

107TH CONGRESS
2D SESSION

H. R. 4761

To reform the safety practices of the railroad industry, to prevent railroad fatalities, injuries, and hazardous materials releases, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 16, 2002

Mr. OBERSTAR (for himself and Mr. FILNER) introduced the following bill;
which was referred to the Committee on Transportation and Infrastructure

A BILL

To reform the safety practices of the railroad industry, to prevent railroad fatalities, injuries, and hazardous materials releases, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Railroad Safety Reform Act of 2002”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Amendment of title 49, United States Code.

TITLE I—EMPLOYEE FATIGUE

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 and power directors.
- Sec. 105. Employee sleeping quarters.
- Sec. 106. Fatigue management plans.
- Sec. 107. Conforming amendments.
- Sec. 108. Limitations on duty hours of transport vehicle drivers.
- Sec. 109. Electronic recordkeeping.
- Sec. 110. Split shifts.
- Sec. 111. Rotating shifts.
- Sec. 112. Recommendations on hours of service changes.

TITLE II—PROTECTION OF EMPLOYEES AND WITNESSES

- Sec. 201. Expansion of employee protections.
- Sec. 202. Employee reports.
- Sec. 203. Audits of reporting.
- Sec. 204. Interfering with or hampering safety investigations.

TITLE III—GRADE CROSSING SAFETY

- Sec. 301. Toll-free number to report grade crossing problems.
- Sec. 302. Grade crossing signal violations.

TITLE IV—PASSENGER SERVICE SAFETY STANDARDS

- Sec. 401. Emergency windows.
- Sec. 402. Passenger railroad signal systems.
- Sec. 403. Passenger locomotive fuel tanks.
- Sec. 404. Positive train control.

TITLE V—SAFETY RULEMAKING AND ENFORCEMENT

- Sec. 501. Purpose.
- Sec. 502. Railroad safety conference.
- Sec. 503. Rulemaking process.
- Sec. 504. Crane safety.
- Sec. 505. Railroad car visibility.
- Sec. 506. High-speed rail noise regulation.
- Sec. 507. Track safety.
- Sec. 508. Enhanced inspection and investigation authority under the Federal railroad safety laws.
- Sec. 509. Expansion of emergency order authority.
- Sec. 510. Safety inspectors.

TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. Safety considerations in grants or loans to commuter railroads.
- Sec. 602. Technical amendments regarding adjustment of civil penalties for inflation.
- Sec. 603. Certification of locomotive engineers and other safety-related railroad personnel.
- Sec. 604. Transport motor vehicle inspections.
- Sec. 605. Conrail safety exemption.
- Sec. 606. Seniority rights.

1 **SEC. 2. FINDINGS.**

2 The Congress makes the following findings:

3 (1) The railroad industry has achieved a reduc-
4 tion in the number of fatalities, and the number of
5 some types of accidents, such as collisions and
6 grade-crossing accidents, has fallen sharply. But the
7 number of derailments and employee fatalities has
8 remained almost unchanged in recent years, and
9 some key safety issues have not been adequately ad-
10 dressed. Employee fatigue remains a critical prob-
11 lem, and harassment and intimidation of railroad
12 employees continue to cast doubt on the reliability of
13 rail safety statistics and to create a hostile working
14 environment that is not conducive to safety. Con-
15 certed efforts are needed to address these problems
16 so that railroad safety can be further improved.

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

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

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

1 dustry consensus and, accordingly, that are more
2 readily understood and more consistently complied
3 with, than rules developed under more traditional
4 methods.

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

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

12 **TITLE I—EMPLOYEE FATIGUE**

13 **SEC. 101. DEFINITIONS.**

14 Section 21101 is amended—

15 (1) by amending paragraph (2) to read as fol-
16 lows:

17 “(2) ‘dispatching service employee’ means an
18 operator, train dispatcher, or other train employee,
19 including an employee of an independent contractor,
20 who—

21 “(A) by the use of an electrical or mechan-
22 ical device dispatches, reports, transmits, re-
23 ceives, or delivers orders related to or affecting
24 train movements; or

1 “(B) directly supervises an employee who
2 carries out responsibilities described in subpara-
3 graph (A),

4 but such term does not include a power director.”;

5 (2) by redesignating paragraphs (3), (4), and
6 (5), as paragraphs (4), (7), and (8), respectively;

7 (3) by inserting after paragraph (2) the fol-
8 lowing new paragraph:

9 “(3) ‘dually employed’ means being at the same
10 time in the employ of two or more railroad carriers,
11 of two or more independent contractors, or of both
12 one or more railroad carriers and one or more inde-
13 pendent contractors.”;

14 (4) in paragraph (4), as so redesignated by
15 paragraph (2) of this section, by striking “or a train
16 employee” and inserting “a train employee, a power
17 director, or a transport vehicle driver”;

18 (5) by inserting after paragraph (4), as so re-
19 designated by paragraph (2) of this section, the fol-
20 lowing new paragraphs:

21 “(5) ‘independent contractor’ means an inde-
22 pendent contractor to a railroad carrier and includes
23 a subcontractor to an independent contractor.

24 “(6) ‘power director’ means—

1 “(A) a train employee, including an em-
2 ployee of an independent contractor, who af-
3 fects the movement of trains through control of
4 third rail or pantographic electric power; and

5 “(B) an individual, including an employee
6 of an independent contractor, who—

7 “(i) supervises operations and section-
8 alizing of an electric power distribution
9 system which transmits electrical energy
10 for the propulsion of trains;

11 “(ii) directs opening and closing of
12 circuit breakers affecting the movement of
13 trains and for the protection of employees
14 and others engaged in work on, or in close
15 proximity to, any portion of the electric
16 power distribution system which transmits
17 electrical energy for the propulsion of
18 trains; or

19 “(iii) disconnects and sectionalizes
20 switches as required for the movement of
21 trains and for the protection of employees
22 and others engaged in work on, or in close
23 proximity to, any portion of the electric
24 power distribution system which transmits

1 electrical energy for the propulsion of
2 trains.”;

3 (6) in paragraph (7), as so redesignated by
4 paragraph (2) of this section, by striking “employed
5 by a railroad carrier who is engaged in installing, re-
6 pairing, or maintaining signal systems” and insert-
7 ing “engaged in installing, repairing, or maintaining
8 signal systems, including an employee of an inde-
9 pendent contractor, and including any individual
10 who directly supervises an individual engaged in
11 those activities”;

12 (7) in paragraph (8), as so redesignated by
13 paragraph (2) of this section, by inserting “and an
14 employee of an independent contractor, and any in-
15 dividual who directly supervises an individual en-
16 gaged in those activities” after “including a hos-
17 tler”; and

18 (8) by adding at the end the following new
19 paragraphs:

20 “(9) ‘transport motor vehicle’ means a motor
21 vehicle used to transport any person employed by a
22 railroad carrier or its independent contractors to or
23 from a work site.

24 “(10) ‘transport vehicle driver’ means a man-
25 ager, supervisor, official, agent, or other employee of

1 a railroad carrier or its independent contractor who
2 drives a transport motor vehicle to or from a work
3 site for the purpose of transporting persons em-
4 ployed by a railroad carrier or its independent con-
5 tractors.”.

6 **SEC. 102. LIMITATIONS ON DUTY HOURS OF TRAIN EM-**
7 **PLOYEES.**

8 (a) GENERAL RULES.—Section 21103(a) is
9 amended—

10 (1) by striking “officers” and inserting “man-
11 agers, supervisors, officers,”; and

12 (2) by striking paragraphs (1) and (2) and in-
13 serting in lieu thereof the following:

14 “(1) unless that employee, during the prior 24
15 hours, has had at least 8 consecutive hours off duty,
16 during which the employee receives no communica-
17 tion from such employing railroad carrier or its
18 managers, supervisors, officers, and agents;

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

21 “(3) after that employee has been on duty for
22 10 or more consecutive hours, unless that employee
23 immediately after being released from such period of
24 duty has at least 10 consecutive hours off duty;

1 “(4) unless that employee has received notice at
2 least 8 hours before beginning such duty;

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

6 “(6) unless, when last released from duty at
7 that employee’s home terminal, the employee had as
8 much time off duty at the employee’s home terminal
9 as the employee most recently had off duty at an
10 away-from-home designated terminal of the em-
11 ployee.

12 In the case of a dually employed employee, a railroad car-
13 rier shall not be held responsible for violating this sub-
14 section because of the employee’s work schedule for an-
15 other employer if none of the railroad carrier’s managers,
16 supervisors, officers, and agents had actual knowledge of
17 that work schedule. For purposes of the preceding sen-
18 tence, a railroad carrier’s managers, supervisors, officers,
19 and agents shall be considered to have actual knowledge
20 of the work schedules of the train employees of its inde-
21 pendent contractors. A railroad carrier shall be held re-
22 sponsible for the actions of its independent contractors in
23 requiring or allowing a train employee to remain or go
24 on duty.”.

1 (b) DETERMINING TIME ON DUTY.—Section
2 21103(b) is amended—

3 (1) in paragraph (3), by striking “the railroad
4 carrier” and inserting “a railroad carrier or inde-
5 pendent contractor”;

6 (2) in paragraph (4), by inserting “or waiting
7 on a train for deadhead transportation from a duty
8 assignment” after “to a duty assignment”;

9 (3) in paragraph (7)(D), by striking “officer or
10 agent” and inserting “manager, supervisor, officer,
11 or agent”; and

12 (4) by inserting the following new paragraph at
13 the end:

14 “(8) All time on duty for any railroad carrier
15 or independent contractor shall be included.”.

16 (c) NOTICE ABOUT DUAL EMPLOYMENT.—Section
17 21103 is amended by adding at the end the following new
18 subsection:

19 “(d) NOTICE ABOUT DUAL EMPLOYMENT.—(1) Not
20 later than January 31 each year, a railroad carrier shall
21 inform in writing each train employee engaged in or con-
22 nected with the movement of a train the railroad carrier
23 operates—

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

1 more independent contractors counts as time on
2 duty under this section;

3 “(B) about the employee’s responsibilities under
4 paragraph (2); and

5 “(C) about the penalties applicable under sec-
6 tion 21303 to a failure to comply with paragraph (2)
7 of this subsection.

8 “(2) A dually employed train employee shall—

9 “(A) inform each of his or her railroad carrier
10 and independent contractor employers in writing
11 within 5 days after entering into an employment re-
12 lationship with an additional railroad carrier or inde-
13 pendent contractor; and

14 “(B) ensure that each of his or her railroad
15 carrier and independent contractor employers is kept
16 informed about the employee’s work schedule with
17 each of the other employing railroad carriers and
18 independent contractors.

