

105TH CONGRESS
2D SESSION

H. R. 3805

To authorize activities under the Federal railroad safety laws for fiscal years 1999 through 2002, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1998

Mr. SHUSTER (for himself, Mr. OBERSTAR, Mr. FRANKS of New Jersey, and Mr. WISE) (all by request) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To authorize activities under the Federal railroad safety laws for fiscal years 1999 through 2002, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION. 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Railroad Safe-
5 ty Authorization Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds and declares the following:

8 (1) Consistent with the purposes of the Govern-
9 ment Performance and Results Act of 1993, the
10 Federal Railroad Administration has reshaped the

1 regulatory and compliance components of the Fed-
2 eral railroad safety program to ensure that the en-
3 tire program is squarely focused on achieving de-
4 monstrable results, i.e., reducing the number of
5 deaths and injuries associated with railroading in
6 the United States. The foundation of the program is
7 its emphasis on inclusion of all interested parties—
8 railroad employees and labor unions, railroad man-
9 agement, manufacturers, State government groups,
10 and public associations—in identifying safety prob-
11 lems and implementing solutions. This emphasis on
12 safety partnership has helped begin a transformation
13 of the safety culture of the Nation’s railroads that
14 is producing safety and business benefits.

15 (2) The Safety Assurance and Compliance Pro-
16 gram is an approach to safety that emphasizes the
17 active partnership of the Federal Railroad Adminis-
18 tration, rail labor representatives, and railroad man-
19 agement in identifying current safety problems and
20 jointly developing effective solutions to those prob-
21 lems. One fundamental principle of this approach is
22 tracing a safety problem to its root cause and at-
23 tacking that cause rather than only its symptoms.
24 Where a problem is determined to be system-wide,
25 this approach calls for a system-wide solution.

1 Under this approach, the Federal Railroad Adminis-
2 tration seeks to focus its inspection and enforcement
3 resources on the most serious safety problems. This
4 approach has demonstrated significant capacity for
5 identifying and eliminating the root cause of system-
6 wide safety problems by enlisting those most directly
7 affected by such problems railroad employees and
8 managers in a partnership effort. Used together with
9 the Federal Railroad Administration's regular in-
10 spections and enforcement tools, this approach pro-
11 vides a firm basis for addressing the safety chal-
12 lenges facing the changing railroad industry and ad-
13 vancing toward the safety program's ultimate goal of
14 zero tolerance for any safety hazard in the railroad
15 industry.

16 (3) The Railroad Safety Advisory Committee,
17 which was established under the Federal Advisory
18 Committee Act (5 U.S.C. App. 2), is proving to be
19 an effective means of involving interested members
20 of the railroad community in the development of
21 railroad safety rules issued by the Federal Railroad
22 Administration. The Congress strongly encourages
23 the continued use of this collaborative method of de-
24 veloping safety regulations, which is more likely to
25 produce rules that are based on an industry consen-

1 sus and, accordingly, more readily understood and
 2 more consistently complied with, than rules produced
 3 under more traditional methods.

4 **SEC. 3. AMENDMENT OF TITLE 49, UNITED STATES CODE.**

5 Except as otherwise expressly provided, whenever in
 6 this Act an amendment or repeal is expressed in terms
 7 of an amendment to, or a repeal of, a section or other
 8 provision, the reference shall be considered to be made to
 9 a section or other provision of title 49, United States
 10 Code.

11 **SEC. 4. TABLE OF CONTENTS.**

12 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Findings.
- Sec. 3. Amendment of title 49, United States Code.
- Sec. 4. Table of contents.

TITLE I—HOURS OF SERVICE

- Sec. 101. Definitions.
- Sec. 102. Limitations on duty hours of train employees.
- Sec. 103. Limitations on duty hours of signal employees.
- Sec. 104. Limitations on duty hours of dispatching service employees.
- Sec. 105. Conforming amendments regarding hours of service violations.
- Sec. 106. Fatigue management plans.
- Sec. 107. Electronic recordkeeping.

TITLE II—MONITORING OF RAILROAD RADIO COMMUNICATIONS

- Sec. 201. Enhanced inspection and investigation authority under the Federal
railroad safety laws.
- Sec. 202. Exception to chapter 119, title 18, United States Code.

TITLE III—RULEMAKING AUTHORITY

- Sec. 301. Railroad accident and incident reporting.
- Sec. 302. High-speed rail noise regulation.

TITLE IV—PROTECTION OF EMPLOYEES AND WITNESSES

- Sec. 401. Expansion of employee protections.
- Sec. 402. Interfering with or hampering major investigations.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Expansion of emergency order authority.

Sec. 502. Safety considerations in grants or loans to commuter railroads.

Sec. 503. Technical amendments regarding adjustment of civil penalties for inflation.

Sec. 504. Emergency notification of grade crossing problems.

Sec. 505. Authorization of appropriations.

