier subcontractor to submit its training plan to the Federal Railroad Administration for review and approval.

(d) EXEMPTION.—The Secretary may exempt railroad carriers and railroad carrier contractors and subcontractors from submitting training plans covering employees for which the Secretary has issued training regulations before the date of enactment of the Railroad Safety Enhancement Act of 2007.

§20163. Railroad safety technology grants

(a) GRANT PROGRAM.—The Secretary of Transportation shall establish a grant program for the deployment of train control technologies, train control component technologies, processor-based technologies, electronically controlled pneumatic brakes, rail integrity

inspection systems, rail integrity warning systems, switch position indicators, remote control power switch technologies, track integrity circuit technologies, and other new or novel railroad safety technology.

(b) **GRANT CRITERIA.**—

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

(2) **CONSIDERATIONS.**—Priority shall be given to projects that—

(A) focus on making technologies interoperable between railroad systems, such as train control technologies;

(B) provide incentives for train control technology deployment on high-risk corridors, such as those that have high volumes of hazardous materials shipments or over which commuter or passenger trains operate; or

(C) benefit both passenger and freight safety and efficiency.

(3) **TECHNOLOGY IMPLEMENTATION PLAN.**—Grants may not be awarded under this section to entities that fail to develop and submit to the Secretary a technology implementation plan as required by section 20157(d)(2).

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary of Transportation \$20,000,000 for each of fiscal years 2008 through 2013 to carry out this section. Amounts appropriated pursuant to this section shall remain available until expended.

§20164. Railroad safety infrastructure improvement grants

(a) **GRANT PROGRAM.**—The Secretary of Transportation shall establish a grant program for safety improvements to railroad infrastructure, including the acquisition, improvement, or rehabilitation of intermodal or rail equipment or facilities, including track, bridges, tunnels, yards, buildings, passenger stations, facilities, and maintenance and repair shops.

(b) **ELIGIBILITY.**—Grants shall be made under this section to eligible passenger and freight railroad carriers, and State and local governments for projects described in subsection (a).

(c) **CONSIDERATIONS.**—In awarding grants the Secretary shall consider, at a minimum—

(1) the age and condition of the rail infrastructure of the applicant;

(2) the railroad's safety record, including accident and incident numbers and rates;

(3) the volume of hazardous materials transported by the railroad;

(4) the operation of passenger trains over the railroad; and

(5) whether the railroad has submitted a railroad safety risk reduction program, as required by section 20157.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary of Transportation \$15,000,000 for each of fiscal years 2008 through 2013 to carry out this section.

Amounts appropriated pursuant to this subsection shall remain available until expended.

§ 20165. Development and use of rail safety technology

(a) *IN GENERAL.*—Not later than 1 year after enactment of the Railroad Safety Enhancement Act of 2007, the Secretary of Transportation shall issue standards, guidance, regulations, or orders governing the development, use, and implementation of rail safety technology in dark territory, in arrangements not defined in section 20501 or otherwise not covered by Federal standards, guidance, regulations, or orders that ensures its safe operation, such as—

- (1) *switch position monitoring devices;*
- (2) *radio, remote control or other power-assisted switches;*
- (3) *hot box, high water or earthquake detectors;*
- (4) *remote control locomotive zone limiting devices;*
- (5) *slide fences;*
- (6) *grade crossing video monitors;*
- (7) *track integrity warning systems;*
- (8) *or other similar rail safety technologies, as determined by the Secretary.*

(b) *DARK TERRITORY DEFINED.*—In this section, the term “dark territory” means any territory in a railroad system that does not have a signal or train control system installed or operational.

§ 20166. Limitations on non-federal alcohol and drug testing

(a) *TESTING REQUIREMENTS.*—Any non-Federal alcohol and drug testing program of a railroad carrier must provide that all post-employment tests of the specimens of employees who are subject to both the program and chapter 211 of this title be conducted using a scientifically recognized method of testing capable of determining the presence of the specific analyte at a level above the cut-off level established by the carrier.

(b) *REDRESS PROCESS.*—Each railroad carrier that has a non-Federal alcohol and drug testing program must provide a redress process to its employees who are subject to both the alcohol and drug testing program and chapter 211 of this title for such an employee to petition for, and receive, a carrier hearing to review his or her specimen test results that were determined to be in violation of the program. A dispute or grievance raised by a railroad carrier or its employee, except a probationary employee, in connection with the carrier’s alcohol and drug testing program and the application of this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153).