19 “(3) A railroad carrier or independent contractor re-
20 ceiving written notification of dual employment shall re-
21 tain a copy of the notification for a period of two years
22 after the termination of such dual employment status. A
23 copy of such notification shall be made available to rep-
24 resentatives of the Secretary of Transportation for inspec-
25 tion and copying during normal business hours at the rail-

1 road carrier's or independent contractor's system head-
 2 quarters and at such subsystem headquarters as may be
 3 required by the Secretary by regulation.”.

4 **SEC. 103. LIMITATIONS ON DUTY HOURS OF SIGNAL EM-**
 5 **PLOYEES.**

6 (a) GENERAL RULES.—Section 21104(a)(2) is
 7 amended—

8 (1) by striking “officers” and inserting “man-
 9 agers, supervisors, officers,”; and

10 (2) by inserting after subparagraph (C) the fol-
 11 lowing:

12 “In the case of a dually employed employee, a railroad
 13 carrier shall not be held responsible for violating this para-
 14 graph because of the employee's work schedule for another
 15 employer if none of the railroad carrier's managers, super-
 16 visors, officers, and agents had actual knowledge of that
 17 work schedule. For purposes of the preceding sentence, a
 18 railroad carrier's managers, supervisors, officers, and
 19 agents shall be considered to have actual knowledge of the
 20 work schedules of the signal employees of its independent
 21 contractors. A railroad carrier shall be held responsible for
 22 the actions of its independent contractors in requiring or
 23 allowing a signal employee to remain or go on duty.”.

24 (b) DETERMINING TIME ON DUTY.—Section
 25 21104(b) is amended—

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

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 shall be included.”.

12 (c) EMERGENCIES.—Section 21104(c) is amended by
13 adding at the end the following: “In the case of a grade
14 crossing at which a grade crossing protection device is con-
15 tinuously operating or wholly nonoperational, a signal em-
16 ployee may be allowed to remain or go on duty as provided
17 under this subsection to prevent motorists from entering
18 such grade crossing, but may not be allowed to remain
19 or go on duty as provided under this subsection to repair
20 or inspect the device. If a signal employee has not received
21 8 or 10 consecutive hours off duty as required by sub-
22 section (a)(2), and such employee is called to duty between
23 12 midnight and 6 a.m., the employee in his sole judgment
24 may refuse to go on duty if he feels too tired to perform
25 the work safely.”.

1 (d) NOTICE ABOUT DUAL EMPLOYMENT.—Section
2 21104 is amended by adding at the end the following new
3 subsection:

4 “(d) NOTICE ABOUT DUAL EMPLOYMENT.—(1) Not
5 later than January 31 each year, a railroad carrier shall
6 inform in writing each signal employee engaged in install-
7 ing, repairing, or maintaining signal systems for the rail-
8 road carrier—

9 “(A) that all time spent performing aggregate
10 duty for one or more railroad carriers and one or
11 more independent contractors counts as time on
12 duty under this section;

13 “(B) about the employee’s responsibilities under
14 paragraph (2); and

15 “(C) about the penalties applicable under sec-
16 tion 21303 to a failure to comply with paragraph (2)
17 of this subsection.

18 “(2) A dually employed signal employee shall—

19 “(A) inform each of his or her railroad carrier
20 and independent contractor employers in writing
21 within 5 days after entering into an employment re-
22 lationship with an additional railroad carrier or inde-
23 pendent contractor; and

24 “(B) ensure that each of his or her railroad
25 carrier and independent contractor employers is kept

1 informed about the employee’s work schedule with
 2 each of the other employing railroad carriers and
 3 independent contractors.

4 “(3) A railroad carrier or independent contractor re-
 5 ceiving written notification of dual employment shall re-
 6 tain a copy of the notification for a period of two years
 7 after the termination of such dual employment status. A
 8 copy shall be made available to representatives of the Sec-
 9 retary of Transportation for inspection and copying during
 10 normal business hours at the railroad carrier’s or inde-
 11 pendent contractor’s system headquarters and at such
 12 subsystem headquarters as may be required by the Sec-
 13 retary by regulation.”.

14 **SEC. 104. LIMITATIONS ON DUTY HOURS OF DISPATCHING**
 15 **SERVICE EMPLOYEES AND POWER DIREC-**
 16 **TORS.**

17 (a) APPLICATION.—Section 21105(a) is amended by
 18 inserting “or power director” after “dispatching service
 19 employee”.

20 (b) GENERAL RULES.—Section 21105(b) is
 21 amended—

22 (1) by striking “subsection (d)” and inserting
 23 “subsection (e)”;

1 (2) by inserting “by a railroad carrier or its
2 managers, supervisors, officers, and agents” after
3 “or allowed”; and

4 (3) by inserting after paragraph (2) the fol-
5 lowing:

6 “In the case of a dually employed employee, a railroad
7 carrier shall not be held responsible for violating this sub-
8 section because of the employee’s work schedule for an-
9 other employer if none of the railroad carrier’s managers,
10 supervisors, officers, and agents had actual knowledge of
11 that work schedule. For purposes of the preceding sen-
12 tence, a railroad carrier’s managers, supervisors, officers,
13 and agents shall be considered to have actual knowledge
14 of the work schedules of the dispatching service employees
15 of its independent contractors. A railroad carrier shall be
16 held responsible for the actions of its independent contrac-
17 tors in requiring or allowing a dispatching service em-
18 ployee to remain or go on duty.”.

19 (c) REDESIGNATION.—Subsections (c) and (d) of sec-
20 tion 21105 are redesignated as subsections (d) and (e),
21 respectively.

22 (d) POWER DIRECTORS.—Section 21105 is amended
23 by inserting after subsection (b) the following new sub-
24 section:

1 “(c) POWER DIRECTORS.—A railroad carrier and its
2 managers, supervisors, officers, and agents may not re-
3 quire or allow a power director to remain or go on duty
4 for more than a total of 12 hours during a 24-hour pe-
5 riod.”.

6 (e) DETERMINING TIME ON DUTY.—Section
7 21105(d), as so redesignated by subsection (c) of this sec-
8 tion, is amended to read as follows:

9 “(d) DETERMINING TIME ON DUTY.—In determining
10 under subsection (b) or (c) the time a dispatching service
11 employee or power director is on or off duty, time spent
12 performing any other service for one or more railroad car-
13 riers or independent contractors (or a combination there-
14 of) during a 24-hour period in which the employee is on
15 duty in a tower, office, station, or other place is time on
16 duty in that tower, office, station, or place, and counts
17 toward the employee’s aggregate time on duty.”.

18 (f) NOTICE ABOUT DUAL EMPLOYMENT.—Section
19 21105 is amended by adding at the end the following new
20 subsection:

21 “(f) NOTICE ABOUT DUAL EMPLOYMENT.—(1) Not
22 later than January 31 each year, a railroad carrier shall
23 inform each of its dispatching service employees and power
24 directors in writing—

1 “(A) that all time spent performing aggregate
2 duty for one or more railroad carriers and one or
3 more independent contractors counts as time on
4 duty under this section;

5 “(B) about the employee’s responsibilities under
6 paragraph (2); and

7 “(C) about the penalties applicable under sec-
8 tion 21303 to a failure to comply with paragraph (2)
9 of this subsection.

10 “(2) A dually employed dispatching service employee
11 or power director shall—

12 “(A) inform each of his or her railroad carrier
13 and independent contractor employers in writing
14 within 5 days after entering into an employment re-
15 lationship with an additional railroad carrier or inde-
16 pendent contractor; and

17 “(B) ensure that each of his or her railroad
18 carrier and independent contractor employers is kept
19 informed about the employee’s work schedule with
20 each of the other employing railroad carriers and
21 independent contractors.

22 “(3) A railroad carrier or independent contractor re-
23 ceiving written notification of dual employment shall re-
24 tain a copy of the notification for a period of two years
25 after the termination of such dual employment status. A

1 copy shall be made available to representatives of the Sec-
 2 retary of Transportation for inspection and copying during
 3 normal business hours at the railroad carrier's or inde-
 4 pendent contractor's system headquarters and at such
 5 subsystem headquarters as may be required by the Sec-
 6 retary by regulation.”.

7 (g) TECHNICAL AMENDMENTS.—(1) The heading of
 8 section 21105 is amended by inserting “**and power di-**
 9 **rectors**” after “**service employees**”.

10 (2) The item in the table of sections of chapter 211
 11 relating to section 21105 is amended by inserting “and
 12 power directors” after “service employees”.

13 **SEC. 105. EMPLOYEE SLEEPING QUARTERS.**

14 Section 21106 is amended to read as follows:

15 “**§ 21106. Limitations on employee sleeping quarters**

16 “(a) GENERAL RULE.—A railroad carrier and its
 17 managers, supervisors, officers, and agents may provide
 18 sleeping quarters (including crew quarters, camp or bunk
 19 cars, and trailers) for employees, including signal employ-
 20 ees, and for any individuals employed to maintain the
 21 right of way of a railroad carrier, only if the sleeping
 22 quarters—

23 “(1) are clean, safe, and sanitary;

1 “(2) give those employees and other individuals
2 an opportunity for rest free from the interruptions
3 caused by noise; and

4 “(3) provide a separate bedroom for each em-
5 ployee or other individual.

6 “(b) LOCATION.—Effective January 1, 2003, sleep-
7 ing quarters referred to in subsection (a) shall not be lo-
8 cated in an area or in the immediate vicinity of an area,
9 as determined under regulations prescribed by the Sec-
10 retary of Transportation, in which railroad switching or
11 humping operations are performed.

12 “(c) MAXIMUM NOISE LEVELS.—The Secretary, in
13 prescribing regulations under this section, shall set max-
14 imum noise levels which may be experienced in sleeping
15 quarters. Such levels shall be based in part on single event
16 noise levels.”.

17 **SEC. 106. FATIGUE MANAGEMENT PLANS.**

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

20 **“§ 21109. Fatigue management plans**

21 “(a) PLAN SUBMISSION.—

22 “(1) REQUIREMENT.—(A) Each Class I and
23 Class II railroad carrier, each railroad carrier pro-
24 viding intercity rail passenger transportation (as
25 such term is defined in section 24102), and each

1 railroad carrier providing commuter rail passenger
2 transportation (as such term is defined in section
3 24102), shall submit to the Secretary of Transpor-
4 tation a fatigue management plan that is designed
5 to reduce the fatigue experienced by railroad employ-
6 ees employed by the railroad carrier or its inde-
7 pendent contractors and to reduce the likelihood of
8 accidents and injuries caused by fatigue. The plan
9 shall address safety effects of fatigue on all employ-
10 ees, including employees not covered by this chapter.
11 The plan shall be submitted not later than 1 year
12 after the date of the enactment of this section, or
13 not later than 45 days prior to commencing oper-
14 ations, whichever is later.

