

In the Senate of the United States,

August 1, 2008.

Resolved, That the bill from the House of Representatives (H.R. 2095) entitled “An Act to amend title 49, United States Code, to prevent railroad fatalities, injuries, and hazardous materials releases, to authorize the Federal Railroad Safety Administration, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert the following:

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

2 ***MENT OF TITLE 49.***

3 *(a) SHORT TITLE.—This Act may be cited as the*
4 *“Railroad Safety Enhancement Act of 2008”.*

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

Sec. 1. Short title; table of contents; amendment of title 49.

Sec. 2. Definitions.

Sec. 3. Authorization of appropriations.

- Sec. 101. Establishment of chief safety officer.
- Sec. 102. Railroad safety strategy.
- Sec. 103. Railroad safety risk reduction pilot program.
- Sec. 104. Railroad safety risk reduction program.
- Sec. 105. Positive train control system implementation.
- Sec. 106. Hours-of-service reform.
- Sec. 107. Protection of railroad safety risk analyses information.

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

- Sec. 201. Pedestrian crossing safety.
- Sec. 202. State action plans.
- Sec. 203. Improvements to sight distance at highway-rail grade crossings.
- Sec. 204. National crossing inventory.
- Sec. 205. Telephone number to report grade crossing problems.
- Sec. 206. Operation Lifesaver.
- Sec. 207. Federal grants to States for highway-rail grade crossing safety.
- Sec. 208. Trespasser prevention and highway-rail crossing safety.
- Sec. 209. Fostering introduction of new technology to improve safety at highway-rail grade crossings.

TITLE III—FEDERAL RAILROAD ADMINISTRATION

- Sec. 301. Human capital increases.
- Sec. 302. Civil penalty increases.
- Sec. 303. Enforcement report.
- Sec. 304. Prohibition of individuals from performing safety-sensitive functions for a violation of hazardous materials transportation law.
- Sec. 305. Railroad radio monitoring authority.
- Sec. 306. Emergency waivers.
- Sec. 307. Federal rail security officers' access to information.
- Sec. 308. Update of Federal Railroad Administration's website.

TITLE IV—RAILROAD SAFETY ENHANCEMENTS

- Sec. 401. Employee training.
- Sec. 402. Certification of certain crafts or classes of employees.
- Sec. 403. Track inspection time study.
- Sec. 404. Study of methods to improve or correct station platform gaps.
- Sec. 405. Locomotive cab studies.
- Sec. 406. Railroad safety technology grants.
- Sec. 407. Railroad safety infrastructure improvement grants.
- Sec. 408. Amendment to the movement-for-repair provision.
- Sec. 409. Development and use of rail safety technology.
- Sec. 410. Employee sleeping quarters.
- Sec. 411. Employee protections.
- Sec. 412. Unified treatment of families of railroad carriers.
- Sec. 413. Study of repeal of Conrail provision.
- Sec. 414. Limitations on non-federal alcohol and drug testing by railroad carriers.
- Sec. 415. Critical incident stress plan.
- Sec. 416. Railroad carrier employee exposure to radiation study.
- Sec. 417. Alcohol and controlled substance testing for maintenance-of-way employees.

TITLE V—RAIL PASSENGER DISASTER FAMILY ASSISTANCE

Sec. 501. Assistance by National Transportation Safety Board to families of passengers involved in rail passenger accidents.

Sec. 502. Rail passenger carrier plan to assist families of passengers involved in rail passenger accidents.

Sec. 503. Establishment of task force.

TITLE VI—CLARIFICATION OF FEDERAL JURISDICTION OVER SOLID WASTE FACILITIES

Sec. 601. Short title.

Sec. 602. Clarification of general jurisdiction over solid waste transfer facilities.

Sec. 603. Regulation of solid waste rail transfer facilities.

Sec. 604. Solid waste rail transfer facility land-use exemption authority.

Sec. 605. Effect on other statutes and authorities.

TITLE VII—TECHNICAL CORRECTIONS

Sec. 701. Technical corrections.

1 (c) *AMENDMENT OF TITLE 49.—Except as otherwise*
 2 *expressly provided, whenever in this Act an amendment or*
 3 *repeal is expressed in terms of an amendment to, or a repeal*
 4 *of, a section or other provision, the reference shall be consid-*
 5 *ered to be made to a section or other provision of title 49,*
 6 *United States Code.*

7 **SEC. 2. DEFINITIONS.**

8 (a) *IN GENERAL.—In this Act:*

9 (1) *CROSSING.—The term “crossing” means a lo-*
 10 *cation within a State, other than a location where*
 11 *one or more railroad tracks cross one or more rail-*
 12 *road tracks at grade where—*

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

1 (B) a pathway explicitly authorized by a
2 public authority or a railroad that is dedicated
3 for the use of nonvehicular traffic, including pe-
4 destrians, bicyclists, and others, that is not asso-
5 ciated with a public highway, road, or street, or
6 a private roadway, crosses one or more railroad
7 tracks either at grade or grade-separated.

8 (2) *DEPARTMENT.*—The term “Department”
9 means the Department of Transportation.

10 (3) *RAILROAD.*—The term “railroad” has the
11 meaning given that term by section 20102 of title 49,
12 United States Code.

13 (4) *RAILROAD CARRIER.*—The term “railroad
14 carrier” has the meaning given that term by section
15 20102 of title 49, United States Code.

16 (5) *SECRETARY.*—The term “Secretary” means
17 the Secretary of Transportation.

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

21 (b) *IN TITLE 49.*—Section 20102 is amended—

22 (1) by redesignating paragraphs (1) and (2) as
23 paragraphs (2) and (3), respectively;

24 (2) by inserting before paragraph (2), as redesi-
25 gnated, the following:

1 “(1) ‘Class I railroad’ means a railroad carrier
2 that has annual carrier operating revenues that meet
3 the threshold amount for Class I carriers, as deter-
4 mined by the Surface Transportation Board under
5 section 1201.1-1 of title 49, Code of Federal Regula-
6 tions.”; and

7 (3) by adding at the end thereof the following:

8 “(4) ‘safety-related railroad employee’ means—

9 “(A) a railroad employee who is subject to
10 chapter 211;

11 “(B) another operating railroad employee
12 who is not subject to chapter 211;

13 “(C) an employee who maintains the right
14 of way of a railroad carrier;

15 “(D) an employee of a railroad carrier who
16 is a hazmat employee as defined in section
17 5102(3) of this title;

18 “(E) an employee who inspects, repairs, or
19 maintains locomotives, passenger cars or freight
20 cars; and

21 “(F) any other employee of a railroad car-
22 rier who directly affects railroad safety, as deter-
23 mined by the Secretary.”.

24 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

25 Section 20117(a) is amended to read as follows:

1 “(a) *IN GENERAL.*—

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

6 “(A) *\$186,000,000 for fiscal year 2008;*

7 “(B) *\$221,000,000 for fiscal year 2009;*

8 “(C) *\$231,000,000 for fiscal year 2010;*

9 “(D) *\$237,000,000 for fiscal year 2011;*

10 “(E) *\$244,000,000 for fiscal year 2012; and*

11 “(F) *\$251,000,000 for fiscal year 2013.*

12 “(2) *With amounts appropriated pursuant to*
13 *paragraph (1), the Secretary may designate the fol-*
14 *lowing amounts for research and development:*

15 “(A) *\$36,000,000.*

16 “(B) *\$34,000,000.*

17 “(C) *\$36,000,000.*

18 “(D) *\$37,000,000.*

19 “(E) *\$38,000,000.*

20 “(F) *\$39,000,000.*

21 “(3) *With amounts appropriated pursuant to*
22 *paragraph (1), the Secretary shall purchase Gage Re-*
23 *straint Measurement System vehicles and track geom-*
24 *etry vehicles or other comparable technology as needed*
25 *to assess track safety, consistent with the results of the*

1 *track inspection study required by section 403 of the*
2 *Railroad Safety Enhancement Act of 2008.*

3 *“(4) Such sums as may be necessary from the*
4 *amount appropriated pursuant to paragraph (1) for*
5 *each of the fiscal years 2008 through 2013 shall be*
6 *made available to the Secretary for personnel in re-*
7 *gional offices and in Washington, D.C., whose duties*
8 *primarily involve rail security.”.*

9 ***TITLE I—RAILROAD SAFETY RISK***
10 ***REDUCTION AND STRATEGY***

11 ***SEC. 101. ESTABLISHMENT OF CHIEF SAFETY OFFICER.***

12 *Section 103 is amended—*

13 *(1) by redesignating subsections (c), (d), and (e)*
14 *as subsections (e), (f), and (g);*