SUBTITLE V. RAIL PROGRAMS

PART A. SAFETY

CHAPTER 203. SAFETY APPLIANCES

§ 20303. Moving defective and insecure vehicles needing repairs

(a) *GENERAL.*—A vehicle that is equipped in compliance with this chapter whose equipment becomes defective or insecure nevertheless may be moved when necessary to make repairs, without a pen-

alty being imposed under section 21302 of this title, from the place at which the defect or insecurity was first discovered to the nearest available place at which the repairs can be made—

(1) on the railroad line on which the defect or insecurity was discovered; or

(2) at the option of a connecting railroad carrier, on the railroad line of the connecting carrier, if not farther than the place of repair described in clause (1) of this subsection.

(b) **USE OF CHAINS INSTEAD OF DRAWBARS.**—A vehicle in a revenue train or in association with commercially-used vehicles may be moved under this section with chains instead of drawbars only when the vehicle contains livestock or perishable freight.

(c) **LIABILITY.**—The movement of a vehicle under this section is at the risk only of the railroad carrier doing the moving. This section does not relieve a carrier from liability in a proceeding to recover damages for death or injury of a railroad employee arising from the movement of a vehicle with equipment that is defective, insecure, or not maintained in compliance with this chapter.

(d) **ADDITIONAL CONDITIONS FOR MOVEMENT TO MAKE REPAIRS TO DEFECTIVE OR INSECURE VEHICLES.**—

(1) **IN GENERAL.**—*The Secretary of Transportation may impose conditions for the movement of a defective or insecure vehicle to make repairs in addition to those conditions set forth in subsection (a) by prescribing regulations or issuing orders as necessary.*

(2) **NECESSITY OF MOVEMENT.**—*The movement of a defective or insecure vehicle from a location may be necessary to make repairs of the vehicle even though a mobile repair truck capable of making the repairs has gone to the location on an irregular basis (as specified in regulations prescribed by the Secretary).*

(e) **DEFINITIONS.**—*In this section:*

(1) **NEAREST.**—*The term “nearest” means the closest in the forward direction of travel for the defective or insecure vehicle.*

(2) **PLACE AT WHICH THE REPAIRS CAN BE MADE.**—*The term “place at which the repairs can be made” means—*

(A) *a location with a fixed facility for conducting the repairs that are necessary to bring the defective or insecure vehicle into compliance with this chapter; or*

(B) *a location where a mobile repair truck capable of making the repairs that are necessary to bring the defective or insecure vehicle into compliance with this chapter makes the same kind of repair at the location regularly (as specified in regulations prescribed by the Secretary).*

CHAPTER 211. HOURS OF SERVICE

§ 21101. Definitions

In this chapter—

(1) “designated terminal” means the home or away-from-home terminal for the assignment of a particular crew.

(2) “dispatching service employee” means an operator, train dispatcher, or other train employee who by the use of an electrical or mechanical device dispatches, reports, transmits, re-

ceives, or delivers orders related to or affecting train movements.

(3) “employee” means a dispatching service employee, a signal employee, or a train employee.

(4) “signal employee” means an individual [employed by a railroad carrier] who is engaged in installing, repairing, or maintaining *railroad* signal systems.

(5) “train employee” means an individual engaged in or connected with the movement of a train, including a hostler.

【§ 21102. Nonapplication and exemption】

§ 21102. *Nonapplication, exemption, and alternate hours of service regime*

(a) GENERAL.—This chapter does not apply to a situation involving any of the following:

- (1) a casualty.
- (2) an unavoidable accident.
- (3) an act of God.

(4) a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.

(b) EXEMPTION.—The Secretary of Transportation may exempt a railroad carrier having not more than 15 employees covered by this chapter from the limitations imposed by this chapter. The Secretary may allow the exemption after a full hearing, for good cause shown, and on deciding that the exemption is in the public interest and will not affect safety adversely. The exemption shall be for a specific period of time and is subject to review at least annually. The exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period.