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

20 “(C) The Secretary may require resubmission
21 or revision of a fatigue management plan at any
22 time.

23 “(2) CONTENTS OF PLAN.—The fatigue man-
24 agement plan shall—

25 “(A) include the railroad carrier’s—

1 “(i) reasons for deciding whether to
2 include or not include each element de-
3 scribed in subsection (b)(2) and (3) in the
4 fatigue management plan; and

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

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

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

14 “(3) APPROVAL.—(A) The Secretary shall re-
15 view each proposed plan and proposed amendment
16 to a plan and approve or disapprove such plan or
17 amendment based on whether the requirements of
18 this section are sufficiently and appropriately ad-
19 dressed and the proposals are adequately justified in
20 the plan or amendment.

21 “(B) If the proposed plan or amendment to the
22 plan is not approved, the Secretary shall notify the
23 affected railroad carrier as to the specific points in
24 which the proposed plan or amendment to the plan
25 is deficient, and the railroad carrier shall correct all

1 deficiencies within 30 days following receipt of writ-
2 ten notice from the Secretary. If a railroad carrier
3 does not submit a plan (or, when directed by the
4 Secretary, an amended plan), or if a railroad car-
5 rier's amended plan is not approved by the Sec-
6 retary, the Secretary shall prescribe a fatigue man-
7 agement plan for the railroad carrier.

8 “(4) AMENDMENTS.—Each affected railroad
9 carrier shall file any proposed amendment to its plan
10 with the Secretary not later than 60 days prior to
11 the proposed effective date of the amendment.

12 “(5) EMPLOYEE PARTICIPATION.—(A) Each af-
13 fected railroad carrier shall consult with, and employ
14 good faith and use its best efforts to reach agree-
15 ment by consensus with, all of its directly affected
16 employee groups on the contents of the fatigue man-
17 agement plan and amendments to the plan, and, ex-
18 cept as provided in subparagraph (C), shall jointly
19 with such groups submit the plan and each amend-
20 ment to the plan to the Secretary.

21 “(B) In the event that labor organizations rep-
22 resent classes or crafts of directly affected employees
23 of the railroad carrier, the railroad carrier shall con-
24 sult with these organizations in drafting the plan
25 and amendments to the plan. The Secretary may

1 provide assistance to such parties in the drafting of
2 the plan and amendments to the plan.

3 “(C) If the railroad carrier and its directly af-
4 fected employees (including any labor organization
5 representing a class or craft of directly affected em-
6 ployees of the railroad carrier) cannot reach con-
7 sensus on the proposed contents of the plan or an
8 amendment to the plan, then—

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

11 “(ii) directly affected employees and labor
12 organizations representing a class or craft of di-
13 rectly affected employees may, at their option,
14 file a statement with the Secretary explaining
15 their views on the plan or amendment on which
16 consensus was not reached.

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

19 “(1) CONSIDERATION OF VARYING CIR-
20 CUMSTANCES.—Each plan filed with the Secretary
21 under the procedures of subsection (a) shall take
22 into account the varying circumstances of operations
23 by the railroad carrier on different parts of its sys-
24 tem, and shall prescribe appropriate fatigue counter-
25 measures to address those varying circumstances.

1 “(2) ISSUES AFFECTING ALL EMPLOYEES.—

2 With respect to all directly affected employees, in-
3 cluding scheduled employees and nonscheduled em-
4 ployees, the railroad carrier shall consider the need
5 to include in its fatigue management plan elements
6 addressing each of the following issues:

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

12 “(B) Opportunities for identification, diag-
13 nosis, and treatment of sleep disorders,
14 including—

15 “(i) screenings as part of required
16 physical examinations;

17 “(ii) questionnaires to identify em-
18 ployees at risk; and

19 “(iii) home screening of employees,
20 with the results thereof assessed by physicians
21 with a specialization in sleep disorders.

22 “(C) Effects on employee fatigue of emer-
23 gency response involving both short-term emer-
24 gency situations, including derailments, and

1 long-term emergency situations, including nat-
2 ural disasters.

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

10 “(E) Minimizing the incidence of fatigue
11 due to rotating shifts.

12 “(F) The effects of staffing levels and
13 workloads on fatigue.

14 “(G) Alertness strategies, such as policies
15 on napping, to address acute sleepiness and fa-
16 tigue while an employee is on duty.

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

20 “(I) In connection with the scheduling of a
21 duty call, increasing the number of consecutive
22 hours of rest off duty, during which an em-
23 ployee receives no communication from the em-
24 ploying railroad carrier or its managers, super-
25 visors, officers, or agents.

1 “(J) Avoiding abrupt changes in rest cy-
2 cles for employees returning to duty after an
3 extended absence due to circumstances such as
4 illness, injury, or vacation.

5 “(3) ISSUES AFFECTING NONSCHEDULED EM-
6 PLOYEES.—With respect only to nonscheduled em-
7 ployees, the railroad carrier shall consider the need
8 to include in its fatigue management plan elements
9 addressing each of the following issues:

10 “(A) Lengthening the notice provided to
11 an employee of the time to report for duty.

12 “(B) Work/rest cycles that guarantee a
13 greater minimum number of consecutive days
14 off than is afforded to scheduled employees (ex-
15 clusive of time off due to illness or injury).

16 “(c) WAIVER.—

17 “(1) PETITION.—A railroad carrier and all
18 labor organizations representing any class or craft of
19 directly affected employees of the railroad carrier
20 may jointly request, as part of a proposed fatigue
21 management plan, the waiver of any provisions of
22 this chapter. The Secretary shall publish any peti-
23 tion for such a waiver in the Federal Register and
24 shall provide all parties an opportunity to comment
25 on the petition. The Secretary shall also, on the re-

1 quest of any interested party, conduct a hearing on
2 the petition.

3 “(2) AUTHORITY TO WAIVE.—The Secretary is
4 authorized to waive any provision of this chapter
5 pursuant to a request under paragraph (1) or para-
6 graph (3) if the petition demonstrates to the Sec-
7 retary’s satisfaction that—

8 “(A) the waiver permits procedures that
9 are essential to achieving the objectives of re-
10 ducing fatigue and enhancing safety, which
11 would not be lawful without the waiver; and

12 “(B) the plan effectively protects the safe-
13 ty interest addressed by the provision to be
14 waived.

15 “(3) WHEN EMPLOYEES ARE NOT REP-
16 RESENTED BY LABOR ORGANIZATIONS.—In the
17 event that labor organizations do not represent
18 classes or crafts of directly affected employees of a
19 railroad carrier, the railroad carrier may, after con-
20 sulting with all of its directly affected employees or
21 employee groups in drafting the waiver request, re-
22 quest the waiver of any provisions of this chapter,
23 subject to the same conditions and procedures as a
24 request made under paragraph (1).

25 “(d) COMPLIANCE AND ENFORCEMENT.—

1 “(1) COMPLIANCE REQUIREMENT.—Effective
2 upon approval or prescription of a fatigue manage-
3 ment plan and amendments thereto under this sec-
4 tion, compliance with that fatigue management plan
5 and those amendments becomes mandatory and en-
6 forceable by the Secretary.

7 “(2) EFFECTIVE DATE.—A fatigue manage-
8 ment plan may include effective dates later than the
9 date of approval of the plan, and may include dif-
10 ferent effective dates for different parts of the plan.

11 “(3) AUDITS.—To enforce this section, the Sec-
12 retary may conduct inspections and periodic audits
13 of a railroad carrier’s compliance with its fatigue
14 management plan.

15 “(e) DEFINITIONS.—For purposes of this section—

16 “(1) the term ‘directly affected employees’
17 means employees, including employees of an inde-
18 pendent contractor, to whose hours of service the
19 terms of a fatigue management plan specifically
20 apply;

21 “(2) the term ‘interested party’ includes a labor
22 organization representing employees of a railroad
23 carrier performing work similar to the work per-
24 formed by the directly affected employees (who are
25 not members of a labor organization) of another

1 railroad carrier requesting a waiver under subsection
2 (c);

3 “(3) the term ‘nonscheduled employee’ means
4 an employee that is not a scheduled employee; and

5 “(4) the term ‘scheduled employee’ means an
6 employee who is assigned to work a tour of duty
7 with a regular and predictable starting and stopping
8 time.”.

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

“21109. Fatigue management plans.”.

12 **SEC. 107. CONFORMING AMENDMENTS.**

13 (a) Section 21102(a)(4) is amended by striking “offi-
14 cer or agent” and inserting “manager, supervisor, officer,
15 or agent”.

16 (b) Section 21303(a)(1) is amended by inserting “or
17 21109” after “section 21108”.

18 (c) Section 21303(c) is amended by striking “officers
19 and agents” and inserting “managers, supervisors, offi-
20 cers, agents, and independent contractors”.

21 **SEC. 108. LIMITATIONS ON DUTY HOURS OF TRANSPORT**
22 **VEHICLE DRIVERS.**

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

1 **“§ 21110. Limitations on duty hours of transport vehi-**
2 **cle drivers**

3 “(a) GENERAL.—Except as provided in subsection (c)
4 of this section, a railroad carrier and its managers, super-
5 visors, officers, and agents may not require or allow a
6 transport vehicle driver to remain or go on duty—

7 “(1) unless that transport vehicle driver has
8 had at least 8 consecutive hours off duty, during
9 which the transport vehicle driver receives no com-
10 munication from such employing railroad carrier or
11 its managers, supervisors, officers, and agents, dur-
12 ing the prior 24 hours;

13 “(2) for a period in excess of 10 consecutive
14 hours;

15 “(3) unless that transport vehicle driver has re-
16 ceived notice at least 8 hours before going on duty;
17 and

18 “(4) unless that transport vehicle driver has
19 had at least one period of at least 24 consecutive
20 hours off duty in the past 7 days.

21 In the case of a dually employed transport vehicle driver,
22 a railroad carrier shall not be held responsible for violating
23 this subsection because of the transport vehicle driver’s
24 work schedule for another employer if none of the railroad
25 carrier’s managers, supervisors, officers, and agents had
26 actual knowledge of that work schedule. For purposes of

1 the preceding sentence, a railroad carrier’s managers, su-
2 pervisors, officers, and agents shall be considered to have
3 actual knowledge of the work schedules of the transport
4 vehicle driver employees of its independent contractors. A
5 railroad carrier shall be held responsible for the actions
6 of its independent contractors in requiring or allowing a
7 transport vehicle driver to remain or go on duty.

8 “(b) DETERMINING TIME ON DUTY.—In determining
9 under subsection (a) of this section the time a transport
10 vehicle driver is on or off duty, the following rules apply:

11 “(1) Time on duty begins when the transport
12 vehicle driver reports for duty and ends when the
13 transport vehicle driver is finally released from duty.