1 **TITLE I—HOURS OF SERVICE**

2 **SEC. 101. DEFINITIONS.**

3 Section 21101 is amended—

4 (1) in paragraph (2), by inserting “, including
5 any manager, supervisor, official, agent, or other
6 employee of a railroad carrier or any employee of an
7 independent contractor to a railroad carrier” after
8 “affecting train movements”;

9 (2) in paragraph (4), by striking “employed by
10 a railroad carrier who is engaged in installing, re-
11 pairing, or maintaining signal systems” and sub-
12 stituting “who is engaged in installing, repairing, or
13 maintaining signal systems, including any manager,
14 supervisor, official, agent, or other employee of a
15 railroad carrier or any employee of an independent
16 contractor to a railroad carrier”;

17 (3) in paragraph (5), by inserting “, and any
18 manager, supervisor, official, agent, or other em-
19 ployee of a railroad carrier or any employee of an
20 independent contractor to a railroad carrier” after
21 “including a hostler”; and

22 (4) by inserting the following new paragraphs:

1 “(6) ‘dually employed’ means being at the same
 2 time in the employ of two or more railroad carriers,
 3 of two or more independent contractors to a railroad
 4 carrier, or of both a railroad carrier and one or more
 5 independent contractors to a railroad carrier.

6 “(7) ‘independent contractor to a railroad car-
 7 rier’ or, in context, ‘independent contractor’, means
 8 an independent contractor to a railroad carrier or a
 9 subcontractor to an independent contractor to a rail-
 10 road carrier.”.

11 **SEC. 102. LIMITATIONS ON DUTY HOURS OF TRAIN EM-**
 12 **PLOYEES.**

13 (a) Section 21103(a) is amended by—

14 (1) striking “officers” and substituting “man-
 15 agers, supervisors, officers,”;

16 (2) redesignating the text of the subsection as
 17 paragraph (1) of the subsection, and redesignating
 18 paragraphs (1) and (2) as subparagraphs (A) and
 19 (B), respectively, of the paragraph; and

20 (3) inserting the following at the end:

21 “(2) Except as provided in subsection (c) of this sec-
 22 tion, a railroad carrier and its managers, supervisors, offi-
 23 cers, and agents may not, if the railroad carrier has actual
 24 knowledge that a train employee is dually employed and
 25 actual knowledge of the individual’s schedule for the time

1 period in question, require or allow a dually employed
2 train employee to remain or go on duty, nor may a dually
3 employed train employee remain or go on duty—

4 “(A) unless that employee has had at least 8
5 consecutive hours off duty during the prior 24
6 hours; or

7 “(B) after that employee has been on duty for
8 12 consecutive hours, until that employee has had at
9 least 10 consecutive hours off duty.”.

10 (b) Section 21103(b) is amended—

11 (1) in paragraph (3), by striking “the railroad
12 carrier” and substituting “a railroad carrier or inde-
13 pendent contractor to a railroad carrier”; and

14 (2) by inserting the following new paragraph at
15 the end:

16 “(8) All time on duty for any railroad carrier
17 or independent contractor to a railroad carrier shall
18 be included.”.

19 (c) Section 21103 is amended by adding the following
20 at the end:

21 “(d) NOTICE ABOUT DUAL EMPLOYMENT.—(1) Not
22 later than January 31 each year, a railroad carrier shall
23 inform each of its train employees in writing—

24 “(A) that all time spent performing aggregate
25 duty on one or more railroad carriers or one or more

1 independent contractors to a railroad carrier counts
2 towards the limitations on duty hours of this section;
3 and

4 “(B) about the employee’s responsibility under
5 this subsection to notify each employer when the em-
6 ployee enters into a multi-employer relationship.

7 “(2) A dually employed train employee shall inform
8 each of his or her railroad carrier and independent con-
9 tractor employers in writing within 5 days of establishing
10 a multi-employer relationship.

11 “(3) A railroad carrier or independent contractor re-
12 ceiving written notification of dual employment shall re-
13 tain one copy of the notification for a period of two years
14 at its system and division headquarters, and shall make
15 the record available to representatives of the Secretary for
16 inspection and copying during normal business hours.”.

17 **SEC. 103. LIMITATIONS ON DUTY HOURS OF SIGNAL EM-**
18 **PLOYEES.**

19 (a) Section 21104(a)(2) is amended by—

20 (1) striking “officers” and substituting “man-
21 agers, supervisors, officers,”;

22 (2) redesignating the text of the paragraph as
23 subparagraph (A) of the paragraph, and redesignat-
24 ing subparagraphs (A), (B), and (C) as clauses (i),
25 (ii), and (iii), respectively, of the subparagraph; and

1 (3) inserting the following at the end:

2 “(B) Except as provided in subsection (c) of
3 this section, a railroad carrier and its managers, su-
4 pervisors, officers, and agents may not, if the rail-
5 road carrier has actual knowledge that a signal em-
6 ployee is dually employed and actual knowledge of
7 the individual’s schedule for the time period in ques-
8 tion, require or allow a dually employed signal em-
9 ployee to remain or go on duty, nor may a dually
10 employed signal employee remain or go on duty—

11 “(i) unless that employee has had at least
12 8 consecutive hours off duty during the prior
13 24 hours;

14 “(ii) after that employee has been on duty
15 for 12 consecutive hours, until that employee
16 has had at least 10 consecutive hours off duty;
17 or

18 “(iii) after that employee has been on duty
19 a total of 12 hours during a 24-hour period, or
20 after the end of that 24-hour period, whichever
21 occurs first, until that employee has had at
22 least 8 consecutive hours off duty.”.