(c) ALTERNATE HOURS OF SERVICE REGIME.—*A railroad carrier and its directly affected employees or a non-profit employee labor organization that represents such employees may jointly develop and submit for approval to the Secretary an alternate hours of service regime to that provided in this chapter that would increase the maximum hours an employee may be required or allowed to go or remain on duty or decrease the minimum hours an employee may be required to rest and would become effective no earlier than 1 year after the date of enactment of the Railroad Safety Enhancement Act of 2007. The Secretary may consider such a request anytime after the date of enactment of the Railroad Safety Enhancement Act of 2007 and may approve such a request only after providing an opportunity for public notice and comment and determining that the proposed hours of service regime is in the public interest and will not adversely affect railroad safety. The exemption shall be for a specific period of time and shall be subject to review upon a schedule determined appropriate by the Secretary.*

§ 21103. Limitations on duty hours of train employees

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

【(1) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours; or

【(2) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty.】

(a) *IN GENERAL.*—*Except as provided in subsection (d) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to—*

(1) *remain or go on duty in any calendar month where the employee had spent a total of 276 hours—*

(A) *on duty; or*

(B) *waiting for transportation, or in deadhead transportation, to a place of final release;*

(2) *remain or go on duty for a period in excess of 12 consecutive hours;*

(3) *remain or go on duty unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours; and*

(4) *remain or go on duty after that employee has initiated an on-duty period each day for—*

(A) *6 consecutive days, unless that employee has had at least 48 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier; or*

(B) *7 consecutive days, if permitted by a collective bargaining agreement, unless that employee has had at least 72 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier.*

The Secretary may waive paragraph (4), consistent with the procedural requirements of section 20103, if a collective bargaining agreement provides a different arrangement and such an arrangement is in the public interest and consistent with railroad safety.

(b) *DETERMINING TIME ON DUTY.*—*In determining under subsection (a) of this section the time a train employee is on or off duty, the following rules apply:*

(1) *Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.*

(2) *Time the employee is engaged in or connected with the movement of a train is time on duty.*

(3) *Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in or connected with the movement of a train is time on duty.*

(4) *Time spent in deadhead transportation to a duty assignment is time on duty, but time spent in deadhead transportation from a duty assignment to the place of a final release is neither time on duty nor time off duty.*

(5) *An interim period available for rest at a place other than a designated terminal is time on duty.*

(6) *An interim period available for less than 4 hours rest at a designated terminal is time on duty.*

(7) *An interim period available for at least 4 hours rest at a place with suitable facilities for food and lodging is not time*

on duty when the employee is prevented from getting to the employee's designated terminal by any of the following:

- (A) a casualty.
- (B) a track obstruction.
- (C) an act of God.
- (D) a derailment or major equipment failure resulting from a cause that was unknown and unforeseeable to the railroad carrier or its officer or agent in charge of that employee when that employee left the designated terminal.

(c) *LIMBO TIME LIMITATION AND ADDITIONAL REST REQUIREMENT.*—

(1) *A railroad carrier may not require or allow an employee to remain or go on duty in excess of 15 hours of time on duty and time waiting for deadhead transportation on a train, not including interim rest periods unless the train carrying the employee is directly delayed by—*

- (A) a casualty;
- (B) an accident;
- (C) an act of God;
- (D) a derailment;
- (E) a major equipment failure that prevents the train from advancing; or
- (F) a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.

(2) *Each railroad shall report to the Secretary, in accordance with procedures established by the Secretary, each instance where an employee subject to this section spends time waiting for deadhead transportation on a train in excess of the requirements of paragraph (1).*

(3) *A railroad carrier and its officers and agents shall provide, at the election of employees subject to this section at the beginning of the employee's off-duty period additional time off duty equal to the number of hours that such sum exceeds 12 hours if—*

- (A) *the time spent waiting for transportation, or in deadhead transportation, from a duty assignment to the place of final release that is not time on duty, plus*
- (B) *the time on duty,*

exceeds 12 consecutive hours.

[(c)] (d) *EMERGENCIES.*—A train employee on the crew of a wreck or relief train may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency. In this subsection, an emergency ends when the track is cleared and the railroad line is open for traffic.

(e) *COMMUNICATION DURING TIME OFF DUTY.*—*During a train employee's minimum off-duty period of 10 consecutive hours, as provided under subsection (a), during an interim period of at least 4 consecutive hours available for rest under subsection (b)(7), or during additional off duty hours elected to be taken by an employee under paragraph (b)(3), a railroad carrier, and its managers, supervisors, officers, and agents, shall not communicate with the train employee by telephone, by pager, or in any other manner that could*

reasonably be expected to disrupt the employee's rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary. The Secretary may waive the requirements of this paragraph for commuter or intercity passenger railroads if the Secretary determines that such a waiver will not reduce safety and is necessary to maintain such railroads' efficient operations and on-time performance of its trains.