14 “(2) Time when the transport vehicle driver is
15 engaged in or connected with the movement of a
16 transport motor vehicle is time on duty, even when
17 such vehicle is not actually transporting employees
18 of a railroad carrier or its independent contractor.

19 “(3) Time spent performing any other service
20 for a railroad carrier or for an independent con-
21 tractor for the benefit of a railroad carrier during a
22 24-hour period in which the transport vehicle driver
23 is engaged in or connected with the movement of a
24 transport motor vehicle is time on duty.

1 “(c) EMERGENCIES.—A transport vehicle driver, who
2 encounters an emergency and cannot, because of that
3 emergency, safely complete a transportation assignment
4 within the 10-hour maximum driving time permitted by
5 subsection (a)(2), may drive and be permitted or required
6 to drive a transport motor vehicle for not more than 2
7 additional hours in order to complete that transportation
8 assignment or to reach a place offering safety for the occu-
9 pants of the transport motor vehicle and security for the
10 transport motor vehicle, if such transportation assignment
11 reasonably could have been completed within such 10-hour
12 period absent the emergency. A railroad carrier shall exer-
13 cise due diligence to avoid or limit excess service even in
14 the event of an emergency.

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

18 “(A) that all time spent performing aggregate
19 duty for one or more railroad carriers and one or
20 more independent contractors counts as time on
21 duty under this section;

22 “(B) about the transport vehicle driver’s re-
23 sponsibilities under paragraph (2); and

1 “(C) about the penalties applicable under sec-
2 tion 21303 to a failure to comply with paragraph (2)
3 of this subsection.

4 “(2) A dually employed transport vehicle driver
5 shall—

6 “(A) inform each of his or her railroad carrier
7 and independent contractor employers in writing
8 within 5 days after entering into an employment re-
9 lationship with an additional railroad carrier or inde-
10 pendent contractor; and

11 “(B) ensure that each of his or her railroad
12 carrier and independent contractor employers is kept
13 informed about the transport vehicle driver’s work
14 schedule with each of the other employing railroad
15 carriers and independent contractors.

16 “(3) A railroad carrier or independent contractor re-
17 ceiving written notification of dual employment shall re-
18 tain a copy of the notification for a period of two years
19 after the termination of such dual employment status. A
20 copy shall be made available to representatives of the Sec-
21 retary of Transportation for inspection and copying during
22 normal business hours at the railroad carrier’s or inde-
23 pendent contractor’s system headquarters and at such
24 subsystem headquarters as may be required by the Sec-
25 retary by regulation.”.

1 (b) TABLE OF SECTIONS AMENDMENT.—The table of
 2 sections for chapter 211 is amended by adding after the
 3 item relating to section 21109 the following new item:

“21110. Limitations on duty hours of transport vehicle drivers.”.

4 **SEC. 109. ELECTRONIC RECORDKEEPING.**

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

7 **“§ 21111. Electronic recordkeeping**

8 “In rules or waivers issued under this part con-
 9 cerning recordkeeping related to compliance with this
 10 chapter, the Secretary of Transportation shall, where ap-
 11 propriate, permit that records be made, maintained, or
 12 submitted by electronic means. The Secretary shall ensure
 13 that railroad carriers making, maintaining, or submitting
 14 such records by electronic means—

15 “(1) provide adequate training to their employ-
 16 ees on how to use those electronic means; and

17 “(2) establish appropriate safeguards to ensure
 18 data integrity.”.

19 (b) TABLE OF SECTIONS AMENDMENT.—The table of
 20 sections for chapter 211 is amended by adding after the
 21 item relating to 21110 the following new item:

“21111. Electronic recordkeeping.”.

1 **SEC. 110. SPLIT SHIFTS.**

2 Section 21103, as amended by section 102 of this
3 Act, is further amended by adding at the end the following
4 new subsection:

5 “(e) SPLIT SHIFTS.—(1) A railroad carrier and its
6 managers, supervisors, officers, and agents may require
7 a train employee to work a split shift only if the split shift
8 begins between 12:01 a.m. and 11:59 a.m. and ends before
9 2:00 a.m. on the day following the day on which the shift
10 begins.

11 “(2) For purposes of this subsection, the term ‘split
12 shift’ means a tour of duty in which an employee, having
13 just completed a rest period of at least 8 hours, reports
14 for duty, works an initial work period, has an interim pe-
15 riod for rest of at least 4 hours but less than 8 hours
16 at the employee’s designated terminal, and then works one
17 or more additional work periods before being released for
18 a rest period of at least 8 hours.

19 “(3) For railroad carriers providing commuter rail
20 passenger transportation, as defined in section 24102 of
21 this title, and with respect to train employees engaged in
22 such transportation, this subsection shall take effect 90
23 days after the date of the enactment of the Railroad Safe-
24 ty Reform Act of 2002. For railroad carriers other than
25 those providing such commuter rail passenger transpor-
26 tation, and for train employees engaged in other forms of

1 railroad transportation, this subsection shall take effect 2
 2 years after the date of the enactment of the Railroad Safe-
 3 ty Reform Act of 2002.”.

4 **SEC. 111. ROTATING SHIFTS.**

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

7 **“§ 21112. Rotating shifts**

8 “(a) GENERAL RULE.—Except as provided in sec-
 9 tions 21103(c), 21104(c), and 21105(e), a railroad carrier
 10 and its managers, supervisors, officers, and agents may
 11 not require or allow an employee to report for duty to
 12 begin an 8-hour shift which begins at a time that is more
 13 than 4 hours earlier or more than 6 hours later than the
 14 time of day when that employee, within the previous 72
 15 hours, began a prior 8-hour shift.

16 “(b) DETERMINING TIME ON DUTY.—For purposes
 17 of this section, the rules for determining time on duty stat-
 18 ed in sections 21103(b), 21104(b), and 21105(d), as ap-
 19 propriate, shall apply.

20 “(c) STUDY.—Not later than 2 years after the date
 21 of the enactment of the Railroad Safety Reform Act of
 22 2002, the Secretary of Transportation shall transmit to
 23 the Congress the results of a study of—

24 “(1) the effect of rotating shifts on employee
 25 fatigue; and

1 “(2) alternative methods of preventing fatigue
2 due to rotating shifts.

3 Such report may include proposals for revisions to this
4 chapter.

5 “(d) DEFINITION.—For purposes of this section, the
6 term ‘8-hour shift’ means a period during which an em-
7 ployee is on duty for 8 consecutive hours or longer.”.

8 (b) CONFORMING AMENDMENT.—The table of sec-
9 tions for chapter 211 is amended by adding at the end
10 the following new item:

“21112. Rotating shifts.”.

11 **SEC. 112. RECOMMENDATIONS ON HOURS OF SERVICE**
12 **CHANGES.**

13 The Railroad Safety Advisory Committee shall con-
14 vene a working group to consider what legislative changes
15 might be appropriate to chapter 211 of title 49, United
16 States Code, relating to hours of service. Not later than
17 9 months after the date of the enactment of this Act, the
18 Advisory Committee shall report to the Administrator of
19 the Federal Railroad Administration on whether it has
20 reached consensus on any recommended changes, and if
21 so what they are. The Administrator shall transmit the
22 recommendations of the Advisory Committee to the Con-
23 gress. If the Advisory Committee has not reached con-
24 sensus on any recommendations, the Administrator shall,
25 not later than 6 months after receiving the report of the

1 Advisory Committee, transmit to the Congress the Admin-
2 istrator's recommendations for appropriate legislative
3 changes to such chapter 211.

4 **TITLE II—PROTECTION OF** 5 **EMPLOYEES AND WITNESSES**

6 **SEC. 201. EXPANSION OF EMPLOYEE PROTECTIONS.**

7 (a) PROTECTED ACTIONS.—Section 20109(a) is
8 amended to read as follows:

9 “(a) PROTECTED ACTIONS.—A railroad carrier en-
10 gaged in interstate or foreign commerce, and an officer
11 or employee of such a railroad carrier, shall not by threat,
12 intimidation, or otherwise attempt to prevent an employee
13 from, or discharge, discipline, or in any way discriminate
14 against an employee for—

15 “(1) filing a complaint or bringing or causing
16 to be brought a proceeding related to the enforce-
17 ment of this part or, as applicable to railroad safety,
18 chapter 51 or 57 of this title;

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

21 “(3) notifying, or attempting to notify, the rail-
22 road carrier of a work-related personal injury or
23 work-related illness of an employee;

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

4 “(5) furnishing information to the Secretary of
5 Transportation, the National Transportation Safety
6 Board, or any other public official as to the facts re-
7 lating to any accident or incident resulting in injury
8 or death to an individual or damage to property oc-
9 curring in connection with railroad transportation;
10 or

11 “(6) accurately reporting hours of duty or dual
12 employment status pursuant to chapter 211.”.

13 (b) HAZARDOUS CONDITIONS.—Section 20109(b) is
14 amended to read as follows:

15 “(b) HAZARDOUS CONDITIONS.—(1) A railroad car-
16 rier engaged in interstate or foreign commerce, and an of-
17 ficer or employee of such a railroad carrier, shall not by
18 threat, intimidation, or otherwise attempt to prevent an
19 employee from, or discharge, discipline, or in any way dis-
20 criminate against an employee for—

21 “(A) reporting a hazardous condition;

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

1 “(C) refusing to authorize the use of any safe-
2 ty-related equipment, track, or structures, if the em-
3 ployee is responsible for the inspection or repair of
4 the equipment, track, or structures, when the em-
5 ployee believes that the equipment, track, or struc-
6 tures are in a hazardous condition, if the conditions
7 described in paragraph (2) exist.

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

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

13 “(B) the employee reasonably concludes that—

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

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

19 “(C) the employee, where possible, has notified
20 the carrier of the existence of the hazardous condi-
21 tion and the intention not to perform further work,
22 or not to authorize the use of the hazardous equip-
23 ment, track, or structures, unless the condition is
24 corrected immediately.

1 “(3) This subsection does not apply to security per-
2 sonnel employed by a railroad carrier to protect individ-
3 uals and property transported by railroad.”.

4 (c) ENFORCEMENT AND DISPUTE RESOLUTION.—
5 Section 20109(c) is amended—

6 (1) by striking “DISPUTE RESOLUTION.—A
7 dispute” and inserting “ENFORCEMENT AND DIS-
8 PUTE RESOLUTION.—(1) The Secretary of Trans-
9 portation may enforce this section under section
10 20111, the Attorney General may enforce this sec-
11 tion under section 20112, and the States may en-
12 force this section under section 20113.

13 “(2) Any employee aggrieved by a violation of sub-
14 section (a) or (b) may in a civil action obtain appropriate
15 relief.