15 *(2) by inserting after subsection (b) the fol-*
16 *lowing:*

17 *“(c) SAFETY AS HIGHEST PRIORITY.—In carrying out*
18 *its duties, the Administration shall consider safety as the*
19 *highest priority, recognizing the clear intent, encourage-*
20 *ment, and dedication of Congress to the furtherance of the*
21 *highest degree of safety in railroad transportation.*

22 *“(d) CHIEF SAFETY OFFICER.—The Administration*
23 *shall have an Associate Administrator for Railroad Safety*
24 *appointed in the career service by the Secretary. The Asso-*
25 *ciate Administrator shall be the Chief Safety Officer of the*

1 *Administration. The Associate Administrator shall carry*
2 *out the duties and powers prescribed by the Administrator;*
3 *and*

4 *(3) by striking “(c)(1)” in subsection (f), as re-*
5 *designated, and inserting “(e)(1)”.*

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

7 *(a) SAFETY GOALS.—In conjunction with existing fed-*
8 *erally-required and voluntary strategic planning efforts on-*
9 *going at the Department and the Federal Railroad Admin-*
10 *istration on the date of enactment of this Act, the Secretary*
11 *shall develop a long-term strategy for improving railroad*
12 *safety to cover a period of not less than 5 years. The strat-*
13 *egy shall include an annual plan and schedule for achiev-*
14 *ing, at a minimum, the following goals:*

15 *(1) Reducing the number and rates of accidents,*
16 *injuries, and fatalities involving railroads including*
17 *train collisions, derailments, and human factors.*

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

20 *(3) Improving the identification of high-risk*
21 *highway-rail grade crossings and strengthening en-*
22 *forcement and other methods to increase grade cross-*
23 *ing safety.*

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

1 (5) *Preventing railroad trespasser accidents, in-*
2 *juries, and fatalities.*

3 (6) *Improving the safety of railroad bridges, tun-*
4 *nels, and related infrastructure to prevent accidents,*
5 *injuries, and fatalities caused by catastrophic failures*
6 *and other bridge and tunnel failures.*

7 (b) *RESOURCE NEEDS.—The strategy and annual*
8 *plan shall include estimates of the funds and staff resources*
9 *needed to accomplish the goals established by subsection (a).*
10 *Such estimates shall also include the staff skills and train-*
11 *ing required for timely and effective accomplishment of each*
12 *such goal.*

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

19 (d) *ACHIEVEMENT OF GOALS.—*

20 (1) *PROGRESS ASSESSMENT.—No less frequently*
21 *than annually, the Secretary shall assess the progress*
22 *of the Department toward achieving the strategic*
23 *goals described in subsection (a). The Secretary shall*
24 *identify any deficiencies in achieving the goals within*

1 *the strategy and develop and institute measures to re-*
2 *mediate such deficiencies.*

3 (2) *REPORT TO CONGRESS.*—Not later than No-
4 *vember 1st of each year, the Secretary shall transmit*
5 *a report to the Senate Committee on Commerce,*
6 *Science, and Transportation and the House of Rep-*
7 *resentatives Committee on Transportation and Infra-*
8 *structure on the performance of the Federal Railroad*
9 *Administration containing the progress assessment re-*
10 *quired by paragraph (1) toward achieving the goals*
11 *of the railroad safety strategy and annual plans*
12 *under subsection (a).*

13 **SEC. 103. RAILROAD SAFETY RISK REDUCTION PILOT PRO-**
14 **GRAM.**

15 (a) *IN GENERAL.*—Subchapter II of chapter 201 is
16 *amended by adding at the end thereof the following:*

17 **“§ 20156. Railroad safety risk reduction pilot program**

18 **“(a) PILOT PROGRAM.—**

19 **“(1) IN GENERAL.—***In conjunction with ongoing*
20 *behavior-based safety research at the Department of*
21 *Transportation, the Secretary shall develop a 4-year*
22 *railroad safety risk reduction pilot program to sys-*
23 *tematically evaluate and manage railroad safety risks*
24 *with the goal of reducing the numbers and rates of*
25 *railroad accidents, injuries, and fatalities. Not later*

1 *than 1 year after the date of enactment of the Rail-*
2 *road Safety Enhancement Act of 2008, the Secretary*
3 *shall, in coordination with selected railroads, railroad*
4 *facilities, nonprofit employee labor organizations that*
5 *represent safety-related railroad employees employed*
6 *at such railroad or railroad facility, and any other*
7 *entities that the Secretary determines to be relevant,*
8 *at a minimum—*

9 *“(A) identify the aspects of a selected rail-*
10 *road or railroad facility, including operating*
11 *practices, infrastructure, equipment, employee*
12 *levels and schedules, safety culture, management*
13 *structure, employee training, and other matters,*
14 *including those not covered by railroad safety*
15 *regulations or other Federal regulations, that im-*
16 *act railroad safety;*

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

20 *“(C) develop a safety risk reduction pro-*
21 *gram to improve the safety of a selected railroad*
22 *or railroad facility by reducing the numbers and*
23 *rates of accidents, injuries, and fatalities*
24 *through—*

1 “(i) the mitigation of the aspects of a
2 selected railroad or railroad facility that in-
3 crease risks to railroad safety; and

4 “(ii) the enhancement of aspects of a
5 selected railroad or railroad facility that de-
6 crease risks to railroad safety; and

7 “(D) incorporate into the program the con-
8 sideration and use of existing, new, or novel
9 technology, operating practices, risk management
10 practices or other behavior-based practices that
11 could improve railroad safety at the selected rail-
12 road or railroad facility.

13 “(2) *IMPLEMENTATION DEADLINE.*—Not later
14 than 2 years after the date of enactment of the Rail-
15 road Safety Enhancement Act of 2008, the selected
16 railroad or railroad facility shall implement the safe-
17 ty risk reduction program developed under paragraph
18 (1)(C) on the selected railroad or railroad facility and
19 ensure that all employees at the selected railroad or
20 railroad facility have received training related to the
21 program.

22 “(b) *SELECTION OF RAILROAD OR RAILROAD FACILITY*
23 *FOR PILOT PROGRAM.*—Not later than 6 months after the
24 date of enactment of the Railroad Safety Enhancement Act
25 of 2008, the Secretary shall develop a voluntary application

1 process to select 1 or more railroad carriers or railroad fa-
2 cilities where the pilot project will be implemented. The ap-
3 plication process shall include criteria for rating appli-
4 cants, such as safety performance, accident and incident
5 history, existence of risk management or behavior-based
6 practices at the railroad or railroad facility, number of em-
7 ployees employed at the railroad or railroad facility, and
8 other relevant criteria determined by the Secretary. If more
9 than 1 railroad or railroad facility is selected, the Secretary
10 shall select railroads and railroad facilities that are rep-
11 resentative of the railroad industry as a whole, if possible.

12 “(c) *EVALUATION.*—Not later than 6 months after the
13 completion of the safety risk reduction program pilot pro-
14 gram, the Secretary shall submit a report to Congress evalu-
15 ating the pilot program, which shall include—

16 “(1) a summary of the railroad safety risk re-
17 duction pilot program and description of the actions
18 taken by the Secretary and selected railroad or rail-
19 road facilities during the program;

20 “(2) an analysis of the difference in the number
21 and rates of accidents, injuries, and fatalities at a se-
22 lected railroad or railroad facility before and after the
23 implementation of the risk reduction pilot program at
24 a selected railroad or railroad facility; and

1 “(3) *guidelines on the preparation and imple-*
 2 *mentation of railroad safety risk reduction program*
 3 *for the railroad carriers required to develop such*
 4 *plans under section 20157 that reflect the best prac-*
 5 *tices developed during the pilot program.*

6 “(d) *GRANTS.—The Secretary shall establish a grant*
 7 *program for implementation of the railroad safety risk re-*
 8 *duction pilot program. Railroads and railroad facilities se-*
 9 *lected by the Secretary shall be eligible for grants.*

10 “(e) *AUTHORIZATION OF APPROPRIATIONS.—There are*
 11 *authorized to be appropriated to the Secretary of Transpor-*
 12 *tation \$1,000,000 for fiscal years 2009 and 2010 to carry*
 13 *out subsection (d).”.*

14 “(b) *CONFORMING AMENDMENT.—The chapter analysis*
 15 *for chapter 201 is amended by inserting after the item relat-*
 16 *ing to section 20155 the following:*