§ 21104. Limitations on duty hours of signal employees

[(a) GENERAL.—

[(1) In paragraph (2)(C) of this subsection, “24-hour period” means the period beginning when a signal employee reports for duty immediately after 8 consecutive hours off duty or, when required under paragraph (2)(B) of this subsection, after 10 consecutive hours off duty.

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

[(A) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours;

[(B) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty; or

[(C) after that employee has been on duty a total of 12 hours during a 24-hour period, or after the end of that 24-hour period, whichever occurs first, until that employee has had at least 8 consecutive hours off duty.]

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

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

(2) unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours.

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a signal employee is on duty or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in installing, repairing, or maintaining signal systems is time on duty.

(3) Time spent returning from a trouble call, whether the employee goes directly to the employee's residence or by way of the employee's headquarters, is neither time on duty nor time off [duty, except that up to one hour of that time spent returning from the final trouble call of a period of continuous or broken service is time off duty.] duty.

(4) If, at the end of scheduled duty hours, an employee has not completed the trip from the final outlying worksite of the duty period to the employee's headquarters or directly to the

employee's residence, the time after the scheduled duty hours necessarily spent in completing the trip to the residence or headquarters is neither time on duty nor time off duty.

(5) If an employee is released from duty at an outlying worksite before the end of the employee's scheduled duty hours to comply with this section, the time necessary for the trip from the worksite to the employee's headquarters or directly to the employee's residence is neither time on duty nor time off duty.

(6) Time spent in transportation on an ontrack vehicle, including time referred to in paragraphs (3)-(5) of this subsection, is time on duty.

(7) A regularly scheduled meal period or another release period of at least 30 minutes but not more than one hour is time off duty and does not break the continuity of service of the employee under this section, but a release period of more than one hour is time off duty and does break the continuity of service.

(c) **EMERGENCIES.**—A signal employee may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of that employee is related to the emergency. In this subsection, an emergency ends when the signal system is restored to service. *A signal employee may not be allowed to remain or go on duty under the emergency authority provided under this subsection to conduct routine repairs, routine maintenance, or routine inspection of signal systems.*

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

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

§ 21106. Limitations on employee sleeping quarters

(a) **IN GENERAL.**—A railroad carrier and its officers and agents—

(1) may provide sleeping quarters (including crew quarters, camp or bunk cars, and trailers) for employees, and any individuals employed to maintain the right of way of a railroad carrier, only if the sleeping quarters are clean, safe, and [sanitary and give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier;] *sanitary, give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier, and provide in-*

door toilet facilities, potable water, and other features to protect the health of employees; and

(2) may not begin, after July 7, 1976, construction or reconstruction of sleeping quarters referred to in clause (1) of this section in an area or in the immediate vicinity of an area, as determined under regulations prescribed by the Secretary of Transportation, in which railroad switching or humping operations are performed.

(b) *CAMP CARS.*—No later than 12 months after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary, in consultation with the Secretary of Labor, shall issue regulations governing the use of camp cars, pursuant to subsection (a)(1), for employees and any individuals employed to maintain the right of way of a railroad carrier. The regulations may also prohibit the use of camp cars, if necessary, to protect the health and safety of the employees.

* * * * *

§ 21109. Regulatory authority

(a) *IN GENERAL.*—In order to improve safety and reduce employee fatigue, the Secretary may issue regulations—

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

(2) to increase the minimum hours an employee may be required or allowed to rest to a level greater than the level established under this chapter;

(3) to limit or eliminate the amount of time an employee spends waiting for or in deadhead transportation to the place of final release that is considered neither on duty nor off duty under this chapter;

(4) to make changes to the number of hours an employee may spend waiting on a train for deadhead transportation to the place of final release that is considered neither on duty nor off duty that provide for an equivalent level of safety as the level established under this chapter;

(5) to make changes to the requirements of off-duty communications with employees that provide for an equivalent level of safety as the level established under this chapter;

(6) for signal employees—

A) to limit or eliminate the amount of time that is considered to be neither on duty nor off duty under this chapter that an employee spends returning from an outlying worksite after scheduled duty hours or returning from a trouble call to the employee's headquarters or directly to the employee's residence; and

(B) to increase the amount of time that constitutes a release period, that does not break the continuity of service and is considered time off duty; and

(7) to require other changes to railroad operating and scheduling practices that could affect employee fatigue and railroad safety.