16 “(3) A dispute”;

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

1 (3) by striking the last sentence and inserting
2 the following: “If the employee has been found by
3 the Board, division, delegate, or board of adjustment
4 to have been discharged, suspended, or otherwise
5 discriminated against in violation of subsection (a)
6 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.”; and

12 (4) by adding at the end the following new
13 paragraph:

14 “(4) An employee may not seek relief under both
15 paragraph (2) and paragraph (3) with respect to the same
16 violation.”.

17 (d) PENALTIES.—

18 (1) CIVIL PENALTIES.—Section 21302(a)(1) is
19 amended by striking “a regulation prescribed or
20 order issued under chapter 201 of this title” and in-
21 serting “chapter 201 of this title, or a regulation
22 prescribed or order issued under chapter 201,”.

23 (2) CRIMINAL PENALTIES.—Section 21311(a) is
24 amended—

1 (A) by striking “or” at the end of para-
 2 graph (4);

3 (B) by striking the period at the end of
 4 paragraph (5) and inserting “; or”; and

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

7 “(6) violates section 20109.”.

8 (e) EXCLUSION FROM EMPLOYMENT.—

9 (1) AMENDMENT.—Chapter 213 is amended by
 10 adding at the end the following new subchapter:

11 “SUBCHAPTER III—EXCLUSION FROM
 12 EMPLOYMENT

13 “§ 21321. **Exclusion from employment**

14 “(a) EXCLUSION FROM EMPLOYMENT.—The Sec-
 15 retary of Transportation may, in order to preserve railroad
 16 safety and protect safety-critical railroad employees from
 17 harassment and intimidation, issue an order excluding
 18 from employment by a railroad carrier as a safety-critical
 19 employee, including employment as a supervisor of a safe-
 20 ty-critical employee, any individual—

21 “(1) who has violated section 20109 of this title
 22 or who has harassed or intimidated a railroad em-
 23 ployee with the intent of discouraging that employee
 24 from reporting—

25 “(A) a reportable accident or injury; or

1 “(B) track, equipment, or operating prac-
2 tices that violate the standards promulgated by
3 the Secretary pursuant to this part; and

4 “(2) who has demonstrated personal dishonesty
5 or willful or continuing disregard for railroad safety
6 or the integrity or accuracy of railroad safety report-
7 ing requirements under section 20901 of this title.

8 “(b) OPPORTUNITY FOR HEARING.—An order under
9 subsection (a) may be issued only after the individual who
10 is the subject of the proposed order is given notice of the
11 reasons for the proposed order and an opportunity for a
12 hearing.

13 “(c) DURATION.—An order under subsection (a) shall
14 be of indefinite duration. Not less than 1 year after the
15 issuance of such an order, an individual subject to such
16 an order may petition the Secretary for the rescission of
17 the order. The Secretary may grant such a petition if the
18 Secretary finds that employment by a railroad carrier of
19 the individual who was the subject of the order is not likely
20 to result in a reduction in railroad safety or in an in-
21 creased likelihood of harassment and intimidation of safe-
22 ty-critical railroad employees.”.

23 “(2) TABLE OF SECTIONS AMENDMENT.—The
24 table of sections of part A of subtitle V is amended
25 by adding at the end the following:

“SUBCHAPTER III—EXCLUSION FROM EMPLOYMENT

“21321. Exclusion from employment.”.

1 (3) CONFORMING AMENDMENTS.—(A) The
2 heading of chapter 213 is amended by inserting
3 “**AND REMEDIES**” after “**PENALTIES**”.

4 (B) The item relating to chapter 213 in the
5 table of chapters of subtitle V is amended by insert-
6 ing “AND REMEDIES” after “PENALTIES”.

7 **SEC. 202. EMPLOYEE REPORTS.**

8 Section 20901(a) is amended—

9 (1) by striking “the carrier’s operations” and
10 inserting in lieu thereof “the operations of the car-
11 rier or of any contractor to the carrier working on
12 the carrier’s property or operating the carrier’s
13 equipment”; and

14 (2) by inserting “The report shall also include
15 copies of any written safety-related complaint or re-
16 port filed with the carrier by an employee or con-
17 tractor during the month, whether or not the com-
18 plaint or report relates to a reported accident or in-
19 cident.” after “contributed to the accident or inci-
20 dent.”.

21 **SEC. 203. AUDITS OF REPORTING.**

22 Section 20901 is amended by adding at the end the
23 following new subsection:

1 “(c) AUDITS.—A railroad carrier shall at least annu-
 2 ally have an audit conducted of the process by which it
 3 reports accidents and incidents pursuant to subsection (a).
 4 The audit shall determine whether the reporting process
 5 is substantially accurate as to the numbers and severity
 6 of accidents and incidents. The audit shall be conducted
 7 by an independent auditor approved by the Secretary.”.

8 **SEC. 204. INTERFERING WITH OR HAMPERING SAFETY IN-**
 9 **VESTIGATIONS.**

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

12 **“§ 21312. Interfering with or hampering safety inves-**
 13 **tigations**

14 “(a) IN GENERAL.—It shall be unlawful for any per-
 15 son knowingly to interfere with, obstruct, or hamper an
 16 investigation by the Secretary of Transportation con-
 17 ducted under section 20703 or 20902 of this title, or a
 18 railroad investigation by the National Transportation
 19 Safety Board under chapter 11 of this title.

20 “(b) INTIMIDATION AND HARASSMENT.—It shall be
 21 unlawful for any person, with regard to an investigation
 22 conducted by the Secretary under section 20703 or 20902
 23 of this title, or a railroad investigation by the National
 24 Transportation Safety Board under chapter 11 of this
 25 title, knowingly or intentionally to use intimidation, har-

1 assessment, threats, or physical force toward another person,
2 or corruptly persuade another person, or attempt to do
3 so, or engage in misleading conduct toward another per-
4 son, with the intent or effect of—

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

7 “(2) hindering, delaying, preventing, or dis-
8 suading any person from—

9 “(A) attending a proceeding or interview
10 with, testifying before, or providing a written
11 statement to, a National Transportation Safety
12 Board railroad investigator, a Federal railroad
13 safety inspector or State railroad safety inspec-
14 tor, or their superiors;

15 “(B) communicating or reporting to a Na-
16 tional Transportation Safety Board railroad in-
17 vestigator, a Federal railroad safety inspector,
18 or a State railroad safety inspector, or their su-
19 periors, information relating to the commission
20 or possible commission of one or more violations
21 of this part or of chapter 51 of this title; or

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

25 “(3) causing or inducing any person to—

1 “(A) withhold testimony, or a statement,
2 record, document, or other object, from the in-
3 vestigation;

4 “(B) alter, destroy, mutilate, or conceal a
5 statement, record, document, or other object
6 with intent to impair the integrity or avail-
7 ability of the statement, record, document, or
8 other object for use in the investigation;

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

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

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

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

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

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

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

7 **TITLE III—GRADE CROSSING** 8 **SAFETY**

9 **SEC. 301. TOLL-FREE NUMBER TO REPORT GRADE CROSS-** 10 **ING PROBLEMS.**

11 Section 20152 is amended to read as follows:

12 **“§ 20152. Emergency notification of grade crossing** 13 **problems**

14 “By January 1, 2004, each railroad carrier shall—

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

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

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

24 “(2) upon receiving a report of a malfunction or
 25 disabled vehicle pursuant to paragraph (1), imme-

1 diately contact trains operating near the grade
2 crossing to warn them of the malfunction or disabled
3 vehicle;

4 “(3) upon receiving a report of a malfunction or
5 disabled vehicle pursuant to paragraph (1), and
6 after contacting trains pursuant to paragraph (2),
7 contact appropriate public safety officials having ju-
8 risdiction over the grade crossing to provide them
9 with the information necessary for them to direct
10 traffic, assist in the removal of the disabled vehicle,
11 or carry out other activities appropriate to respond-
12 ing to the hazardous circumstance; and

13 “(4) ensure the placement at each grade cross-
14 ing on rights-of-way that it owns of appropriately lo-
15 cated signs, on which shall appear—

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

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

22 “(C) the grade crossing number assigned
23 for that crossing by the National Highway-Rail
24 Crossing Inventory established by the Depart-

1 ment of Transportation and the Association of
2 American Railroads; and

3 “(D) a statement that reporting a disabled
4 vehicle blocking the railroad tracks should be
5 done immediately, before any attempt is made
6 to remove the vehicle from the tracks.

7 The Secretary of Transportation shall implement this sec-
8 tion through appropriate regulations.”.

9 **SEC. 302. GRADE CROSSING SIGNAL VIOLATIONS.**

10 (a) AMENDMENTS.—Section 20151 is amended—

11 (1) by amending the section heading to read as
12 follows:

13 **“§ 20151. Railroad trespassing, vandalism, and signal**
14 **violation prevention strategy”;**

15 (2) in subsection (a)—

16 (A) by striking “and vandalism affecting
17 railroad safety” and inserting in lieu thereof “,
18 vandalism affecting railroad safety, and viola-
19 tions of grade crossing signals”;

20 (B) by inserting “, concerning trespassing
21 and vandalism,” after “such evaluation and re-
22 view”; and

23 (C) by inserting “The second such evalua-
24 tion and review, concerning violations of grade

1 crossing signals, shall be completed before No-
2 vember 2, 2003.” after “November 2, 1994.”;

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

6 (4) in subsection (c)—

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

9 (B) by inserting “(1)” after “MODEL LEG-
10 ISLATION.—”; and

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

13 “(2) Within 18 months after the date of the enact-
14 ment of the Railroad Safety Reform Act of 2002, the Sec-
15 retary, after consultation with State and local govern-
16 ments and railroad carriers, shall develop and make avail-
17 able to State and local governments model State legisla-
18 tion providing for civil or criminal penalties, or both, for
19 violations of grade crossing signals.”; and

20 (5) by adding at the end the following new sub-
21 section:

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

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

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

6 “(3) to drive through a grade crossing with pas-
 7 sive warning signs without ensuring that the grade
 8 crossing could be safely crossed before any train ar-
 9 rived; and

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

13 (b) CONFORMING AMENDMENT.—The item relating
 14 to section 20151 in the table of sections for subchapter
 15 II of chapter 201 is amended to read as follows:

“20151. Railroad trespassing, vandalism, and signal violation prevention strat-
 egy.”.

16 **TITLE IV—PASSENGER SERVICE** 17 **SAFETY STANDARDS**

18 **SEC. 401. EMERGENCY WINDOWS.**

19 Section 20133 is amended by adding at the end the
 20 following new subsection:

21 “(e) EMERGENCY WINDOWS.—(1) After January 1,
 22 2004, all railroad cars, including self-propelled cars, used
 23 for providing transportation for members of the general

1 public shall have emergency windows installed in at least
 2 one half of their window locations.

3 “(2) For purposes of this subsection, the term ‘emer-
 4 gency window’ means a window designed to permit rapid
 5 and easy removal for passenger escape in an emergency
 6 without tools.