23 (b) Section 21104(b) is amended—

1 (1) in paragraph (2), by striking “the railroad
2 carrier” and substituting “a railroad carrier or inde-
3 pendent contractor to a railroad carrier”;

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

8 (3) by inserting the following new paragraph at
9 the end:

10 “(8) All time on duty for any railroad carrier
11 or independent contractor to a railroad carrier shall
12 be included.”.

13 (c) Section 21104 is amended by adding the following
14 at the end:

15 “(d) NOTICE ABOUT DUAL EMPLOYMENT.—(1) Not
16 later than January 31 each year, a railroad carrier shall
17 inform each of its signal employees in writing—

18 “(A) that all time spent performing aggregate
19 duty on one or more railroad carriers or one or more
20 independent contractors to a railroad carrier counts
21 towards the limitations on duty hours of this section;
22 and

23 “(B) about the employee’s responsibility under
24 this subsection to notify each employer when the em-
25 ployee enters into a multi-employer relationship.

1 “(2) A dually employed signal employee shall inform
2 each of his or her railroad carrier and independent con-
3 tractor employers in writing within 5 days of establishing
4 a multi-employer relationship.

5 “(3) A railroad carrier or independent contractor re-
6 ceiving written notification of dual employment shall re-
7 tain one copy of the notification for a period of two years
8 at its system and division headquarters, and shall make
9 the record available to representatives of the Secretary for
10 inspection and copying during normal business hours.”.

11 **SEC. 104. LIMITATIONS ON DUTY HOURS OF DISPATCHING**

12 **SERVICE EMPLOYEES.**

13 (a) Section 21105(b) is amended by—

14 (1) striking “or allowed” and substituting “or
15 allowed by a railroad carrier or its managers, super-
16 visors, officers, and agents”;

17 (2) redesignating the text of the subsection as
18 paragraph (1) of the subsection, and redesignating
19 paragraphs (1) and (2) as subparagraphs (A) and
20 (B), respectively, of the paragraph; and

21 (3) inserting the following at the end:

22 “(2) Except as provided in subsection (d) of this sec-
23 tion, a railroad carrier and its managers, supervisors, offi-
24 cers, and agents may not, if the railroad carrier has actual
25 knowledge that a dispatching service employee is dually

1 employed and actual knowledge of the individual's sched-
2 ule for the time period in question, require or allow a du-
3 ally employed dispatching service employee to remain or
4 go on duty, nor may a dually employed dispatching service
5 employee remain or go on duty, for more than—

6 “(A) a total of 9 hours during a 24-hour period
7 in a tower, office, station, or place at which at least
8 2 shifts are employed; or

9 “(B) a total of 12 hours during a 24-hour pe-
10 riod in a tower, office, station, or place at which only
11 one shift is employed.”.

12 (b) Section 21105(c) is amended to read as follows:

13 “(c) DETERMINING TIME ON DUTY.—In determining
14 under subsection (b) of this section the time a dispatching
15 service employee is on or off duty, the following rules
16 apply:

17 “(1) Time spent performing any other service
18 for one or more railroad carriers or independent con-
19 tractors to railroad carriers (or a combination there-
20 of) during a 24-hour period in which the employee
21 is on duty in a tower, office, station, or other place
22 is time on duty in that tower, office, station, or
23 place, and counts toward the employee's aggregate
24 time on duty.

1 “(2) If during a 24-hour period an employee
2 performs the duties of a dispatching service em-
3 ployee for more than one railroad carrier or inde-
4 pendent contractor to a railroad carrier, and at least
5 one of those tours of duty is in a tower, office, sta-
6 tion, or other place at which at least two shifts are
7 employed, then the duty limits of subsection (b)(1)
8 of this section apply.

9 “(3) All time on duty by the employee for any
10 railroad carrier or independent contractor to a rail-
11 road carrier shall be included.”.

12 (c) Section 21105 is amended by adding the following
13 at the end:

14 “(e) NOTICE ABOUT DUAL EMPLOYMENT.—(1) Not
15 later than January 31 each year, a railroad carrier shall
16 inform each of its dispatching service employees in writ-
17 ing—

18 “(A) that all time spent performing aggregate
19 duty on one or more railroad carriers or one or more
20 independent contractors to a railroad carrier counts
21 towards the limitations on duty hours of this section;
22 and

23 “(B) about the employee’s responsibility under
24 this subsection to notify each employer when the em-
25 ployee enters into a multi-employer relationship.

1 “(2) A dually employed dispatching service employee
2 shall inform each of his or her railroad carrier and inde-
3 pendent contractor employers in writing within 5 days of
4 establishing a multi-employer relationship.

5 “(3) A railroad carrier or independent contractor re-
6 ceiving written notification of dual employment shall re-
7 tain one copy of the notification for a period of two years
8 at its system and division headquarters, and shall make
9 the record available to representatives of the Secretary for
10 inspection and copying during normal business hours.”.

11 **SEC. 105. CONFORMING AMENDMENTS REGARDING HOURS**
12 **OF SERVICE VIOLATIONS.**

13 (a) Section 21106 is amended by striking “officers
14 and agents” and substituting “managers, supervisors, offi-
15 cers, agents, and independent contractors”.