 “20156. *Railroad safety risk reduction pilot program”.*

17 **SEC. 104. RAILROAD SAFETY RISK REDUCTION PROGRAM.**

18 “(a) *IN GENERAL.—Subchapter II of chapter 201, as*
 19 *amended by section 103, is amended by adding at end there-*
 20 *of the following:*

21 **“§ 20157. Railroad safety risk reduction program**

22 “(a) *IN GENERAL.—*

23 “(1) *PROGRAM REQUIREMENT.—Not later than 5*
 24 *years after the date of enactment, the Secretary, by*
 25 *regulation, shall require each railroad carrier that is*

1 *a Class I railroad, a railroad carrier that has inad-*
2 *equately safety performance (as determined by the Sec-*
3 *retary), or a railroad that provides intercity pas-*
4 *senger or commuter rail passenger transportation—*

5 *“(A) to develop a railroad safety risk reduc-*
6 *tion program under subsection (d) that system-*
7 *atically evaluates system-wide railroad safety*
8 *risks and manages those risks in order to reduce*
9 *the numbers and rates of railroad accidents, in-*
10 *juries, and fatalities;*

11 *“(B) to submit its program, including any*
12 *required plans, to the Federal Railroad Adminis-*
13 *tration for its review and approval; and*

14 *“(C) to implement the program and plans*
15 *approved by the Federal Railroad Administra-*
16 *tion.*

17 *“(2) RELIANCE ON PILOT PROGRAM.—The Sec-*
18 *retary shall use the information and experience gath-*
19 *ered through the pilot program under section 20156*
20 *in developing regulations under this section.*

21 *“(3) WAIVERS.—Under section 20103(d) of this*
22 *chapter the Secretary may grant a waiver to a rail-*
23 *road carrier from compliance with all or a part of the*
24 *requirements of this section if the Secretary deter-*

1 *mines that the safety performance of the railroad car-*
2 *rier is sufficient to warrant the waiver.*

3 *“(4) VOLUNTARY COMPLIANCE.—A railroad car-*
4 *rier that is not required to submit a railroad safety*
5 *risk reduction program under this section may volun-*
6 *tarily submit a program that meets the requirements*
7 *of this section to the Federal Railroad Administra-*
8 *tion. The Federal Railroad Administration shall ap-*
9 *prove or disapprove any program submitted under*
10 *this paragraph.*

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

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

1 “(d) *PROGRAM ELEMENTS.*—

2 “(1) *IN GENERAL.*—Each railroad required to
3 submit a railroad safety risk reduction program
4 under subsection (a) shall develop a comprehensive
5 safety risk reduction program to improve safety by re-
6 ducing the number and rates of accidents, injuries,
7 and fatalities that is based on the risk analysis re-
8 quired by subsection (c) through—

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

11 “(B) the enhancement of aspects that de-
12 crease risks to railroad safety.

13 “(2) *REQUIRED COMPONENTS.*—Each railroad’s
14 safety risk reduction program shall include a tech-
15 nology implementation plan that meets the require-
16 ments of subsection (e) and a fatigue management
17 plan that meets the requirements of subsection (f).

18 “(e) *TECHNOLOGY IMPLEMENTATION PLAN.*—

19 “(1) *IN GENERAL.*—As part of its railroad safety
20 risk reduction program, a railroad required to submit
21 a railroad safety risk reduction program under sub-
22 section (a) shall develop a 10-year technology imple-
23 mentation plan that describes the railroad’s plan for
24 development, adoption, implementation, and use of
25 current, new, or novel technologies on its system over

1 *a 10-year period to reduce safety risks identified*
2 *under the railroad safety risk reduction program.*

3 “(2) *TECHNOLOGY ANALYSIS.*—*A railroad’s tech-*
4 *nology implementation plan shall include an analysis*
5 *of the safety impact, feasibility, and cost and benefits*
6 *of implementing technologies, including processor-*
7 *based technologies, positive train control systems (as*
8 *defined in section 20158(b)), electronically controlled*
9 *pneumatic brakes, rail integrity inspection systems,*
10 *rail integrity warning systems, switch position indi-*
11 *cators, trespasser prevention technology, highway rail*
12 *grade crossing technology, and other new or novel*
13 *railroad safety technology, as appropriate, that may*
14 *mitigate risks to railroad safety identified in the risk*
15 *analysis required by subsection (c).*

16 “(3) *IMPLEMENTATION SCHEDULE.*—*A railroad’s*
17 *technology implementation plan shall contain a*
18 *prioritized implementation schedule for the develop-*
19 *ment, adoption, implementation, and use of current,*
20 *new, or novel technologies on its system to reduce*
21 *safety risks identified under the railroad safety risk*
22 *reduction program.*

23 “(f) *FATIGUE MANAGEMENT PLAN.*—

24 “(1) *IN GENERAL.*—*As part of its railroad safety*
25 *risk reduction program, a railroad required to submit*

1 *a railroad safety risk reduction program under sub-*
2 *section (a) for which the analysis under subsection (c)*
3 *has shown fatigue to be a significant source of risk*
4 *shall develop a fatigue management plan that is de-*
5 *signed to reduce the fatigue experienced by safety-re-*
6 *lated railroad employees and to reduce the likelihood*
7 *of accidents, injuries, and fatalities caused by fatigue.*

8 “(2) *TARGETED FATIGUE COUNTERMEASURES.*—
9 *A railroad’s fatigue management plan shall take into*
10 *account the varying circumstances of operations by*
11 *the railroad on different parts of its system, and shall*
12 *prescribe appropriate fatigue countermeasures to ad-*
13 *dress those varying circumstances.*

14 “(3) *ADDITIONAL ELEMENTS.*—*A railroad shall*
15 *consider the need to include in its fatigue manage-*
16 *ment plan elements addressing each of the following*
17 *items, as applicable:*

18 “(A) *Employee education and training on*
19 *the physiological and human factors that affect*
20 *fatigue, as well as strategies to reduce or miti-*
21 *gate the effects of fatigue, based on the most cur-*
22 *rent scientific and medical research and lit-*
23 *erature.*

24 “(B) *Opportunities for identification, diag-*
25 *nosis, and treatment of any medical condition*

1 *that may affect alertness or fatigue, including*
2 *sleep disorders.*

3 “(C) *Effects on employee fatigue of an em-*
4 *ployee’s short-term or sustained response to*
5 *emergency situations, such as derailments and*
6 *natural disasters, or engagement in other inten-*
7 *sive working conditions.*

8 “(D) *Scheduling practices for employees, in-*
9 *cluding innovative scheduling practices for em-*
10 *ployees, including scheduling procedures, on-duty*
11 *call practices, work and rest cycles, increases in*
12 *consecutive days off for employees, changes in*
13 *shift patterns, appropriate scheduling practices*
14 *for varying types of work, and other aspects of*
15 *employee scheduling that would reduce employee*
16 *fatigue and cumulative sleep loss.*

17 “(E) *Methods to minimize accidents and*
18 *incidences that occur as a result of working at*
19 *times when scientific and medical research have*
20 *shown increased fatigue disrupts employees’ cir-*
21 *cadian rhythm.*

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

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

4 “(H) *The increase of the number of consec-*
5 *utive hours of off-duty rest, during which an em-*
6 *ployee receives no communication from the em-*
7 *ploying railroad carrier or its managers, super-*
8 *visors, officers, or agents.*

9 “(I) *Avoidance of abrupt changes in rest cy-*
10 *cles for employees.*

11 “(J) *Additional elements that the Secretary*
12 *considers appropriate.*

13 “(g) *CONSENSUS.—*

14 “(1) *IN GENERAL.—Each railroad required to*
15 *submit a railroad safety risk reduction program*
16 *under subsection (a) shall consult with, employ good*
17 *faith and use its best efforts to reach agreement with,*
18 *all of its directly affected employees, including any*
19 *non-profit labor organization representing a class or*
20 *craft of directly affected employees of the railroad car-*
21 *rier, on the contents of the safety risk reduction pro-*
22 *gram.*

23 “(2) *STATEMENT.—If the railroad carrier and*
24 *its directly affected employees, including any non-*
25 *profit employee labor organization representing a*

1 *class or craft of directly affected employees of the rail-*
2 *road carrier, cannot reach consensus on the proposed*
3 *contents of the plan, then directly affected employees*
4 *and such organization may file a statement with the*
5 *Secretary explaining their views on the plan on*
6 *which consensus was not reached. The Secretary shall*
7 *consider such views during review and approval of*
8 *the program.*

9 “(h) *ENFORCEMENT.*—*The Secretary shall have the*
10 *authority to assess civil penalties pursuant to chapter 213*
11 *for a violation of this section, including the failure to sub-*
12 *mit, certify, or comply with a safety risk reduction pro-*
13 *gram, technology implementation plan, or fatigue manage-*
14 *ment plan.”.*

15 (b) *CONFORMING AMENDMENT.*—*The chapter analysis*
16 *for chapter 201, as amended by section 103, is further*
17 *amended by inserting after the item relating to section*
18 *20156 the following:*

 “20157. *Railroad safety risk reduction program*”.