7 “(3) This subsection shall not apply to railroad cars
 8 used by tourist, excursion, scenic, or historic railroads that
 9 are not part of the general system of railroad transpor-
 10 tation and that do not operate at speeds in excess of 30
 11 miles per hour.”.

12 **SEC. 402. PASSENGER RAILROAD SIGNAL SYSTEMS.**

13 (a) AMENDMENT.—(1) Section 20502 is amended by
 14 adding at the end the following new subsection:

15 “(c) PASSENGER RAILROAD SIGNALS.—Each rail-
 16 road line on which passenger service operates, except lines
 17 where automatic train stop or cab signaling equipment is
 18 in use for all passenger service, shall have installed ap-
 19 proach and stop signals such that at least one approach
 20 signal intervenes between a passenger station stop and a
 21 subsequent stop signal.”.

22 (2) The amendment made by paragraph (1) shall
 23 take effect January 1, 2004.

24 (b) STUDY.—The Secretary of Transportation shall,
 25 within 1 year after the date of the enactment of this Act,

1 transmit to the Congress a report on the results of a study
2 of the safety implications of signal systems and their
3 placement. In conducting the study, the Secretary shall
4 consult with representatives of railroad labor, railroad
5 management, and railroad equipment manufacturers.
6 After transmitting the report, the Secretary shall initiate
7 appropriate rulemaking proceedings under chapter 205 to
8 implement the recommendations made in the report.

9 **SEC. 403. PASSENGER LOCOMOTIVE FUEL TANKS.**

10 (a) AMENDMENT.—Chapter 207 is amended by add-
11 ing at the end the following new section:

12 **“§ 20704. Passenger locomotive fuel tanks**

13 “(a) REQUIREMENTS.—Any locomotive manufac-
14 tured after the date of the enactment of the Federal Rail-
15 road Safety Enhancement Act of 2002, and delivered to
16 a railroad carrier on or after January 1, 2004, for use
17 on passenger trains, except for a locomotive intended pri-
18 marily for yard switching purposes, shall—

19 “(1) be equipped with fuel tanks that are inter-
20 nal and compartmentalized;

21 “(2) be equipped with internal fuel tank bulk-
22 heads and skin that are either $\frac{3}{8}$ inch steel plate
23 with 25,000-pound yield strength or another mate-
24 rial of equivalent strength; and

1 “(3) have fuel tank vent systems that are de-
 2 signed to prevent those systems from becoming a
 3 path of fuel loss in the event the tank is placed in
 4 an abnormal orientation due to a locomotive derail-
 5 ing.

6 “(b) DEFINITIONS.—For purposes of this section—

7 “(1) the term ‘compartmentalized’ means hav-
 8 ing an interior divided into at least 4 separate com-
 9 partments designed so that penetration of the exte-
 10 rior skin of any 1 compartment shall result in loss
 11 of fuel only from that compartment; and

12 “(2) the term ‘internal’ means having its lowest
 13 point at least 18 inches above the lowest point on
 14 the locomotive wheel tread, and being enclosed by, or
 15 part of, the locomotive structure.”.

16 (b) TABLE OF SECTIONS AMENDMENT.—The table of
 17 sections of chapter 207 is amended by adding at the end
 18 the following new item:

“20704. Passenger locomotive fuel tanks.”.

19 **SEC. 404. POSITIVE TRAIN CONTROL.**

20 (a) AMENDMENTS.—Section 20150 is amended—

21 (1) by striking “**progress report**” in the
 22 section heading;

23 (2) by inserting “(a) PROGRESS REPORT.—”
 24 before “The Secretary of Transportation”; and

1 (3) by adding at the end the following new sub-
2 section:

3 “(b) SCHEDULE FOR IMPLEMENTATION.—(1) The
4 Secretary shall—

5 “(A) before March 31, 2003—

6 “(i) develop a model for assessing the risks
7 associated with accident or injury on railroad
8 corridors;

9 “(ii) compile data on each railroad corridor
10 to enable the application of the model developed
11 under clause (i); and

12 “(iii) rank railroad corridors on the basis
13 of their risks associated with accident or injury;

14 “(B) before October 1, 2003, identify high-pri-
15 ority railroad corridors the Secretary will require to
16 be equipped with positive train control systems,
17 which shall include, at a minimum, all railroad lines
18 on which more than 42 regularly scheduled pas-
19 senger trains per week operate and all railroad lines
20 on which more than 2,500,000 tons of hazardous
21 materials are transported each year; and

22 “(C) before October 1, 2004, issue regulations
23 establishing standards for the use of positive train
24 control systems and requiring their use on high-pri-

1 ority railroad corridors by no later than September
2 30, 2005.

3 “(2) For purposes of this subsection—

4 “(A) the term ‘passenger train’ does not include
5 trains operated by tourist, excursion, scenic, or his-
6 toric railroads that are not part of the general sys-
7 tem of railroad transportation and that do not oper-
8 ate at speeds in excess of 30 miles per hour; and

9 “(B) the term ‘positive train control system’
10 means a system for automatically controlling the
11 speed of or stopping a train to prevent collisions, en-
12 force speed restrictions, and protect roadway work-
13 ers and their equipment in the event that the train
14 operator has failed to take appropriate action.”.

15 (b) CONFORMING AMENDMENT.—The item relating
16 to section 20150 in the table of sections of subchapter II
17 of chapter 201 is amended by striking “progress report”.

18 **TITLE V—SAFETY RULEMAKING** 19 **AND ENFORCEMENT**

20 **SEC. 501. PURPOSE.**

21 Section 20101 is amended to read as follows:

22 **“§ 20101. Purpose**

23 “The purpose of this part is to assign and maintain
24 safety as the highest priority in every area of railroad op-

1 erations and to reduce railroad-related accidents and inci-
2 dents.”.

3 **SEC. 502. RAILROAD SAFETY CONFERENCE.**

4 (a) IN GENERAL.—The Secretary of Transportation
5 shall convene, within 6 months after the date of the enact-
6 ment of this Act and annually thereafter, a conference to
7 determine what are the most important actions needed to
8 improve the safety of railroad operations. Each such con-
9 ference shall provide an opportunity for the participants
10 to present their views, respond to the views of other par-
11 ticipants, and discuss railroad safety issues with other
12 participants so that a consensus can be reached.

13 (b) PARTICIPANTS.—Each conference convened pur-
14 suant to subsection (a) shall include as participants, at
15 a minimum, appropriate representatives of the Depart-
16 ment of Transportation, railroad management, railroad
17 labor, railroad passengers, railroad equipment suppliers,
18 and railroad shippers, as well as individuals representing
19 community interests.

20 (c) REPORT TO CONGRESS.—The Secretary of Trans-
21 portation shall, within 3 months after the completion of
22 a conference convened pursuant to subsection (a), trans-
23 mit to the Congress a report summarizing the results of
24 the conference.

1 **SEC. 503. RULEMAKING PROCESS.**

2 (a) AMENDMENT.—Subchapter I of chapter 201 is
3 amended by inserting after section 20115 the following
4 new section:

5 **“§ 20116. Rulemaking process**

6 “(a) RULES PROPOSED BY RAILROAD SAFETY ADVI-
7 SORY COMMITTEE.—A rule that has been proposed unani-
8 mously by the Railroad Safety Advisory Committee shall
9 be issued as a proposed rule by the Secretary of Transpor-
10 tation without preparation of a regulatory analysis, regu-
11 latory evaluation, or any other assessment of the costs or
12 benefits of the proposed rule, and without soliciting the
13 approval or comment of any Federal agency or employee
14 outside the Department of Transportation.

15 “(b) INCORPORATION BY REFERENCE.—No rule or
16 order issued by the Secretary under this part shall be ef-
17 fective if it incorporates by reference a code, rule, stand-
18 ard, requirement, or practice issued by an association or
19 other entity that is not an agency of the Federal Govern-
20 ment, unless that reference is to a particular code, rule,
21 standard, requirement, or practice adopted before the date
22 on which the rule is issued by the Secretary, and unless
23 the date on which the code, rule, standard, requirement,
24 or practice was adopted is specifically cited in the rule.”.

25 (b) TABLE OF SECTIONS AMENDMENT.—The table of
26 sections of subchapter I of chapter 201 is amended by

1 adding after the item relating to section 20115 the fol-
2 lowing new item:

“20116. Rulemaking process.”.

3 **SEC. 504. CRANE SAFETY.**

4 The Secretary of Transportation shall initiate a rule-
5 making, based on the recommendations of the Railroad
6 Safety Advisory Committee, to ensure the safety of opera-
7 tors of railroad cranes and other hoisting equipment, and
8 of railroad employees working in the vicinity of cranes and
9 other hoisting equipment. If the Railroad Safety Advisory
10 Committee has not made consensus recommendations
11 within 12 months after the date of the enactment of this
12 Act, the Secretary shall discharge the Committee of its
13 responsibilities under this section and shall, within 24
14 months after the date of the enactment of this Act, issue
15 a final rule.

16 **SEC. 505. RAILROAD CAR VISIBILITY.**

17 Section 20148(b) is amended by striking “initiate a
18 rulemaking proceeding to” and inserting “, not later than
19 1 year after the date of the enactment of the Railroad
20 Safety Reform Act of 2002,”.

21 **SEC. 506. HIGH-SPEED RAIL NOISE REGULATION.**

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

1 **“§ 20154. High-speed rail noise regulation**

2 “The Secretary of Transportation, in consultation
 3 with the Administrator of the Environmental Protection
 4 Agency, shall prescribe regulations addressing noise emis-
 5 sions from high-speed rail systems, including magnetic
 6 levitation systems, when operating at speeds greater than
 7 150 miles per hour. Such regulations shall be prescribed
 8 to protect the public health and welfare, including the
 9 health and welfare of railroad employees, taking into ac-
 10 count the degree of noise reduction achievable through the
 11 application of the best available technology and the cost
 12 of compliance. Regulations issued under this section shall
 13 be in lieu of railroad-related noise regulations issued pur-
 14 suant to the Noise Control Act of 1972 (42 U.S.C.
 15 4916(a)) only for locomotives, cars, and consists of loco-
 16 motives and cars, when operating at speeds greater than
 17 150 miles per hour.”.

18 (b) TABLE OF SECTIONS AMENDMENT.—The table of
 19 sections of chapter 201 is amended by adding at the end
 20 the following new item:

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

21 **SEC. 507. TRACK SAFETY.**

22 Section 20142 is amended to read as follows:

23 **“§ 20142. Track safety**

24 “(a) SPEED OF INSPECTION VEHICLES.—Not later
 25 than one year after the date of the enactment of the Fed-

1 eral Railroad Safety Enhancement Act of 2002, the Sec-
2 retary of Transportation shall issue rules requiring that
3 no track inspection shall be conducted from a vehicle trav-
4 eling at a speed of more than 15 miles per hour, unless
5 the Secretary can demonstrate that operations at higher
6 speeds provide equally accurate inspection information.