(b) *CONSIDERATIONS.*—*In issuing regulations under subsection (a) the Secretary shall consider scientific and medical research related to fatigue and fatigue abatement, railroad scheduling and operating practices that improve safety or reduce employee fatigue, a railroad’s use of new or novel technology intended to reduce or eliminate human error, the variations in freight and passenger railroad scheduling practices and operating conditions, the variations in duties and operating conditions for employees subject to this chapter, a railroad’s required or voluntary use of fatigue management plans covering employees subject to this chapter, and any other relevant factors.*

(c) *TIME LIMITS.*—*If the Secretary requests that the Railroad Safety Advisory Committee accept the task of developing regulations under paragraph (a) and the Committee accepts the task, the Committee shall reach consensus on the rulemaking within 18 months after accepting the task. If the Committee does not reach consensus within 18 months after the Secretary makes the request, the Secretary shall prescribe appropriate regulations within 18 months. If the Secretary does not request that the Railroad Safety Advisory Committee accept the task of developing regulations under subsection (a), the Secretary shall issue regulations within 3 years after the date of enactment of the Railroad Safety Enhancement Act of 2007.*

(d) *PILOT PROJECTS.*—

(1) *IN GENERAL.*—*Not later than 2 years after the date of enactment of the Railroad Safety Enhancement Act of 2007, the Secretary shall conduct at least 2 pilot projects of sufficient size and scope to analyze specific practices which may be used to reduce fatigue for train and engine and other railroad employees as follows:*

(A) *A pilot project at a railroad or railroad facility to evaluate the efficacy of communicating to employees notice of their assigned shift time 10 hours prior to the beginning of their assigned shift as a method for reducing employee fatigue.*

(B) *A pilot project at a railroad or railroad facility to evaluate the efficacy of requiring railroads who use employee scheduling practices that subject employees to periods of unscheduled duty calls to assign employees to defined or specific unscheduled call shifts that are followed by shifts not subject to call, as a method for reducing employee fatigue.*

(2) *WAIVER.*—*The Secretary may temporarily waive the requirements of this section, if necessary, to complete a pilot project under this subsection.*

(e) *DUTY CALL DEFINED.*—*In this section the term “duty call” means a telephone call that a railroad places to an employee to notify the employee of his or her assigned shift time.*

CHAPTER 213. PENALTIES

SUBCHAPTER I. CIVIL PENALTIES

§ 21301. Chapter 201 general violations

(a) *PENALTY.*—

(1) A person may not fail to comply *with section 20160 or with a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title*. Subject to section 21304 of this title, a person violating *section 20157 of this title or a regulation prescribed or order issued by the Secretary under chapter 201* is liable to the United States Government for a civil penalty. The Secretary shall impose the penalty applicable under paragraph (2) of this subsection. A separate violation occurs for each day the violation continues.

(2) The Secretary shall include in, or make applicable to, each regulation prescribed and order issued under chapter 201 of this title a civil penalty for a violation. *The Secretary shall impose a civil penalty for a violation of section 20160 of this title*. The amount of the penalty shall be at least \$500 but not more than ~~[\$10,000.]~~ \$25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than ~~[\$20,000.]~~ \$100,000

(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.]~~ \$25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to

individuals, or has caused death or injury, the amount may be not more than ~~【\$20,000.】~~ *\$100,000*.

(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.

§ 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.】~~ *\$25,000*. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than ~~【\$20,000.】~~ *\$100,000*.

(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.

PART C-PASSENGER TRANSPORTATION

CHAPTER 243. AMTRAK

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§24316. Plans to address needs of families of passengers involved in rail passenger accidents

(a) *SUBMISSION OF PLAN.*—Not later than 6 months after the date of the enactment of the Railroad Safety Enhancement Act of 2007, a rail passenger carrier shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving a rail passenger carrier intercity train and resulting in a major loss of life.

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

(1) A process by which a rail passenger carrier will maintain and provide to the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for a rail passenger carrier to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.

(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

(3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.

(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as a rail passenger carrier has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

(5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within a rail passenger carrier's control; that any possession of the passenger within a rail passenger carrier's control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within a rail passenger carrier's control will be retained by the rail passenger carrier for at least 18 months.