16 (b) Section 21303(a)(1) is amended by striking “or
17 violating any provision of a waiver applicable to that per-
18 son that has been granted under section 21108 of this
19 title, is liable to the United States Government for a civil
20 penalty” and substituting “any provision of a waiver appli-
21 cable to that person that has been granted under section
22 21108 or 21109 of this title, or any provision of a regula-
23 tion issued under section 21109 of this title, is liable to
24 the United States Government for a civil penalty”.

1 (c) Section 21303(c) is amended by striking “officers
2 and agents” and substituting “managers, supervisors, offi-
3 cers, agents, and independent contractors”.

4 **SEC. 106. FATIGUE MANAGEMENT PLANS.**

5 (a) AMENDMENT.—Chapter 211 is amended by add-
6 ing at the end the following new section:

7 **“§ 21109. Fatigue management plans**

8 “(a) PLAN SUBMISSION.—(1) Each Class I and Class
9 II railroad carrier, each railroad carrier providing intercity
10 rail passenger service, and each railroad carrier providing
11 commuter passenger service, shall submit to the Secretary
12 of Transportation a fatigue management plan that is de-
13 signed to reduce the fatigue experienced by railroad em-
14 ployees covered by the hours of service laws and to reduce
15 the likelihood of accidents and injuries caused by fatigue.
16 The plan shall be submitted not more than 1 year after
17 enactment of this section, or not less than 45 days prior
18 to commencing operations, whichever is later.

19 “(2) The fatigue management plan shall—

20 “(A) include a summary of each railroad car-
21 rier’s analysis supporting each plan element;

22 “(B) describe how every condition on the rail-
23 road carrier’s property that is likely to be affected
24 by fatigue is addressed in the plan; and

1 “(C) include the name, title, address, and tele-
2 phone number of the primary person to be contacted
3 with regard to review of the plan.

4 “(3)(A) The Secretary is authorized to review each
5 proposed plan and proposed amendment to a plan to de-
6 termine whether the elements prescribed in subsection (b)
7 of this section are sufficiently and rationally addressed
8 and discussed in the railroad’s plan submission or pro-
9 posed amendment to the plan.

10 “(B) If the proposed plan or amendment to the plan
11 is reviewed and not approved, the Secretary shall notify
12 the affected railroad carrier as to the specific points in
13 which the proposed plan or amendment to the plan is defi-
14 cient, and the carrier shall correct all deficiencies within
15 30 days following receipt of written notice from the Sec-
16 retary.

17 “(C) To carry out this section, the Secretary may
18 conduct periodic audits of a plan to determine compliance.

19 “(4) Each affected railroad carrier shall file any pro-
20 posed amendment to its plan with the Secretary not less
21 than 60 days prior to the proposed effective date of the
22 amendment.

23 “(5)(A) Each affected railroad carrier shall employ
24 good faith and use its best efforts to reach agreement by
25 consensus with all of its directly affected covered service

1 employee groups on the contents of the fatigue manage-
2 ment plan and amendments to the plan, and jointly submit
3 the plan and each amendment to the plan to the Secretary.

4 “(B) In the event that labor organizations represent
5 classes or crafts of directly affected covered service em-
6 ployees of the railroad carrier, the railroad carrier shall
7 consult with these organizations in drafting the plan and
8 amendments to the plan. The Secretary shall be author-
9 ized to provide assistance to the parties involved in a nego-
10 tiation.

11 “(C) If the railroad carrier and its employees (includ-
12 ing any labor organization representing a class or craft
13 of directly affected covered service employees of the rail-
14 road carrier) cannot reach consensus on the proposed con-
15 tents of the plan or an amendment to the plan, then—

16 “(i) the railroad carrier shall file the plan or
17 amendment with the Secretary; and

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

24 “(6) During the first two years after enactment of
25 this section, compliance with a fatigue management plan

1 approved by the Secretary not requiring a waiver of a pro-
2 vision of law is not required. However, compliance with
3 a plan approved by the Secretary involving waiver of one
4 or more statutory provisions under subsection (c) of this
5 section is mandatory. No plan involving a waiver shall be
6 implemented unless approved by the Secretary.

7 “(7) Effective two years after the date of enactment
8 of this section:

9 “(A) Compliance with a fatigue management
10 plan and amendments becomes mandatory and en-
11 forceable by the Secretary. No plan or amendment
12 involving a waiver shall be implemented unless ap-
13 proved by the Secretary.

14 “(B) In the interest of railroad safety, addi-
15 tional categories or classes of railroad carriers may
16 be required to submit a fatigue management plan, as
17 determined under regulations prescribed by the Sec-
18 retary.

19 “(8) The Secretary may require resubmission or revi-
20 sion of a fatigue management plan at any time.

21 “(b) ELEMENTS OF THE FATIGUE MANAGEMENT
22 PLAN.—(1) Each plan filed with the Secretary under the
23 procedures of subsection (a) of this section shall take into
24 account the varying circumstances of operations by the
25 railroad carrier on different parts of its system, and shall

1 prescribe appropriate fatigue countermeasures to address
2 those varying circumstances.

3 “(2) With respect to all employees, whether working
4 in scheduled or nonscheduled service, the plan shall ad-
5 dress the following issues:

6 “(A) Education and training on the physio-
7 logical and psychological factors that affect fatigue,
8 as well as strategies to counter fatigue, based on
9 current and evolving scientific and medical research
10 and literature.