7 “(b) MAINTENANCE-OF-WAY EQUIPMENT.—(1) All
8 track motor vehicles, self-propelled maintenance-of-way
9 equipment, and other equipment which is designed with
10 a wheeled carriage allowing the equipment to move along
11 a railroad track shall be designed and maintained so as
12 to conduct electrical current from one rail of the track to
13 the other, enabling the activation of signal systems de-
14 signed to detect the presence of locomotives, cars, trains,
15 and other rolling equipment on the track.

16 “(2) All roadway work groups and lone roadway
17 workers when working in a classification yard shall be
18 equipped with portable equipment permitting the motion
19 of freely rolling railroad cars to be automatically arrested.

20 “(c) DEFINITIONS.—For purposes of this section—

21 “(1) the term ‘roadway work group’ means 2 or
22 more roadway workers working together on a com-
23 mon task who are in direct communication with each
24 other; and

1 “(2) the term ‘roadway worker’ means an em-
2 ployee of a railroad carrier, or of a contractor to a
3 railroad carrier, including a maintenance-of-way
4 worker or a signalman, who is working on or near
5 railroad track.

6 “(d) EFFECTIVE DATE.—Subsection (b)(1) shall take
7 effect on January 1, 2004.”.

8 **SEC. 508. ENHANCED INSPECTION AND INVESTIGATION AU-**
9 **THORITY UNDER THE FEDERAL RAILROAD**
10 **SAFETY LAWS.**

11 Section 20107 is amended by inserting at the end the
12 following new subsection:

13 “(c) RAILROAD RADIO COMMUNICATIONS.—(1) To
14 carry out the Secretary’s responsibilities under this part,
15 officers, employees, or agents of the Secretary are author-
16 ized to conduct the following kinds of inspection and inves-
17 tigative activities at reasonable times and in a reasonable
18 manner:

19 “(A) To receive or assist in receiving a radio
20 communication that is broadcast or transmitted over
21 a railroad carrier’s dedicated frequency not for the
22 use of the general public, with or without making
23 their presence known to the sender or other receivers
24 of the communication, and with or without obtaining

1 the consent of the sender or other receivers of the
2 communication.

3 “(B) To communicate the existence, contents,
4 substance, purport, effect, or meaning of a commu-
5 nication described in subparagraph (A).

6 “(C) To record a communication described in
7 subparagraph (A) by any means, including writing
8 and tape recording.

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

14 “(3) Information obtained in compliance with para-
15 graphs (1) and (2) of this subsection may not be used
16 as evidence for the assessment or collection of civil pen-
17 alties, or for the implementation of other enforcement
18 mechanisms provided in section 5122, 20702(b), 20111,
19 20112, 20113, or 20114 of this title, or in any disciplinary
20 proceeding by a railroad carrier, but may be used as back-
21 ground for further investigation which might lead to the
22 discovery of other useful evidence.

23 “(4) The authority granted by this subsection shall
24 be an exception to the general prohibitions of section 605

1 of title 47, United States Code, and chapter 119 of title
2 18, United States Code.”.

3 **SEC. 509. EXPANSION OF EMERGENCY ORDER AUTHORITY.**

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

7 **SEC. 510. SAFETY INSPECTORS.**

8 Section 20115 is amended—

9 (1) by amending paragraph (1) of subsection
10 (a) to read as follows:

11 “(1) shall cover the costs of providing 400 rail-
12 road safety inspectors, in addition to those already
13 employed by the Federal Railroad Administration as
14 of October 1, 1998, to improve the safety of railroad
15 carriers subject to this chapter;”;

16 (2) in subsection (c)(2), by striking “only to
17 carry out this chapter” and inserting in lieu thereof
18 “only for the purposes described in subsection
19 (a)(1)”;

20 (3) in subsection (c)(3), by striking “of activi-
21 ties under” and all that follows through “financed
22 by the fees” and inserting in lieu thereof “described
23 in subsection (a)(1)”;

24 (4) in the heading of subsection (d), by striking
25 “ANNUAL REPORT” and inserting “REPORTS”;

1 (5) in subsection (d)(1), by striking “90 days
2 after the end of each fiscal year in which fees are
3 collected under this section” and inserting in lieu
4 thereof “180 days after the end of fiscal year 2005,
5 and every 3 years thereafter”;

6 (6) in subsection (d)(1)(A), by striking “that
7 fiscal year” and inserting in lieu thereof “the 3 pre-
8 vious fiscal years”;

9 (7) in subsection (d)(2), by striking “for a fis-
10 cal year”; and

11 (8) by striking subsection (e).

12 **TITLE VI—MISCELLANEOUS** 13 **PROVISIONS**

14 **SEC. 601. SAFETY CONSIDERATIONS IN GRANTS OR LOANS** 15 **TO COMMUTER RAILROADS.**

16 Section 5329 is amended by adding at the end the
17 following new subsection:

18 “(c) COMMUTER RAILROAD SAFETY CONSIDER-
19 ATIONS.—In making a grant or loan under this chapter
20 that concerns a railroad subject to the Secretary’s safety
21 jurisdiction under section 20102 of this title, the Adminis-
22 trator of the Federal Transit Administration shall consult
23 with the Administrator of the Federal Railroad Adminis-
24 tration concerning relevant safety issues. The Secretary
25 may use appropriate authority under this chapter, includ-

1 ing the authority to prescribe particular terms or cov-
 2 enants under section 5334 of this title, to address any
 3 safety issues identified in the project supported by the
 4 loan or grant.”.

5 **SEC. 602. TECHNICAL AMENDMENTS REGARDING ADJUST-**
 6 **MENT OF CIVIL PENALTIES FOR INFLATION.**

7 (a) CHAPTER 201 GENERAL VIOLATIONS.—In sec-
 8 tion 21301(a)(2), insert after “\$10,000” and after
 9 “\$20,000” the following: “, as adjusted pursuant to the
 10 Federal Civil Penalties Inflation Adjustment Act of 1990
 11 (28 U.S.C. 2461 note)”.

12 (b) CHAPTER 201 ACCIDENT AND INCIDENT VIOLA-
 13 TIONS AND CHAPTER 203–209 VIOLATIONS.—In section
 14 21302(a)(2), insert after “\$10,000” and after “\$20,000”
 15 the following: “, as adjusted pursuant to the Federal Civil
 16 Penalties Inflation Adjustment Act of 1990 (28 U.S.C.
 17 2461 note)”.

18 (c) CHAPTER 211 VIOLATIONS.—In section
 19 21303(a)(2), insert after “\$10,000” and after “\$20,000”
 20 the following: “, as adjusted pursuant to the Federal Civil
 21 Penalties Inflation Adjustment Act of 1990 (28 U.S.C.
 22 2461 note)”.

1 **SEC. 603. CERTIFICATION OF LOCOMOTIVE ENGINEERS**
2 **AND OTHER SAFETY-RELATED RAILROAD**
3 **PERSONNEL.**

4 (a) AMENDMENT.—Section 20135 is amended to
5 read as follows:

6 **“§ 20135. Certification of locomotive engineers and**
7 **other safety-related railroad personnel**

8 “(a) IN GENERAL.—The Administrator of the Fed-
9 eral Railroad Administration shall establish a program for
10 issuing certificates for—

- 11 “(1) carmen;
- 12 “(2) conductors;
- 13 “(3) dispatchers;
- 14 “(4) locomotive engineers;
- 15 “(5) power directors;
- 16 “(6) signalmen;
- 17 “(7) track inspectors; and
- 18 “(8) trainmen,

19 to individuals when the Administrator finds, after inves-
20 tigation, that the individuals are qualified for, and phys-
21 ically able to perform the duties related to, the position
22 to be authorized by the certificates. After January 1,
23 2004, no person shall carry out the responsibilities of the
24 carman, conductor, dispatcher, locomotive engineer, power
25 director, signalman, track inspector, or trainman unless

1 that person has been certificated for that position by the
2 Administrator.

3 “(b) GENERAL QUALIFICATIONS.—The program es-
4 tablished under subsection (a)—

5 “(1) shall provide qualification standards and
6 minimum training requirements for each type of po-
7 sition described in subsection (a); and

8 “(2) shall require comprehensive knowledge of
9 applicable railroad carrier operating practices and
10 rules.

11 “(c) LOCOMOTIVE ENGINEERS.—

12 “(1) QUALIFICATIONS.—The program estab-
13 lished under subsection (a), in the case of certifi-
14 cation of a locomotive engineer—

15 “(A) except as provided in paragraph
16 (2)(A), shall require consideration, to the extent
17 the information is available, of the motor vehi-
18 cle driving record of each individual seeking
19 certification, including—

20 “(i) any denial, cancellation, revoca-
21 tion, or suspension of a motor vehicle oper-
22 ator’s license by a State for cause within
23 the prior 5 years; and

1 “(ii) any conviction within the prior 5
2 years of an offense described in section
3 30304(a)(3)(A) or (B) of this title;

4 “(B) may require, based on the individ-
5 ual’s driving record, disqualification or the
6 granting of a certificate conditioned on require-
7 ments the Administrator prescribes; and

8 “(C) shall require an individual seeking
9 certification—

10 “(i) to request the chief driver licens-
11 ing official of each State in which the indi-
12 vidual has held a motor vehicle operator’s
13 license within the prior 5 years to provide
14 information about the individual’s driving
15 record to the individual’s employer, pro-
16 spective employer, or the Administrator, as
17 the Administrator requires; and

18 “(ii) to make the request provided for
19 in section 30305(b)(4) of this title for in-
20 formation to be sent to the individual’s em-
21 ployer, prospective employer, or the Ad-
22 ministrator, as the Administrator requires.

23 “(2) WAIVERS.—(A) The Administrator shall
24 prescribe standards and establish procedures for
25 waiving paragraph (1)(A) for an individual or class

1 of individuals who the Administrator decides are not
2 currently unfit to operate a locomotive. However, the
3 Administrator may waive paragraph (1)(A) for an
4 individual or class of individuals with a conviction,
5 cancellation, revocation, or suspension described in
6 subparagraph (B)(i) or (ii) only if the individual or
7 class, after the conviction, cancellation, revocation,
8 or suspension, successfully completes a rehabilitation
9 program established by a railroad carrier or ap-
10 proved by the Administrator.