19 **SEC. 105. POSITIVE TRAIN CONTROL SYSTEM IMPLEMENTA-**
20 **TION.**

21 (a) *IN GENERAL.*—*Subchapter II of chapter 201, as*
22 *amended by section 104, is further amended by adding at*
23 *end thereof the following:*

1 **“§ 20158. Positive train control system implementation**

2 “(a) *IN GENERAL.*—*The Secretary of Transportation*
 3 *shall ensure that each railroad required to submit a rail-*
 4 *road safety risk reduction program pursuant to section*
 5 *20157 that includes in its technology implementation plan*
 6 *a schedule for implementation of a positive train control*
 7 *system complies with that schedule and implements its posi-*
 8 *tive train control system by December 31, 2018, unless the*
 9 *Secretary determines that a railroad shall implement its*
 10 *positive train control system by an earlier date.*

11 “(b) *POSITIVE TRAIN CONTROL SYSTEM DEFINED.*—
 12 *The term ‘positive train control system’ means a system de-*
 13 *signed to prevent train-to-train collisions, overspeed*
 14 *derailments, and incursions into roadway worker work lim-*
 15 *its.”.*

16 “(b) *CONFORMING AMENDMENT.*—*The chapter analysis*
 17 *for chapter 201, as amended by section 104, is further*
 18 *amended by inserting after the item relating to section*
 19 *20157 the following:*

 “20158. *Positive train control system implementation*”.

20 **SEC. 106. HOURS-OF-SERVICE REFORM.**

21 “(a) *CHANGE IN DEFINITION OF SIGNAL EMPLOYEE.*—
 22 *Section 21101(4) is amended—*

23 (1) *by striking “employed by a railroad carrier”;*

24 *and*

25 (2) *by inserting “railroad” after “maintaining”.*

1 **(b) LIMITATION ON DUTY HOURS OF TRAIN EMPLOY-**
2 **EES.**—*Section 21103 is amended—*

3 *(1) by striking subsection (a) and inserting the*
4 *following:*

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

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

11 “*(A) on duty;*

12 “*(B) waiting for transportation, or in*
13 *deadhead transportation, to a place of final re-*
14 *lease; or*

15 “*(C) in any other mandatory service for the*
16 *carrier;*

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

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

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

24 “*(A) 6 consecutive days, unless that em-*
25 *ployee has had at least 48 consecutive hours off*

1 *duty at the employee’s home terminal during*
2 *which time the employee is unavailable for any*
3 *service for any railroad carrier; or*

4 “(B) 7 consecutive days, unless that em-
5 ployee has had at least 72 consecutive hours off
6 duty at the employee’s home terminal during
7 which time the employee is unavailable for any
8 service for any railroad carrier, if—

9 “(i) a collective bargaining agreement
10 expressly provides for such a schedule;

11 “(ii) such a schedule is provided for by
12 a pilot program authorized by a collective
13 bargaining agreement; or

14 “(iii) such a schedule is provided for
15 by a pilot program under section 21108 of
16 this chapter related to employees’ work and
17 rest cycles.

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

23 (2) *by redesignating subsection (c) as subsection*
24 *(d) and inserting after subsection (b) the following:*

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

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

9 “(A) *a casualty;*

10 “(B) *an accident;*

11 “(C) *an act of God;*

12 “(D) *a derailment;*

13 “(E) *a major equipment failure that pre-*
14 *vents the train from advancing; or*

15 “(F) *a delay resulting from a cause un-*
16 *known and unforeseeable to a railroad carrier or*
17 *its officer or agent in charge of the employee*
18 *when the employee left a terminal.*

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

1 “(3) A railroad carrier and its officers and
2 agents shall provide, at the election of employees sub-
3 ject to this section at the beginning of the employee’s
4 off-duty period additional time off duty equal to the
5 number of hours that such sum exceeds 12 hours if—

6 “(A) the time spent waiting for transpor-
7 tation, or in deadhead transportation, from a
8 duty assignment to the place of final release that
9 is not time on duty, plus

10 “(B) the time on duty,
11 exceeds 12 consecutive hours.”; and

12 (3) by adding at the end thereof the following:

13 “(e) *COMMUNICATION DURING TIME OFF DUTY.*—
14 During a train employee’s minimum off-duty period of 10
15 consecutive hours, as provided under subsection (a), during
16 an interim period of at least 4 consecutive hours available
17 for rest under subsection (b)(7), or during additional off
18 duty hours elected to be taken by an employee under sub-
19 section (c)(3), a railroad carrier, and its officers and
20 agents, shall not communicate with the train employee by
21 telephone, by pager, or in any other manner that could rea-
22 sonably be expected to disrupt the employee’s rest. Nothing
23 in this subsection shall prohibit communication necessary
24 to notify an employee of an emergency situation, as defined
25 by the Secretary. The Secretary may waive the require-

1 *ments of this paragraph for commuter or intercity pas-*
 2 *senger railroads if the Secretary determines that such a*
 3 *waiver will not reduce safety and is necessary to maintain*
 4 *such railroads' efficient operations and on-time perform-*
 5 *ance of its trains.”.*

6 *(c) LIMITATION ON DUTY HOURS OF SIGNAL EMPLOY-*
 7 *EES.—Section 21104 is amended—*

8 *(1) by striking subsection (a) and inserting the*
 9 *following:*

10 *“(a) IN GENERAL.—Except as provided in subsection*
 11 *(c) of this section, a railroad carrier and its officers and*
 12 *agents may not require or allow its signal employee to re-*
 13 *main or go on duty and a contractor or subcontractor to*
 14 *a railroad carrier and its officers and agents may not re-*
 15 *quire or allow one of its signal employees to remain or go*
 16 *on duty —*

17 *“(1) for a period in excess of 12 consecutive*
 18 *hours; or*

19 *“(2) unless that employee has had at least 10*
 20 *consecutive hours off duty during the prior 24*
 21 *hours.”;*

22 *(2) by striking “duty, except that up to one hour*
 23 *of that time spent returning from the final trouble*
 24 *call of a period of continuous or broken service is*

1 *time off duty.” in subsection (b)(3) and inserting*
2 *“duty.”;*

3 *(3) by inserting “A signal employee may not be*
4 *allowed to remain or go on duty under the emergency*
5 *authority provided under this subsection to conduct*
6 *routine repairs, routine maintenance, or routine in-*
7 *spection of signal systems.” after “service.” in sub-*
8 *section (c);*

9 *(4) by adding at the end the following:*

10 *“(d) COMMUNICATION DURING TIME OFF DUTY.—*
11 *During a signal employee’s minimum off-duty period of 10*
12 *consecutive hours, as provided under subsection (a), a rail-*
13 *road carrier or a contractor or subcontractor to a railroad*
14 *carrier, and its officers and agents, shall not communicate*
15 *with the signal employee by telephone, by pager, or in any*
16 *other manner that could reasonably be expected to disrupt*
17 *the employee’s rest. Nothing in this subsection shall prohibit*
18 *communication necessary to notify an employee of an emer-*
19 *gency situation, as defined by the Secretary.*

20 *“(e) EXCLUSIVITY.—The hours of service, duty hours,*
21 *and rest periods of signal employees shall be governed exclu-*
22 *sively by this chapter. Signal employees operating motor*
23 *vehicles shall not be subject to any hours of service rules,*
24 *duty hours or rest period rules promulgated by any Federal*
25 *authority, including the Federal Motor Carrier Safety Ad-*

1 *ministration, other than the Federal Railroad Administra-*
2 *tion.”.*

3 *(d) ALTERNATE HOURS OF SERVICE REGIME.—*

4 *(1) APPLICATION OF HOURS OF SERVICE RE-*
5 *GIME.—Section 21102 is amended—*

6 *(A) by striking the section caption and in-*
7 *serting the following:*

8 **“§21102. Nonapplication, exemption, and alternate**
9 **hours of service regime”**; and