11 “(B) Opportunities for identification, diagnosis,
12 and treatment of sleep disorders, including:
13 screenings as part of required physical examinations;
14 questionnaires to identify employees at risk; home
15 screening of employees; and results assessed by phy-
16 sicians with a specialization in sleep disorders.

17 “(C) Effects on employee fatigue of emergency
18 response involving both short-term emergency situa-
19 tions, including derailments, and long-term emer-
20 gency situations, including natural disasters.

21 “(D) Scheduling practices involving train line-
22 ups and calling times, including work/rest cycles for
23 shift workers and on-call employees that permit em-
24 ployees to compensate for cumulative sleep loss by
25 guaranteeing a minimum number of consecutive

1 days off (exclusive of time off due to illness or in-
2 jury).

3 “(E) Minimizing the scheduling of a nighttime
4 split shift.

5 “(F) An analysis demonstrating that staffing
6 levels and workloads were considered when the plan
7 was formulated.

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

11 “(H) Opportunities to obtain restful sleep at
12 lodging facilities, including sleeping quarters pro-
13 vided by the railroad carrier.

14 “(3) With respect only to employees working in non-
15 scheduled service, the plan shall address the following
16 areas:

17 “(A) Increasing the number of consecutive
18 hours of undisturbed rest to an employee in connec-
19 tion with the scheduling of a duty call.

20 “(B) Lengthening the notice provided to an em-
21 ployee of the time to report for duty, to afford great-
22 er scheduling predictability.

23 “(C) Work/rest cycles that guarantee a greater
24 minimum number of consecutive days off than is af-

1 forded to employees working in scheduled service
2 (exclusive of time off due to illness or injury).

3 “(D) Avoiding abrupt changes in rest cycles for
4 employees returning to duty after an extended ab-
5 sence due to circumstances including illness, injury,
6 or vacation.

7 “(E) Ways to minimize the amount of time that
8 employees spend awaiting the arrival of deadhead
9 transportation to their points of final release, and to
10 mitigate the fatigue consequences of excessive wait-
11 ing time.

12 “(F) Scheduling of employees so that the rest
13 period occurring at the home terminal generally ex-
14 ceeds that given at the away-from-home terminal.

15 “(c) WAIVER.—A railroad carrier (including a Class
16 III railroad carrier) and all labor organizations represent-
17 ing any class or craft of directly affected covered service
18 employees of the railroad carrier may jointly request, as
19 part of a proposed fatigue management plan, the waiver
20 of any provisions of this chapter where the waiver would
21 enhance the ability of the plan to achieve the objective of
22 reducing fatigue and enhancing safety. The Secretary is
23 authorized to waive any provision of this chapter if a waiv-
24 er is jointly requested by the railroad carrier and the labor
25 organizations representing the directly affected employees,

1 and if the railroad carrier and labor organizations dem-
2 onstrate to the Secretary's satisfaction that the waiver is
3 essential to achieving the objectives of reducing fatigue
4 and enhancing safety and that the plan effectively protects
5 the safety interest addressed by the provision to be waived.
6 In the event that labor organizations do not represent
7 classes or crafts of directly affected covered employees of
8 the railroad carrier, the railroad carrier shall instead con-
9 sult with all of its directly affected employee groups in
10 drafting the waiver request. No waiver shall be approved
11 unless the Secretary makes a finding that the waiver per-
12 mits procedures that reduce fatigue and enhance safety,
13 and which would not be lawful without the waiver.

14 “(d) DEFINITIONS.—For purposes of this section, the
15 term ‘directly affected covered service employees’ means
16 covered service employees to whose hours of service the
17 terms of the approved plan specifically apply, and the term
18 ‘scheduled employee’ means an employee who is assigned
19 to work a tour of duty with a regular and predictable
20 starting and stopping time.”.

21 (b) TABLE OF SECTIONS AMENDMENT.—The table of
22 sections for chapter 211 is amended by adding at the end
23 the following new item:

“21109. Fatigue management plans.”.

1 **SEC. 107. ELECTRONIC RECORDKEEPING.**

2 (a) AMENDMENT.—Chapter 211 is amended by add-
3 ing at the end the following new section:

4 **“§ 21110. Electronic recordkeeping**

5 “In rules or waivers issued under this part concern-
6 ing recordkeeping related to compliance with this chapter,
7 the Secretary may, and is encouraged to, permit that
8 records be made, maintained, or submitted by electronic
9 means in order to reduce the paperwork burden on rail-
10 road carriers.”.

11 (b) TABLE OF SECTIONS AMENDMENT.—The table of
12 sections for chapter 211 is amended by adding after item
13 21109 the following new item:

“21110. Electronic recordkeeping.”.

14 **TITLE II—MONITORING OF RAIL-**
15 **ROAD RADIO COMMUNICA-**
16 **TIONS**

17 **SEC. 201. ENHANCED INSPECTION AND INVESTIGATION AU-**
18 **THORITY UNDER THE FEDERAL RAILROAD**
19 **SAFETY LAWS.**

20 Section 20107 is amended by inserting at the end the
21 following new subsection:

22 “(c) RAILROAD RADIO COMMUNICATIONS.—(1) To
23 carry out the Secretary’s responsibilities under this part,
24 officers, employees, or agents of the Secretary are author-
25 ized to conduct the following kinds of inspection and inves-

1 tigtive activities at reasonable times and in a reasonable
2 manner:

3 “(A) To listen to a radio communication that is
4 broadcast or transmitted over a railroad’s dedicated
5 frequency not for the use of the general public, with
6 or without making their presence known to the send-
7 er or other receivers of the communication and with
8 or without obtaining the consent of the sender or
9 other receivers of the communication.