11 “(B) An individual may not be denied a certifi-
12 cate under paragraph (1)(A) because of—

13 “(i) a conviction for operating a motor ve-
14 hicle when under the influence of, or impaired
15 by, alcohol or a controlled substance; or

16 “(ii) the cancellation, revocation, or sus-
17 pension of the individual’s motor vehicle opera-
18 tor’s license for operating a motor vehicle when
19 under the influence of, or impaired by, alcohol
20 or a controlled substance,

21 if the individual, after the conviction, cancellation,
22 revocation, or suspension, successfully completes a
23 rehabilitation program established by a railroad car-
24 rier or approved by the Administrator.

1 “(3) OPPORTUNITY TO EXAMINE AND COMMENT
2 ON INFORMATION.—The Administrator, employer, or
3 prospective employer, as appropriate, shall make in-
4 formation obtained under paragraph (1)(C) available
5 to the individual. The individual shall be given an
6 opportunity to comment in writing about the infor-
7 mation. Any comment shall be included in any
8 record or file maintained by the Administrator, em-
9 ployer, or prospective employer that contains infor-
10 mation to which the comment is related.

11 “(d) DELEGATION.—

12 “(1) IN GENERAL.—Subject to any regulations,
13 supervision, and review the Administrator may pre-
14 scribe, the Administrator may delegate, to a quali-
15 fied private person or an employee under the super-
16 vision of that person, a matter related to—

17 “(A) the examination, testing, and inspec-
18 tion necessary to issue a certificate under this
19 section; and

20 “(B) issuing the certificate.

21 “(2) RESCISSION.—The Administrator may re-
22 scind a delegation under this section at any time for
23 any reason the Administrator considers appropriate.

24 “(3) RECONSIDERATION.—A person affected by
25 an action of a person to whom responsibilities have

1 been delegated under this subsection may apply for
2 reconsideration of the action by the Administrator,
3 and, on the Administrator’s own initiative, the Ad-
4 ministrator may reconsider the action of such a per-
5 son at any time. If the Administrator decides on re-
6 consideration that the action is unreasonable or un-
7 warranted, the Administrator shall change, modify,
8 or reverse the action. If the Administrator decides
9 that the action is warranted, the Administrator shall
10 affirm the action.

11 “(e) SUSPENSION OR REVOCATION.—

12 “(1) AUTHORITY.—The Administrator may re-
13 view the certification of any employee holding a cer-
14 tificate under this section. The Administrator may
15 suspend or revoke a certificate issued under this sec-
16 tion if—

17 “(A) the employee, in the course of rail-
18 road employment, has engaged in or authorized
19 a practice that endangers human life, including
20 authorizing the use of unsafe equipment or
21 track; or

22 “(B) the Administrator decides after re-
23 viewing the actions or qualifications of the em-
24 ployee that railroad safety and the public inter-
25 est require such a suspension or revocation.

1 The length of a suspension shall be at the discretion
2 of the Administrator. In determining the length of a
3 suspension, the Administrator shall take into ac-
4 count the seriousness of the unsafe practice and the
5 employee's past safety record.

6 “(2) PROCEDURES.—Before acting to suspend
7 or revoke a certificate, the Administrator shall ad-
8 vise the holder of the certificate of the charges or
9 other reasons on which the Administrator relies for
10 the proposed action. Except in an emergency, the
11 Administrator shall provide the holder of the certifi-
12 cate with an opportunity to answer the charges and
13 to be heard on why the certificate should not be sus-
14 pended or revoked. Except as provided in paragraph
15 (3), the action of the Administrator suspending or
16 revoking a certificate shall be stayed pending the
17 outcome of an appeal under subsection (f).

18 “(3) EMERGENCIES.—If the Administrator de-
19 termines that an emergency exists and that railroad
20 safety requires that a suspension or revocation be ef-
21 fective immediately, then the Administrator's action
22 shall be effective immediately.

23 “(f) APPEALS.—The Administrator shall establish an
24 appropriate procedure through which a person adversely
25 affected by—

1 “(1) an action denying a certificate under this
2 section; or

3 “(2) an order suspending or revoking a certifi-
4 cate under subsection (e),

5 may appeal such action or order. If a finding is made
6 under that appeals procedure, after notice and an oppor-
7 tunity for a hearing, that railroad safety and the public
8 interest do not require affirmation of the original action
9 or order, the Administrator shall amend, modify, or re-
10 verse that action or order.

11 “(g) CERTIFICATION OF SAFETY.—

12 “(1) BY A CARMAN.—(A) After January 1,
13 2004, no locomotive, railroad car, or train shall de-
14 part its initial terminal until it has been inspected
15 and its safety has been certified in writing by a car-
16 man certificated under this section.

17 “(B) After January 1, 2004, no locomotive,
18 railroad car, or train shall be used or operated after
19 it has been repaired or reported to have a defect po-
20 tentially affecting safety until it has been inspected
21 by a carman certificated under this section and its
22 safety has been subsequently certified in writing by
23 that carman. A safety certification made under this
24 paragraph may be made conditional on the loco-

1 motive, railroad car, or train being repaired at the
2 first practical opportunity.

3 “(2) BY A SIGNALMAN.—(A) After January 1,
4 2004, no signal system shall be used to signal that
5 a train may proceed or to control the movement of
6 automobiles at grade crossings unless its safety has
7 been certified in writing by a signalman certificated
8 under this section in accordance with regulations
9 issued by the Secretary of Transportation requiring
10 such certification—

11 “(i) when a signal system is first placed in
12 service;

13 “(ii) after it has been modified or dis-
14 arranged; and

15 “(iii) at least once a year.

16 The Secretary may by regulation require that cer-
17 tain kinds of signal systems be inspected and cer-
18 tified more frequently than is required by clauses (i)
19 through (iii).

20 “(B) After January 1, 2004, no signal system
21 shall be used to signal that a train may proceed or
22 to control the movement of automobiles at grade
23 crossings after that signal system has been repaired
24 or reported to have a defect potentially affecting
25 safety until it has been inspected by a signalman

1 certificated under this section and its safety has
2 been subsequently certified in writing by that signal-
3 man.

4 “(3) BY A TRACK INSPECTOR.—(A) After Janu-
5 ary 1, 2004, no track shall be used to operate loco-
6 motives, railroad cars, or trains unless the safety of
7 that track has been certified in writing by a track
8 inspector certificated under this section each time
9 the track is inspected as required by regulations
10 issued by the Secretary under this chapter. In no
11 event shall such inspections be required less often
12 than once a month.

13 “(B) After January 1, 2004, no track shall be
14 used after it has been repaired or reported to have
15 a defect potentially affecting safety until it has been
16 inspected by a track inspector certificated under this
17 section and its safety for its anticipated use has
18 been subsequently certified in writing by that track
19 inspector.

20 “(h) AUTHORITY TO REFUSE TO OPERATE TRAINS
21 OR LOCOMOTIVES.—A locomotive engineer may refuse to
22 operate a train or locomotive if that locomotive engineer
23 is not satisfied that the train or locomotive can be oper-
24 ated safely.

25 “(i) DEFINITIONS.—For purposes of this section—

1 “(1) the term ‘carman’ means a railroad em-
2 ployee who inspects, tests, maintains, and repairs
3 brakes, other mechanical systems and components,
4 and safety appliances on railroad cars or loco-
5 motives;

6 “(2) the term ‘conductor’ means a railroad road
7 or yard employee who is in charge of a train’s pas-
8 sengers or freight;

9 “(3) the term ‘dispatcher’ has the meaning
10 given the term ‘dispatching service employee’ in sec-
11 tion 21101 of this title;

12 “(4) the term ‘locomotive engineer’ means an
13 operator of a locomotive other than—

14 “(A) a person who operates a locomotive
15 solely within the confines of a locomotive repair
16 or servicing area; and

17 “(B) a person who operates a locomotive
18 for short distances for inspection and mainte-
19 nance purposes;

20 “(5) the term ‘power director’ has the meaning
21 given such term in section 21101 of this title;

22 “(6) the term ‘signalman’ has the meaning
23 given the term ‘signal employee’ in section 21101 of
24 this title;

5 “(8) the term ‘trainman’ means a railroad road
6 or yard employee who is under the supervision of a
7 conductor.”.

(b) TABLE OF SECTIONS AMENDMENT.—The item relating to section 20135 in the table of sections of chapter 201 is amended to read as follows:

“20135. Certification of locomotive engineers and other safety-related railroad personnel.”.

(c) EFFECT OF AMENDMENT.—Notwithstanding the amendment made by subsection (a), the requirements for licensing or certification of locomotive operators under section 20135 as in effect before the date of the enactment of this Act shall continue in effect until the program established under the amendment made by subsection (a) takes effect with respect to locomotive engineers.

19 (a) DEFINITION.—Section 20301(a) is amended to
20 read as follows:

21 “(a) DEFINITIONS.—In this chapter—

22 “(1) the term ‘vehicle’ means a car, locomotive,
23 tender, or similar vehicle; and

1 “(2) the term ‘transport motor vehicle’ means
 2 a motor vehicle used to transport employees of a
 3 railroad carrier or its independent contractors to or
 4 from a work site.”.

5 (b) INSPECTION REQUIREMENT.—Section 20302 is
 6 amended by adding at the end the following new sub-
 7 section:

8 “(f) TRANSPORT MOTOR VEHICLES.—A railroad car-
 9 rier shall not require or allow a transport motor vehicle
 10 to be used to transport employees to or from a work site,
 11 whether that transport motor vehicle is owned or operated
 12 by the railroad carrier or by an independent contractor
 13 to the railroad carrier, unless the transport motor vehicle
 14 has been tested and inspected at appropriate intervals, in
 15 accordance with regulations promulgated by the Secretary,
 16 to ensure that it has been properly maintained and can
 17 safely transport railroad employees.”.

18 **SEC. 605. CONRAIL SAFETY EXEMPTION.**

19 Section 711 of the Regional Rail Reorganization Act
 20 of 1973 (45 U.S.C. 797j) is repealed.

21 **SEC. 606. SENIORITY RIGHTS.**

22 (a) AMENDMENT.—Part E of subtitle V is amended
 23 by adding at the end the following new chapter:

24 **“CHAPTER 285—SENIORITY RIGHTS**

“Sec.

“28501. Seniority rights.

1 **“§ 28501. Seniority rights**

2 “Reemployment rights, seniority rights, and the right
3 to return to employment after a leave of absence from a
4 railroad carrier, negotiated by a labor organization pursu-
5 ant to the Railway Labor Act, shall not be considered for
6 purposes of section 208(b) of title 18 to be a financial
7 interest so substantial as to be deemed likely to affect the
8 integrity of the services which the Government may expect
9 from an officer or employee who has such rights. Such
10 an officer or employee shall be considered to have received
11 in advance a written determination to that effect.”.

12 (b) TABLE OF CHAPTERS AMENDMENT.—The table
13 of chapters of part E of subtitle V is amended by adding
14 at the end the following new item:

“285. SENIORITY RIGHTS 28501”.