10 *(B) by adding at the end thereof the fol-*
11 *lowing:*

12 *“(c) ALTERNATE HOURS OF SERVICE REGIME.—A*
13 *railroad carrier and its directly affected employees or a*
14 *non-profit employee labor organization that represents such*
15 *employees may jointly develop and submit for approval to*
16 *the Secretary an alternate hours of service regime to that*
17 *provided in this chapter that would increase the maximum*
18 *hours an employee may be required or allowed to go or re-*
19 *main on duty or decrease the minimum hours an employee*
20 *may be required to rest and would become effective no ear-*
21 *lier than 1 year after the date of enactment of the Railroad*
22 *Safety Enhancement Act of 2008. The Secretary may con-*
23 *sider such a request anytime after the date of enactment*
24 *of the Railroad Safety Enhancement Act of 2008 and may*
25 *approve such a request only after providing an opportunity*

1 *for public notice and comment and determining that the*
2 *proposed hours of service regime is in the public interest*
3 *and will not adversely affect railroad safety. The exemption*
4 *shall be for a specific period of time and shall be subject*
5 *to review upon a schedule determined appropriate by the*
6 *Secretary.*

7 “(d) *APPLICATION OF HOURS OF SERVICE REGIME TO*
8 *COMMUTER AND INTERCITY PASSENGER RAILROAD TRAIN*
9 *EMPLOYEES.—*

10 “(1) *When providing commuter rail passenger*
11 *transportation or intercity rail passenger transpor-*
12 *tation, the limitations on duty hours for train em-*
13 *ployees of railroad carriers, including public authori-*
14 *ties operating passenger service, shall be solely gov-*
15 *erned by old section 21103 until the earlier of—*

16 “(A) *the effective date of regulations pre-*
17 *scribed by the Secretary under section 21109(b)*
18 *of this chapter; or*

19 “(B) *the date that is 3 years following the*
20 *date of enactment of the Railroad Safety En-*
21 *hancement Act of 2008.*

22 “(2) *After the date on which old section 21103*
23 *ceases to apply, pursuant to paragraph (1), to the*
24 *limitations on duty hours for train employees of rail-*
25 *road carriers with respect to the provision of com-*

1 *muter rail passenger transportation or intercity rail*
2 *passenger transportation, the limitations on duty*
3 *hours for train employees of such railroad carriers*
4 *shall be governed by new section 21103, except as pro-*
5 *vided in paragraph (3).*

6 “(3) *After the effective date of the regulations*
7 *prescribed by the Secretary under section 21109(b) of*
8 *this title, such carriers shall—*

9 “(A) *comply with the limitations on duty*
10 *hours for train employees with respect to the pro-*
11 *vision of commuter rail passenger transportation*
12 *or intercity rail passenger transportation as pre-*
13 *scribed by such regulations; and*

14 “(B) *be exempt from complying with the*
15 *provisions of old section 21103 and new section*
16 *21103 for such employees.*

17 “(4) *In this subsection:*

18 “(A) *The terms ‘commuter rail passenger*
19 *transportation’ and ‘intercity rail passenger*
20 *transportation’ have the meaning given those*
21 *terms in section 24102 of this title.*

22 “(C) *The term ‘new section 21103’ means*
23 *section 21103 of this chapter as amended by the*
24 *Railroad Safety Enhancement Act of 2008.*

1 “(D) *The term ‘old section 21103’ means*
 2 *section 21103 of this chapter as it was in effect*
 3 *on the day before the enactment of that Act.’”.*

4 (2) *CONFORMING AMENDMENT.—The chapter*
 5 *analysis for chapter 211 is amended by striking the*
 6 *item relating to section 21102 and inserting the fol-*
 7 *lowing:*

“21102. Nonapplication, exemption, and alternate hours of service regime”.

8 (e) *REGULATORY AUTHORITY.—*

9 (1) *IN GENERAL.—Chapter 211 is amended by*
 10 *adding at the end thereof the following:*

11 **“§21109. Regulatory authority**

12 “(a) *IN GENERAL.—In order to improve safety and re-*
 13 *duce employee fatigue, the Secretary may prescribe*
 14 *regulations—*

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

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

22 “(3) *to limit or eliminate the amount of time an*
 23 *employee spends waiting for or in deadhead transpor-*
 24 *tation to the place of final release that is considered*
 25 *neither on duty nor off duty under this chapter;*

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

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

11 “(6) for signal employees—

12 “(A) to limit or eliminate the amount of
13 time that is considered to be neither on duty nor
14 off duty under this chapter that an employee
15 spends returning from an outlying worksite after
16 scheduled duty hours or returning from a trouble
17 call to the employee’s headquarters or directly to
18 the employee’s residence; and

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

23 “(7) to require other changes to railroad oper-
24 ating and scheduling practices, including unscheduled

1 *duty calls, that could affect employee fatigue and rail-*
2 *road safety.*

3 “(b) *REGULATIONS GOVERNING THE HOURS OF SERV-*
4 *ICE OF TRAIN EMPLOYEES OF COMMUTER AND INTERCITY*
5 *PASSENGER RAILROAD CARRIERS.—Within 3 years after*
6 *the date of enactment of the Railroad Safety Enhancement*
7 *Act of 2008, the Secretary shall prescribe regulations and*
8 *issue orders to establish hours of service requirements for*
9 *train employees engaged in commuter rail passenger trans-*
10 *portation and intercity rail passenger transportation (as*
11 *defined in section 24102 of this title) that may differ from*
12 *the requirements of this chapter. Such regulations and or-*
13 *ders may address railroad operating and scheduling prac-*
14 *tices, including unscheduled duty calls, communications*
15 *during time off duty, and time spent in or waiting for*
16 *deadhead transportation to the place of final release, that*
17 *could affect employee fatigue and railroad safety.*

18 “(c) *CONSIDERATIONS.—In issuing regulations under*
19 *subsection (a) the Secretary shall consider scientific and*
20 *medical research related to fatigue and fatigue abatement,*
21 *railroad scheduling and operating practices that improve*
22 *safety or reduce employee fatigue, a railroad’s use of new*
23 *or novel technology intended to reduce or eliminate human*
24 *error, the variations in freight and passenger railroad*
25 *scheduling practices and operating conditions, the vari-*

1 *ations in duties and operating conditions for employees*
2 *subject to this chapter, a railroad’s required or voluntary*
3 *use of fatigue management plans covering employees subject*
4 *to this chapter, and any other relevant factors.*

5 “(d) *TIME LIMITS.*—*If the Secretary requests that the*
6 *Railroad Safety Advisory Committee accept the task of de-*
7 *veloping regulations under subsection (a) or (b) and the*
8 *Committee accepts the task, the Committee shall reach con-*
9 *sensus on the rulemaking within 18 months after accepting*
10 *the task. If the Committee does not reach consensus within*
11 *18 months after the Secretary makes the request, the Sec-*
12 *retary shall prescribe appropriate regulations within 18*
13 *months. If the Secretary does not request that the Railroad*
14 *Safety Advisory Committee accept the task of developing*
15 *regulations under subsection (a) or (b), the Secretary shall*
16 *prescribe regulations within 3 years after the date of enact-*
17 *ment of the Railroad Safety Enhancement Act of 2008.*

18 “(e) *PILOT PROJECTS.*—

19 “(1) *IN GENERAL.*—*Not later than 2 years after*
20 *the date of enactment of the Railroad Safety En-*
21 *hancement Act of 2008, the Secretary shall conduct at*
22 *least 2 pilot projects of sufficient size and scope to*
23 *analyze specific practices which may be used to re-*
24 *duce fatigue for train and engine and other railroad*
25 *employees as follows:*

1 “(A) A pilot project at a railroad or rail-
2 road facility to evaluate the efficacy of commu-
3 nicating to employees notice of their assigned
4 shift time 10 hours prior to the beginning of
5 their assigned shift as a method for reducing em-
6 ployee fatigue.

7 “(B) A pilot project at a railroad or rail-
8 road facility to evaluate the efficacy of requiring
9 railroads who use employee scheduling practices
10 that subject employees to periods of unscheduled
11 duty calls to assign employees to defined or spe-
12 cific unscheduled call shifts that are followed by
13 shifts not subject to call, as a method for reduc-
14 ing employee fatigue.

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

18 “(f) DUTY CALL DEFINED.—In this section the term
19 ‘duty call’ means a telephone call that a railroad places
20 to an employee to notify the employee of his or her assigned
21 shift time.”.