(6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

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

(c) *USE OF INFORMATION.*—Neither the National Transportation Safety Board, the Secretary of Transportation, the Secretary of Homeland Security, nor a rail passenger carrier may release any personal information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or a rail passenger carrier considers appropriate.

(d) *LIMITATION ON LIABILITY.*—A rail passenger carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of a rail passenger carrier under this section in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by a rail passenger carrier under subsection (b), unless such liability was caused by a rail passenger carrier's gross negligence or extreme misconduct.

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

(f) *FUNDING.*—Out of funds appropriated pursuant to section 20117(a)(1)(A), there shall be made available to the Secretary of Transportation \$500,000 for fiscal year 2008 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.

PART E. MISCELLANEOUS

CHAPTER 281. LAW ENFORCEMENT

§ 28104. Federal rail security officers' access to information

(a) *ACCESS TO RECORDS OR DATABASE SYSTEMS BY THE ADMINISTRATOR OF THE FEDERAL RAILROAD ADMINISTRATION.*—

(1) *IN GENERAL.*—*The Administrator of the Federal Railroad Administration is authorized to have access to a system of documented criminal justice information maintained by the Department of Justice or by a State for the purpose of carrying out the civil and administrative responsibilities of the Administrator to protect the safety, including security, of railroad operations and for other purposes authorized by law, including the National Crime Prevention and Privacy Compact (42 U.S.C. 14611-14616). The Administrator shall be subject to the same conditions or procedures established by the Department of Justice or State for access to such an information system by other governmental agencies with access to the system.*

(2) *LIMITATION.*—*The Administrator may not use the access authorized under paragraph (1) to conduct criminal investigations.*

(b) *DESIGNATED EMPLOYEES OF THE FEDERAL RAILROAD ADMINISTRATION.*—*The Administrator shall, by order, designate each employee of the Administration whose primary responsibility is rail security who shall carry out the authority described in subsection (a). The Administrator shall strictly limit access to a system of documented criminal justice information to persons with security responsibilities and with appropriate security clearances. Such a designated employee may, insofar as authorized or permitted by the National Crime Prevention and Privacy Compact or other law or agreement governing an affected State with respect to such a State—*

(1) *have access to and receive criminal history, driver, vehicle, and other law enforcement information contained in the law enforcement databases of the Department of Justice, or of any jurisdiction in a State in the same manner as a police officer employed by a State or local authority of that State who is certified or commissioned under the laws of that State;*

(2) *use any radio, data link, or warning system of the Federal Government and of any jurisdiction in a State that provides information about wanted persons, be-on-the-lookout notices, or warrant status or other officer safety information to which a police officer employed by a State or local authority in that State who is certified or commissioned under the laws of that State has access and in the same manner as such police officer; or*

(3) *receive Federal, State, or local government communications with a police officer employed by a State or local authority in that State in the same manner as a police officer employed by a State or local authority in that State who is commissioned under the laws of that State.*

(c) *SYSTEM OF DOCUMENTED CRIMINAL JUSTICE INFORMATION DEFINED.*—*In this section, the term “system of documented criminal justice information” means any law enforcement database, systems,*

or communications containing information concerning identification, criminal history, arrests, convictions, arrest warrants, or wanted or missing persons, including the National Crime Information Center and its incorporated criminal history databases and the National Law Enforcement Telecommunications System.

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TITLE 23. HIGHWAYS

CHAPTER 1. FEDERAL-AID HIGHWAYS

§ 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.—

(1) IN GENERAL.—Before making an apportionment under section 104(b)(5) for a fiscal year, the Secretary shall set aside, from amounts made available to carry out the highway safety improvement program under section 148 for such fiscal year, at least \$220,000,000 for the elimination of hazards and the installation of protective devices at railway-highway crossings. At least $\frac{1}{2}$ 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.

(2) SPECIAL RULE.—If a State demonstrates to the satisfaction of the Secretary that the State has met all its needs for installation of protective devices at railway-highway crossings, the State may use funds made available by this section for other purposes under this subsection.

(f) APPORTIONMENT.—

(1) FORMULA.—Fifty percent of the funds set aside to carry out this section pursuant to subsection (e)(1) shall be apportioned to the States in accordance with the formula set forth in section 104(b)(3)(A), and 50 percent of such funds shall be apportioned to the States in the ratio that total public railway-highway crossings in each State bears to the total of such crossings in all States.