10 “(B) To communicate the existence, contents,
11 substance, purport, effect, or meaning of the com-
12 munication.

13 “(C) To receive or assist in receiving the com-
14 munication (or any information therein contained).

15 “(D) Having received the communication or
16 having become acquainted with the contents, sub-
17 stance, purport, effect, or meaning of the commu-
18 nication (or any part thereof), to disclose the con-
19 tents, substance, purport, effect, or meaning of the
20 communication (or any part thereof of such commu-
21 nication) or use the communication (or any informa-
22 tion contained therein).

23 “(E) To record the communications by any
24 means, including writing and tape recording.

1 “(2) The purposes for which officers, employees, or
2 agents of the Secretary are permitted to engage in the
3 activities set forth in paragraph (1) of this subsection in-
4 clude rulemaking, accident investigation, and acquiring
5 general information as to railroad operations.

6 “(3) Information obtained in compliance with para-
7 graphs (1) and (2) of this subsection may not be used
8 as evidence for the assessment or collection of civil pen-
9 alties or for the implementation of other enforcement
10 mechanisms provided in section 5122, 20702(b), 20111,
11 20112, 20113, or 20114 of this title, but may be used
12 as background for further investigation which might lead
13 to the discovery of other useful evidence.

14 “(4) The authority granted by this subsection shall
15 be an exception to the general prohibitions of section 605
16 of title 47, United States Code, and chapter 119 of title
17 18, United States Code.”.

18 **SEC. 202. EXCEPTION TO CHAPTER 119, TITLE 18, UNITED**
19 **STATES CODE.**

20 Section 2511(2) of title 18, United States Code, is
21 amended by redesignating paragraphs (c) through (h) as
22 paragraphs (d) through (i) and adding after paragraph
23 (b), the following new paragraph:

24 “(c) Notwithstanding any other provision of this
25 chapter or section 605 of title 47, United States Code,

1 officers, employees, or agents of the Secretary of Trans-
 2 portation in the normal course of employment and in fur-
 3 therance of the Federal railroad safety laws in chapter 51
 4 and subtitle V, part A, of title 49 may intercept railroad
 5 radio communications and disclose or use the information
 6 thereby contained, for the purposes and to the extent per-
 7 mitted by section 20107(c) of title 49.”.

8 **TITLE III—RULEMAKING**

9 **AUTHORITY**

10 **SEC. 301. RAILROAD ACCIDENT AND INCIDENT REPORTING.**

11 Section 20901(a) is amended to read as follows:

12 “(a) GENERAL REQUIREMENTS.—On a periodic basis
 13 not less often than quarterly as specified by the Secretary
 14 of Transportation, a railroad carrier shall file a report
 15 with the Secretary on all accidents and incidents resulting
 16 in injury or death to an individual or damage to equipment
 17 or a roadbed arising from the carrier’s operations during
 18 that period. The report shall state the nature, cause, and
 19 circumstances of each reported accident or incident. If a
 20 railroad carrier assigns human error as a cause, the report
 21 shall include, at the option of each employee whose error
 22 is alleged, a statement by the employee explaining any fac-
 23 tors the employee alleges contributed to the accident or
 24 incident.”.

1 **SEC. 302. HIGH-SPEED RAIL NOISE REGULATION.**

2 (a) AMENDMENT.—Chapter 201 is amended by add-
3 ing a new section at the end as follows:

4 **“§ 20154. High-speed rail noise regulation**

5 “The Secretary of Transportation, in consultation
6 with the Administrator of the Environmental Protection
7 Agency, shall prescribe regulations addressing noise emis-
8 sions from high-speed rail systems, including magnetic
9 levitation systems, when operating at speeds greater than
10 150 miles per hour. Regulations issued under this section
11 shall be in lieu of railroad-related noise regulations issued
12 pursuant to the Noise Control Act of 1972 (42 U.S.C.
13 4916(a)) only for locomotives, cars, and consists of loco-
14 motives and cars when operating at speeds greater than
15 150 miles per hour.”.

16 (b) TABLE OF SECTIONS AMENDMENT.—The table of
17 sections of subchapter II of chapter 201, is amended by
18 adding at the end the following new item:

“20154. High-speed rail noise regulation.”.

19 **TITLE IV—PROTECTION OF**
20 **EMPLOYEES AND WITNESSES**

21 **SEC. 401. EXPANSION OF EMPLOYEE PROTECTIONS.**

22 (a) Section 20109(a) is amended—

23 (1) by striking “AND TESTIFYING” in the sub-
24 section heading and substituting the following: “,
25 TESTIFYING, REPORTING INJURIES AND ILLNESSES,

1 AND COOPERATING WITH SAFETY INVESTIGA-
2 TIONS”;

3 (2) by inserting “(1)” before “A railroad car-
4 rier engaged in interstate or foreign commerce”;

5 (3) by redesignating paragraphs (1) through
6 (2) as subparagraphs (A) through (B);

7 (4) by striking “or” following the semicolon in
8 newly designated subparagraph (A);

9 (5) by striking the period at the end of newly
10 designated subparagraph (B) and substituting a
11 semicolon and the following:

12 “(C) notified, or attempted to notify, the rail-
13 road carrier of a work-related personal injury or
14 work-related illness of an employee; or

15 “(D) cooperated with a safety investigation by
16 the Secretary of Transportation or the National
17 Transportation Safety Board.