22 (2) CONFORMING AMENDMENTS.—

23 (A) The chapter analysis for chapter 211 is
24 amended by adding at the end thereof the fol-
25 lowing:

“21109. Regulatory authority”.

1 (B) *The first sentence of section 21303(a)(1)*
2 *is amended by inserting “including section*
3 *21103 (as such section was in effect on the day*
4 *before the date of enactment of the Railroad*
5 *Safety Enhancement Act of 2008),” after “this*
6 *title,” the second place it appears.*

7 (f) *RECORD KEEPING AND REPORTING.—*

8 (1) *REGULATIONS.—Not later than 180 days*
9 *after the date of enactment of this Act, the Secretary*
10 *shall prescribe a regulation revising the requirements*
11 *for recordkeeping and reporting for Hours of Service*
12 *of Railroad Employees contained in part 228 of title*
13 *49, Code of Federal Regulations—*

14 (A) *to adjust record keeping and reporting*
15 *requirements to support fully compliance with*
16 *chapter 211 of title 49, United States Code, as*
17 *amended by this Act;*

18 (B) *to authorize electronic record keeping,*
19 *and reporting of excess service, consistent with*
20 *appropriate considerations for user interface;*
21 *and*

22 (C) *to require training of affected employees*
23 *and supervisors, including training of employees*
24 *in the entry of hours of service data.*

1 (2) *PROCEDURE.*—*In lieu of issuing a notice of*
2 *proposed rulemaking as contemplated by section 553*
3 *of title 5, United States Code, the Secretary may uti-*
4 *lize the Railroad Safety Advisory Committee to assist*
5 *in development of the regulation. The Secretary may*
6 *propose and adopt amendments to the revised regula-*
7 *tions thereafter as may be necessary in light of expe-*
8 *rience under the revised requirements.*

9 (g) *1-YEAR DELAY IN IMPLEMENTATION OF DUTY*
10 *HOURS LIMITATION CHANGES.*—*The amendments made by*
11 *subsections (a), (b), and (c) shall take effect 1 year after*
12 *the date of enactment of this Act.*

13 **SEC. 107. PROTECTION OF RAILROAD SAFETY RISK ANAL-**
14 **YSES INFORMATION.**

15 (a) *AMENDMENT.*—*Subchapter I of chapter 201 is*
16 *amended by adding at the end thereof the following:*

17 **“§20118. Prohibition on public disclosure of railroad**
18 **safety analysis records**

19 “(a) *IN GENERAL.*—*Except as necessary for the Sec-*
20 *retary of Transportation or another Federal agency to en-*
21 *force or carry out any provision of Federal law, any part*
22 *of any record (including, but not limited to, a railroad car-*
23 *rier’s analysis of its safety risks and its statement of the*
24 *mitigation measures it has identified with which to address*
25 *those risks) that the Secretary has obtained pursuant to a*

1 *provision of, or regulation or order under, this chapter re-*
2 *lated to the establishment, implementation, or modification*
3 *of a railroad safety risk reduction program or pilot pro-*
4 *gram is exempt from the requirements of section 552 of title*
5 *5 if the record is—*

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

8 “(2) *made available for inspection and copying*
9 *by an officer, employee, or agent of the Secretary pur-*
10 *suant to that safety risk reduction program or pilot*
11 *program.*

12 “(b) *EXCEPTION.—Notwithstanding subsection (a), the*
13 *Secretary may disclose any part of any record comprised*
14 *of facts otherwise available to the public if, in the Sec-*
15 *retary’s sole discretion, the Secretary determines that dis-*
16 *closure would be consistent with the confidentiality needed*
17 *for that safety risk reduction program.*

18 “(c) *DISCRETIONARY PROHIBITION OF DISCLOSURE.—*
19 *The Secretary may prohibit the public disclosure of risk*
20 *analyses or risk mitigation analyses that the Secretary has*
21 *obtained under other provisions of, or regulations or orders*
22 *under, this chapter if the Secretary determines that the pro-*
23 *hibition of public disclosure is necessary to promote rail-*
24 *road safety.*

1 **“§20119. Discovery and admission into evidence of**
2 **certain reports and surveys**

3 *“Notwithstanding any other provision of law, no part*
4 *of any report, survey, schedule, list, or data compiled or*
5 *collected for the purpose of evaluating, planning, or imple-*
6 *menting a railroad safety risk reduction program or other*
7 *risk analysis or risk mitigation analysis designated by the*
8 *Secretary of Transportation under section 20118(c) pursu-*
9 *ant to a provision of, or regulation or order under, this*
10 *chapter (including a railroad carrier’s analysis of its safety*
11 *risks and its statement of the mitigation measures with*
12 *which it will address those risks) shall be subject to dis-*
13 *covery or admitted into evidence in a Federal or State court*
14 *proceeding, or considered for another purpose, in any action*
15 *by a private party or parties for damages against the car-*
16 *rier, or its officers, employees, or contractors. The preceding*
17 *sentence does not apply to any report, survey, list, or data*
18 *otherwise available to the public.”.*

19 **(b) CONFORMING AMENDMENT.—***The chapter analysis*
20 *for chapter 201 is amended by inserting after the item relat-*
21 *ing to section 20117 the following:*

“20118. Prohibition on public disclosure of railroad safety analysis records”.

“20119. Discovery and admission into evidence of certain reports and surveys”.

1 **TITLE II—HIGHWAY-RAIL GRADE**
2 **CROSSING AND PEDESTRIAN**
3 **SAFETY AND TRESPASSER**
4 **PREVENTION**

5 **SEC. 201. PEDESTRIAN CROSSING SAFETY.**

6 *Not later than 1 year after the date of enactment of*
7 *this Act, the Secretary shall provide guidance to railroads*
8 *on strategies and methods to prevent pedestrian accidents,*
9 *injuries, and fatalities at or near passenger stations,*
10 *including—*

11 *(1) providing audible warning of approaching*
12 *trains to the pedestrians at railroad passenger sta-*
13 *tions;*

14 *(2) using signs, signals, or other visual devices*
15 *to warn pedestrians of approaching trains;*

16 *(3) installing infrastructure at pedestrian cross-*
17 *ings to improve the safety of pedestrians crossing rail-*
18 *road tracks;*

19 *(4) installing fences to prohibit access to railroad*
20 *tracks; and*

21 *(5) other strategies or methods as determined by*
22 *the Secretary.*

23 **SEC. 202. STATE ACTION PLANS.**

24 *(a) IN GENERAL.—Beginning not later than 6 months*
25 *after the date of enactment of this Act, the Secretary shall*

1 *identify on an annual basis the 10 States that receive Fed-*
2 *eral funds for highway-rail grade crossing safety projects*
3 *that have had the most highway-rail grade crossing colli-*
4 *sions in the preceding fiscal year. The Secretary may re-*
5 *quire as a condition of receiving such funds in the future*
6 *(in addition to any requirements imposed under any other*
7 *provision of law) that each of these States develop within*
8 *a period of time determined by the Secretary a State Grade*
9 *Crossing Action Plan that identifies specific solutions for*
10 *improving safety at crossings, including highway-rail grade*
11 *crossing closures or grade separations, particularly at cross-*
12 *ings that have experienced multiple accidents, and shall*
13 *provide assistance to the States in developing and carrying*
14 *out, as appropriate, the plan. The plan may be coordinated*
15 *with other State or Federal planning requirements.*

16 **(b) REVIEW AND APPROVAL.**—*Not later than 90 days*
17 *after the Secretary receives a plan under subsection (a), the*
18 *Secretary shall review and approve or disapprove it. If the*
19 *proposed plan is not approved, the Secretary shall notify*
20 *the affected State as to the specific points in which the pro-*
21 *posed plan is deficient, and the State shall correct all defi-*
22 *ciencies within 60 days following receipt of written notice*
23 *from the Secretary.*

1 **SEC. 203. IMPROVEMENTS TO SIGHT DISTANCE AT HIGH-**
2 **WAY-RAIL GRADE CROSSINGS.**

3 (a) *IN GENERAL.*—Subchapter II of chapter 201, as
4 amended by section 105 of this Act, is further amended by
5 inserting after section 20158 the following:

6 **“§ 20159. Roadway user sight distance at highway-rail**
7 **grade crossings**