(2) MINIMUM APPORTIONMENT.—Notwithstanding paragraph (1), each State shall receive a minimum of one-half of 1 percent of the funds apportioned under paragraph (1).

(3) FEDERAL SHARE.—The Federal share payable on account of any project financed with funds set aside 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 and the Committee on Commerce, Science, and Transportation, of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, not later than April 1, 2006, and every 2 years thereafter, 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.

(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) **EXPENDITURE OF FUNDS.**—Not more than 2 percent of funds apportioned to a State to carry out this section may be used by the State for compilation and analysis of data in support of activities carried out under subsection (g).

(l) **NATIONAL CROSSING INVENTORY.**—

(1) **INITIAL REPORTING OF CROSSING INFORMATION.**—*Not later than 1 year after the date of enactment of the Railroad Safety Enhancement Act of 2007 or within 6 months of a new crossing becoming operational, whichever occurs later, each State shall report to the Secretary of Transportation current information, including information about warning devices and signage, as*

specified by the Secretary, concerning each previously unreported crossing located within its borders.

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

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

(4) *DEFINITIONS.*—In this subsection, the terms “crossing” and “State” have the meaning given those terms by section 20160(d)(1) and (2), respectively, of title 49.

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SOLID WASTE DISPOSAL ACT

SUBTITLE A—GENERAL PROVISIONS

[42 U.S.C. 6901 et seq.]

SEC. 1009. CLARIFICATION OF FEDERAL JURISDICTION OVER SOLID WASTE RAIL TRANSFER FACILITIES.

(a) *IN GENERAL.*—A State or political subdivision thereof may enforce state solid waste environmental laws at a solid waste rail transfer facility.

(b) *EXISTING FACILITIES.*—

(1) *IN GENERAL.*—Within 180 days after the date of enactment of the Rail Safety Enhancement Act of 2007, a solid waste rail transfer facility operating as of that date shall comply with all State solid waste environmental laws other than those requiring permits.

(2) *PERMITTING REQUIREMENTS.*—Any solid waste rail transfer facility described in paragraph (1) that does not already possess permits related to State solid waste environmental laws as of the date of enactment of the Rail Safety Enhancement Act of 2007 shall not be required by a solid waste facility permitting agency to possess any permits related to State solid waste environmental laws in order to operate the facility—

(A) if within 1 year after the date of enactment of the Rail Safety Enhancement Act of 2007, the railroad carrier that owns or operates the solid waste rail transfer facility has submitted, in good faith, a complete application for all permits required by a State’s solid waste environmental laws to a solid waste facility permitting agency authorized to grant such permits; and

(B) until a solid waste facility permitting agency has either approved or denied the railroad carrier's application for a permit or permits.

(c) **DEFINITIONS.**—In this section:

(1) **SOLID WASTE FACILITY PERMITTING AGENCY.**—The term “solid waste facility permitting agency” means an agency of a State or subdivision thereof authorized to grant permits, including licenses or other approvals or credentials, from such State or subdivision in order to generate, store, treat, handle, manage, or dispose of solid waste in such State.

(2) **SOLID WASTE RAIL TRANSFER FACILITY.**—The term “solid waste rail transfer facility”—

(A) means the portion of a facility owned or operated by or on behalf of a railroad carrier (as defined in section 10102 of title 49, United States Code) where solid waste, as a commodity to be transported in commerce, is collected, stored, separated, processed, treated, managed, disposed of, or transferred outside of original sealed shipping containers; but

(B) does not include a facility to the extent that activities taking place at such facility are comprised of the railroad transportation of solid waste after the solid waste is placed on or in a rail car, including railroad transportation for the purpose of interchanging railroad cars containing sealed solid waste shipments.

(3) **STATE SOLID WASTE ENVIRONMENTAL LAWS.**—The term “State solid waste environmental laws”—

(A) means—

(i) the substantive and procedural aspects of statutes, regulations, and orders of a State or its subdivisions that establish public health and safety or environmental standards concerning the generation, storage, treatment, handling, management, or disposal of solid waste; and

(ii) the substantive and procedural aspects of statutes, regulations, and orders of a State or its subdivisions which govern the processes and procedures by which permits, licenses, or other approvals or credentials from such State or subdivision are required in order to generate, store, treat, handle, manage, or dispose of solid waste are granted; but

(B) does not include the statutes, regulations, and orders of a State or its subdivisions which govern land use, including land use restrictions or zoning ordinances.