18 “(2) It shall be unlawful for any officer or employee
19 of a railroad carrier to commit any act prohibited to a
20 railroad carrier by this subsection.”.

21 (b) Section 20109(b) is amended—

22 (1) by striking “REFUSING TO WORK BECAUSE
23 OF” in the subsection heading;

24 (2) by inserting in paragraph (1) “or against
25 an employee responsible for the inspection or repair

1 of safety-related equipment, track, or structures for
2 refusing to authorize the use of such equipment,
3 track, or structures when the employee believes that
4 the equipment, track, or structures are in a hazard-
5 ous condition and that the use of the equipment,
6 track, or structures would endanger human life,”
7 after “performance of the employee’s duties,”; and

8 (3) by striking subparagraph (C) and substitut-
9 ing the following new subparagraph:

10 “(C) the employee, where possible, has notified
11 the carrier of the existence of the hazardous condi-
12 tion and the intention not to perform further work
13 or not to authorize the use of the hazardous equip-
14 ment, track, or structures, unless the condition is
15 corrected immediately or the equipment, track, or
16 structures are repaired properly or replaced.”.

17 (c) Section 20109(c) is amended—

18 (1) by striking “180 days after it is filed” and
19 substituting “60 days after it is filed if the violation
20 is a form of discrimination that involves discharge,
21 suspension, or another action affecting pay and 180
22 days after the dispute, grievance, or claim is filed if
23 the violation is a form of discrimination that does
24 not involve discharge, suspension, or another action
25 affecting pay”; and

1 (2) by striking the last sentence and substitut-
 2 ing the following: “If the employee has been found
 3 by the Board, division, delegate, or board of adjust-
 4 ment to have been discharged, suspended, or other-
 5 wise discriminated against in violation of subsection
 6 (a) or (b) of this section, the employee shall be made
 7 whole, including reinstatement, with an award of
 8 back pay, and with all benefits and accumulated se-
 9 niority. The employee may also be awarded punitive
 10 damages sufficient to deter the railroad carrier from
 11 such conduct in the future.”.

12 **SEC. 402. INTERFERING WITH OR HAMPERING MAJOR IN-**
 13 **VESTIGATIONS.**

14 (a) AMENDMENT.—Subchapter II of chapter 213 is
 15 amended by adding at the end the following new section:

16 **“§ 21312. Interfering with or hampering major inves-**
 17 **tigations**

18 “(a) IN GENERAL.—It shall be unlawful for any per-
 19 son knowingly to interfere with, obstruct, or hamper an
 20 investigation by the Secretary of Transportation con-
 21 ducted under section 20703 or 20902 of this title.

22 “(b) KNOWING INTIMIDATION AND OTHER ACTS.—
 23 It shall be unlawful for any person, with regard to an in-
 24 vestigation conducted by the Secretary under section
 25 20703 or 20902 of this title, knowingly to use intimidation

1 or physical force, threaten, or corruptly persuade another
2 person, or attempt to do so, or engage in misleading con-
3 duct toward another person, with intent to—

4 “(1) influence, delay, or prevent the testimony
5 or statement of any person;

6 “(2) cause or induce any person to—

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

10 “(B) alter, destroy, mutilate, or conceal an
11 object with intent to impair the object’s integ-
12 rity or availability for use in the investigation;

13 “(C) evade legal process summoning that
14 person to appear as a witness, or to produce a
15 record, document, or other object, in the inves-
16 tigation; or

17 “(D) be absent from an investigation to
18 which such person has been summoned by legal
19 process; or

20 “(3) hinder, delay, or prevent the communica-
21 tion to a Federal railroad safety inspector or a State
22 railroad safety inspector, or their superiors, of infor-
23 mation relating to the commission or possible com-
24 mission of one or more violations of this part or of
25 chapter 51 of this title.

1 “(c) INTENTIONAL HARASSMENT.—It shall be unlaw-
2 ful, with regard to an investigation conducted by the Sec-
3 retary under section 20703 or 20902 of this title, to inten-
4 tionally harass another person and thereby hinder, delay,
5 prevent, or dissuade any person from—

6 “(1) attending a proceeding or interview, pro-
7 viding a written statement to a Federal railroad
8 safety inspector or State railroad safety inspector, or
9 their superiors, or testifying as part of the investiga-
10 tion;

11 “(2) reporting to a Federal railroad safety in-
12 spector or a State railroad safety inspector, or their
13 superiors, the commission or possible commission of
14 a violation of this part or of chapter 51 of this title;
15 or

16 “(3) recommending or using any legal remedy
17 available to the Secretary under this title.

18 “(d) DEFENSE.—In a prosecution for an offense
19 under this section, it is an affirmative defense, as to which
20 the defendant has the burden of proof by a preponderance
21 of the evidence, that the conduct consisted solely of lawful
22 conduct and that the defendant’s sole intention was to en-
23 courage, induce, or cause the other person to testify or
24 provide a statement truthfully.