8 “(a) *IN GENERAL.*—Not later than 18 months after the
9 date of enactment of the Railroad Safety Enhancement Act
10 of 2008, the Secretary of Transportation shall prescribe reg-
11 ulations that require each railroad carrier to remove from
12 its active rights-of-way at all public highway-rail grade
13 crossings, and at all private highway-rail grade crossings
14 open to unrestricted public access (as declared in writing
15 by the holder of the crossing right), grass, brush, shrubbery,
16 trees, and other vegetation which may materially obstruct
17 the view of a pedestrian or a vehicle operator for a reason-
18 able distance, as specified by the Secretary, in either direc-
19 tion of the train’s approach, and to maintain its rights-
20 of-way at all such crossings free of such vegetation. In pre-
21 scribing the regulations, the Secretary shall take into con-
22 sideration to the extent practicable—

23 “(1) the type of warning device or warning de-
24 vices installed at such crossings;

25 “(2) factors affecting the timeliness and effective-
26 ness of roadway user decisionmaking, including the

1 *maximum allowable roadway speed, maximum au-*
2 *thorized train speed, angle of intersection, and topog-*
3 *raphy;*

4 “(3) *the presence or absence of other sight dis-*
5 *tance obstructions off the railroad right-of-way; and*

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

8 “(b) *PROTECTED VEGETATION.*—*In promulgating reg-*
9 *ulations pursuant to this section, the Secretary may make*
10 *allowance for preservation of trees and other ornamental*
11 *or protective growth where State or local law or policy*
12 *would otherwise protect the vegetation from removal and*
13 *where the roadway authority or private crossing holder is*
14 *notified of the sight distance obstruction and, within a rea-*
15 *sonable period specified by the regulation, takes appropriate*
16 *action to abate the hazard to roadway users (such as by*
17 *closing the crossing, posting supplementary signage, install-*
18 *ing active warning devices, lowering roadway speed, or in-*
19 *stalling traffic calming devices).*

20 “(c) *MODEL LEGISLATION.*—*Not later than 18 months*
21 *after the date of enactment of the Railroad Safety Enhance-*
22 *ment Act of 2008, the Secretary, after consultation with the*
23 *Federal Railroad Administration, the Federal Highway*
24 *Administration, and States, shall develop and make avail-*
25 *able to States model legislation providing for improving*

1 *safety by addressing sight obstructions, at highway-rail*
 2 *grade crossings that are equipped solely with passive warn-*
 3 *ings, as recommended by the Inspector General of the De-*
 4 *partment of Transportation in Report No. MH-2007-*
 5 *044.”.*

6 (b) *CONFORMING AMENDMENT.—The chapter analysis*
 7 *for chapter 201, as amended by section 105 of this Act, is*
 8 *amended by inserting after the item relating to section*
 9 *20158 the following new item:*

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

10 **SEC. 204. NATIONAL CROSSING INVENTORY.**

11 (a) *IN GENERAL.—Subchapter II of chapter 201, as*
 12 *amended by section 203 of this Act, is further amended by*
 13 *adding at the end the following new section:*

14 **“§ 20160. National crossing inventory**

15 *“(a) INITIAL REPORTING OF INFORMATION ABOUT*
 16 *PREVIOUSLY UNREPORTED CROSSINGS.—Not later than 1*
 17 *year after the date of enactment of the Railroad Safety En-*
 18 *hancement Act of 2008 or 6 months after a new crossing*
 19 *becomes operational, whichever occurs later, each railroad*
 20 *carrier shall—*

21 *“(1) report to the Secretary of Transportation*
 22 *current information, including information about*
 23 *warning devices and signage, as specified by the Sec-*
 24 *retary, concerning each previously unreported cross-*

1 *ing through which it operates or with respect to the*
2 *trackage over which it operates; or*

3 “(2) *ensure that the information has been re-*
4 *ported to the Secretary by another railroad carrier*
5 *that operates through the crossing.*

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

7 “(1) *On a periodic basis beginning not later*
8 *than 2 years after the date of enactment of the Rail-*
9 *road Safety Enhancement Act of 2008 and on or be-*
10 *fore September 30 of every year thereafter, or as oth-*
11 *erwise specified by the Secretary, each railroad car-*
12 *rier shall—*

13 “(A) *report to the Secretary current information,*
14 *including information about warning devices and*
15 *signage, as specified by the Secretary, concerning each*
16 *crossing through which it operates or with respect to*
17 *the trackage over which it operates; or*

18 “(B) *ensure that the information has been re-*
19 *ported to the Secretary by another railroad carrier*
20 *that operates through the crossing.*

21 “(2) *A railroad carrier that sells a crossing or any*
22 *part of a crossing on or after the date of enactment of the*
23 *Railroad Safety Enhancement Act of 2008 shall, not later*
24 *than the date that is 18 months after the date of enactment*
25 *of that Act or 3 months after the sale, whichever occurs*

1 *later, or as otherwise specified by the Secretary, report to*
2 *the Secretary current information, as specified by the Sec-*
3 *retary, concerning the change in ownership of the crossing*
4 *or part of the crossing.*

5 “(c) *RULEMAKING AUTHORITY.*—*The Secretary shall*
6 *prescribe the regulations necessary to implement this sec-*
7 *tion. The Secretary may enforce each provision of the De-*
8 *partment of Transportation’s statement of the national*
9 *highway-rail crossing inventory policy, procedures, and in-*
10 *struction for States and railroads that is in effect on the*
11 *date of enactment of the Railroad Safety Enhancement Act*
12 *of 2008, until such provision is superseded by a regulation*
13 *issued under this section.*

14 “(d) *DEFINITIONS.*—*In this section:*

15 “(1) *CROSSING.*—*The term ‘crossing’ means a lo-*
16 *cation within a State, other than a location where*
17 *one or more railroad tracks cross one or more rail-*
18 *road tracks either at grade or grade-separated,*
19 *where—*

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

24 “(B) *a pathway explicitly authorized by a*
25 *public authority or a railroad carrier that is*

1 *dedicated for the use of nonvehicular traffic, in-*
2 *cluding pedestrians, bicyclists, and others, that is*
3 *not associated with a public highway, road, or*
4 *street, or a private roadway, crosses one or more*
5 *railroad tracks either at grade or grade-sepa-*
6 *rated.*

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

10 (b) *CONFORMING AMENDMENT.*—*The chapter analysis*
11 *for chapter 201, as amended by section 203 of this Act, is*
12 *amended by inserting after the item relating to section*
13 *20159 the following:*

 “20160. *National crossing inventory*”.

14 (c) *REPORTING AND UPDATING.*—*Section 130 of title*
15 *23, United States Code, is amended by adding at the end*
16 *the following:*

17 “(l) *NATIONAL CROSSING INVENTORY.*—

18 “(1) *INITIAL REPORTING OF CROSSING INFORMA-*
19 *TION.*—*Not later than 1 year after the date of enact-*
20 *ment of the Railroad Safety Enhancement Act of*
21 *2008 or within 6 months of a new crossing becoming*
22 *operational, whichever occurs later, each State shall*
23 *report to the Secretary of Transportation current in-*
24 *formation, including information about warning de-*
25 *vices and signage, as specified by the Secretary, con-*

1 cerning each previously unreported crossing located
2 within its borders.

3 “(2) *PERIODIC UPDATING OF CROSSING INFOR-*
4 *MATION.*—On a periodic basis beginning not later
5 than 2 years after the date of enactment of the Rail-
6 road Safety Enhancement Act of 2008 and on or be-
7 fore September 30 of every year thereafter, or as oth-
8 erwise specified by the Secretary, each State shall re-
9 port to the Secretary current information, including
10 information about warning devices and signage, as
11 specified by the Secretary, concerning each crossing
12 located within its borders.

13 “(3) *RULEMAKING AUTHORITY.*—The Secretary
14 shall prescribe the regulations necessary to implement
15 this subsection. The Secretary may enforce each provi-
16 sion of the Department of Transportation’s statement
17 of the national highway-rail crossing inventory pol-
18 icy, procedures, and instructions for States and rail-
19 roads that is in effect on the date of enactment of the
20 Railroad Safety Enhancement Act of 2008, until such
21 provision is superseded by a regulation issued under
22 this subsection.

23 “(4) *DEFINITIONS.*—In this subsection—

24 “(A) ‘public crossing’ means a location
25 within a State, other than a location where one

1 *or more railroad tracks cross one or more rail-*
2 *road tracks either at grade or grade-separated,*
3 *where—*

4 “(i) a public highway, road, or street,
5 including associated sidewalks and path-
6 ways, crosses one or more railroad tracks ei-
7 ther at grade or grade-separated; or

8 “(ii) a publicly owned pathway explic-
9 itly authorized by a public authority or a
10 railroad carrier and dedicated for the use of
11 non-vehicular traffic, including pedestrians,
12 bicyclists, and others, that is not associated
13 with a public highway, road, or street, or a
14 private roadway, crosses one or more rail-
15 road tracks either at grade or grade-sepa-
16 rated; and

17 “(B) ‘State’ means a State of the United
18 States, the District of Columbia, or Puerto
19 Rico.”.