1 “(e) ELEMENTS OF VIOLATION.—(1) For the pur-
 2 poses of this section, the testimony or statement, or the
 3 record, document, or other object need not be admissible
 4 in evidence or free from a claim of privilege.

5 “(2) In a prosecution for an offense under this sec-
 6 tion, no state of mind need be proved with respect to the
 7 circumstance that the investigation is being conducted by
 8 the Secretary under section 20703 or 20902 of this title.

9 “(f) CRIMINAL PENALTIES.—A person violating this
 10 section shall be fined under title 18, imprisoned for not
 11 more than two years, or both.”.

12 (b) TABLE OF SECTIONS AMENDMENT.—The table of
 13 sections of subchapter II of chapter 213, is amended by
 14 adding at the end the following new item:

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

15 **TITLE V—MISCELLANEOUS** 16 **PROVISIONS**

17 **SEC. 501. EXPANSION OF EMERGENCY ORDER AUTHORITY.**

18 Section 20104(a)(1) is amended by striking “death
 19 or personal injury” and inserting “death, personal injury,
 20 or significant harm to the environment”.

21 **SEC. 502. SAFETY CONSIDERATIONS IN GRANTS OR LOANS** 22 **TO COMMUTER RAILROADS.**

23 Section 5329 is amended by adding at the end the
 24 following new subsection:

1 “(c) COMMUTER RAILROAD SAFETY CONSIDER-
 2 ATIONS.—In making a grant or loan under this chapter
 3 that concerns a railroad subject to the Secretary’s safety
 4 jurisdiction under section 20102 of this title, the Federal
 5 Transit Administrator shall consult with the Federal Rail-
 6 road Administrator concerning relevant safety issues. The
 7 Secretary may use appropriate authority under this chap-
 8 ter, including the authority to prescribe particular terms
 9 or covenants under section 5334 of this title, to address
 10 any safety issues identified in the project supported by the
 11 loan or grant.”.

12 **SEC. 503. TECHNICAL AMENDMENTS REGARDING ADJUST-**
 13 **MENT OF CIVIL PENALTIES FOR INFLATION.**

14 (a) CHAPTER 201 GENERAL VIOLATIONS.—In sec-
 15 tion 21301(a)(2), insert after “\$10,000” and after
 16 “\$20,000” the following: “or within the range of such
 17 other amounts to which the stated minimum and maxi-
 18 mum penalties are adjusted if required by the Federal
 19 Civil Penalties Inflation Adjustment Act of 1990 (Public
 20 Law 101–410; 28 U.S.C. 2461 note)”.

21 (b) CHAPTER 201 ACCIDENT AND INCIDENT VIOLA-
 22 TIONS AND CHAPTER 203–209 VIOLATIONS.—In section
 23 21302(a)(2), insert after “\$10,000” and after “\$20,000”
 24 the following: “or within the range of such other amounts
 25 to which the stated minimum and maximum penalties are

1 adjusted if required by the Federal Civil Penalties Infla-
 2 tion Adjustment Act of 1990 (Public Law 101–410; 28
 3 U.S.C. 2461 note)”.
 4

5 (c) CHAPTER 211 VIOLATIONS.—In section
 6 21303(a)(2), insert after “\$10,000” and after “\$20,000”
 7 the following: “or within the range of such other amounts
 8 to which the stated minimum and maximum penalties are
 9 adjusted if required by the Federal Civil Penalties Infla-
 10 tion Adjustment Act of 1990 (Public Law 101–410; 28
 11 U.S.C. 2461 note)”.
 12

13 **SEC. 504. EMERGENCY NOTIFICATION OF GRADE CROSSING**
 14 **PROBLEMS.**
 15

16 Section 20152 is revised to read as follows:

17 **“§ 20152. Emergency notification of grade crossing**
 18 **problems**
 19

20 “(a) PROGRAM.—(1) The Secretary of Transpor-
 21 tation shall promote the establishment of emergency noti-
 22 fication systems utilizing toll-free telephone numbers that
 23 the public can use to convey to railroad carriers, either
 24 directly or through public safety personnel, information
 25 about malfunctions of automated warning devices or other
 26 safety problems at highway-rail grade crossings.

27 “(2) To assist in encouraging widespread use of such
 28 systems, the Secretary may provide technical assistance
 29 and enter into cooperative agreements. Such assistance

1 shall include appropriate emphasis on the public safety
2 needs associated with operation of small railroads.

3 “(b) REPORT.—Not later than 24 months following
4 enactment of the Federal Railroad Safety Authorization
5 Act of 1998, the Secretary shall report to the Congress
6 the status of such emergency notification systems, to-
7 gether with any recommendations for further legislation
8 that the Secretary considers appropriate.”.

9 **SEC. 505. AUTHORIZATION OF APPROPRIATIONS.**

10 Section 20117(a)(1) is amended by striking subpara-
11 graphs (A) through (E), redesignating subparagraph (F)
12 as subparagraph (A), and inserting after newly designated
13 subparagraph (A) the following new subparagraphs:

14 “(B) \$82,086,000 for fiscal year 1999.

15 “(C) Such sums as may be necessary for fiscal
16 years 2000–2002.”.

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