20 (d) *CIVIL PENALTIES.—*

21 (1) *Section 21301(a)(1) is amended—*

22 (A) *by inserting “with section 20160 or”*
23 *after “comply” in the first sentence; and*

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

1 (2) *Section 21301(a)(2) is amended by inserting*
2 *“The Secretary shall impose a civil penalty for a vio-*
3 *lation of section 20160 of this title.” after the first*
4 *sentence.*

5 **SEC. 205. TELEPHONE NUMBER TO REPORT GRADE CROSS-**
6 **ING PROBLEMS.**

7 (a) *IN GENERAL.*—*Section 20152 is amended to read*
8 *as follows:*

9 **“§ 20152. Notification of grade crossing problems**

10 *“Not later than 18 months after the date of enactment*
11 *of the Railroad Safety Enhancement Act of 2008, the Sec-*
12 *retary of Transportation shall require each railroad carrier*
13 *to—*

14 *“(1) establish and maintain a telephone service,*
15 *which may be required to be a toll-free telephone for*
16 *specific railroad carriers as determined by the Sec-*
17 *retary to be appropriate, for rights-of-way over which*
18 *it dispatches trains, to directly receive calls*
19 *reporting—*

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

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

1 “(C) obstructions to the view of a pedestrian
2 or a vehicle operator for a reasonable distance in
3 either direction of a train’s approach; or

4 “(D) other safety information involving
5 such grade crossings;

6 “(2) upon receiving a report pursuant to para-
7 graph (1)(A) or (B), immediately contact trains oper-
8 ating near the grade crossing to warn them of the
9 malfunction or disabled vehicle;

10 “(3) upon receiving a report pursuant to para-
11 graph (1)(A) or (B), and after contacting trains pur-
12 suant to paragraph (2), contact, as necessary, appro-
13 priate public safety officials having jurisdiction over
14 the grade crossing to provide them with the informa-
15 tion necessary for them to direct traffic, assist in the
16 removal of the disabled vehicle, or carry out other ac-
17 tivities as appropriate;

18 “(4) upon receiving a report pursuant to para-
19 graph (1)(C) or (D), timely investigate the report, re-
20 move the obstruction if possible, or correct the unsafe
21 circumstance; and

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

1 “(A) a telephone number to be used for plac-
2 ing calls described in paragraph (1) to the rail-
3 road carrier dispatching trains on that right-of-
4 way;

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

7 “(C) the grade crossing number assigned for
8 that crossing by the National Highway-Rail
9 Crossing Inventory established by the Depart-
10 ment of Transportation.”.

11 (b) *CONFORMING AMENDMENT.*—The chapter analysis
12 for chapter 201 is amended by striking the item relating
13 to section 20152 and inserting the following:

“20152. Notification of grade crossing problems”.

14 **SEC. 206. OPERATION LIFESAVER.**

15 (a) *GRANT.*—The Federal Railroad Administration
16 shall make a grant or grants to Operation Lifesaver to
17 carry out a public information and education program to
18 help prevent and reduce pedestrian, motor vehicle, and other
19 incidents, injuries, and fatalities, and to improve awareness
20 along railroad rights-of-way and at highway-rail grade
21 crossings. This includes development, placement, and dis-
22 semination of Public Service Announcements in newspaper,
23 radio, television, and other media. It will also include
24 school presentations, brochures and materials, support for
25 public awareness campaigns, and related support for the

1 *activities of Operation Lifesaver's member organizations.*
2 *As part of an educational program funded by grants*
3 *awarded under this section, Operation Lifesaver shall pro-*
4 *vide information to the public on how to identify and report*
5 *to the appropriate authorities unsafe or malfunctioning*
6 *highway-rail grade crossings.*

7 **(b) PILOT PROGRAM.**—*The Secretary may allow funds*
8 *provided under subsection (a) also to be used by Operation*
9 *Lifesaver to implement a pilot program, to be known as*
10 *the Railroad Safety Public Awareness Program, that ad-*
11 *dresses the need for targeted and sustained community out-*
12 *reach on the subjects described in subsection (a). Such a*
13 *pilot program shall be established in 1 or more States iden-*
14 *tified under section 202 of this Act. In carrying out such*
15 *a pilot program Operation Lifesaver shall work with the*
16 *State, community leaders, school districts, and public and*
17 *private partners to identify the communities at greatest*
18 *risk, to develop appropriate measures to reduce such risks,*
19 *and shall coordinate the pilot program with the State grade*
20 *crossing action plan.*

21 **(c) AUTHORIZATION OF APPROPRIATIONS.**—*There are*
22 *authorized to be appropriated to the Federal Railroad Ad-*
23 *ministration for carrying out this section—*

24 **(1)** *\$2,000,000 for each of fiscal years 2008,*
25 *2009, and 2010; and*

1 (2) \$1,500,000 for each of fiscal years 20011,
2 2012, and 2013.

3 **SEC. 207. FEDERAL GRANTS TO STATES FOR HIGHWAY-RAIL**
4 **GRADE CROSSING SAFETY.**

5 (a) *IN GENERAL.*—Part B of subtitle V is amended
6 by adding at the end thereof the following:

“CHAPTER 225. FEDERAL GRANTS TO STATES FOR HIGHWAY-RAIL
GRADE CROSSING SAFETY

“Sec.

“22501. *Financial assistance to States for certain projects*

“22502. *Distribution*

“22503. *Standards for awarding grants*

“22504. *Use of funds*

“22505. *Authorization of appropriations*

7 **“§ 22501. *Financial assistance to States for certain***
8 ***projects***

9 “*The Secretary of Transportation shall make grants*
10 *to a maximum of 3 States per year for development or con-*
11 *tinuance of enhanced public education and awareness ac-*
12 *tivities, in combination with targeted law enforcement, to*
13 *significantly reduce violations of traffic laws at highway-*
14 *rail grade crossings and to help prevent and reduce injuries*
15 *and fatalities along railroad rights-of-way.*

16 **“§ 22502. *Distribution***

17 “*The Secretary shall provide the grants to the State*
18 *agency or agencies responsible for highway-rail grade cross-*
19 *ing safety.*

1 **“§ 22503. Standards for awarding grants**

2 *“The Secretary shall provide grants based upon the*
 3 *merits of the proposed program of activities provided by*
 4 *the State and upon a determination of where the grants*
 5 *will provide the greatest safety benefits.*

6 **“§ 22504. Use of funds**

7 *“Any State receiving a grant under this chapter shall*
 8 *use the funds to develop, implement, and continue to meas-*
 9 *ure the effectiveness of a dedicated program of public edu-*
 10 *cation and enforcement of highway-rail crossing safety laws*
 11 *and to prevent casualties along railroad rights-of-way. The*
 12 *Secretary may not make a grant under this chapter avail-*
 13 *able to assist a State or political subdivision thereof in es-*
 14 *tablishing or continuing a quiet zone pursuant to part 222*
 15 *of title 49, Code of Federal Regulations.*

16 **“§ 22505. Authorization of appropriations**

17 *“There are authorized to be appropriated to the Sec-*
 18 *retary \$500,000 for each of fiscal years 2009 through 2013*
 19 *to carry out the provisions of this chapter. Amounts appro-*
 20 *priated pursuant to this section shall remain available*
 21 *until expended.”.*

22 **(b) CONFORMING AMENDMENT.**—*The subtitle analysis*
 23 *for subtitle V is amended by inserting after the item relat-*
 24 *ing to chapter 223 the following:*

225. *Federal grant to States for highway-rail crossing safety.....22501”.*

1 **SEC. 208. TRESPASSER PREVENTION AND HIGHWAY-RAIL**
2 **CROSSING SAFETY.**

3 (a) *TRESPASSER PREVENTION AND HIGHWAY-RAIL*
4 *GRADE CROSSING WARNING SIGN VIOLATIONS.*—Section
5 *20151 is amended—*

6 (1) *by striking the section heading and inserting*
7 *the following:*

8 **“§20151. Railroad trespassing, vandalism, and high-**
9 **way-rail grade crossing warning sign vio-**
10 **lation prevention strategy” ;**

11 (2) *by striking subsection (a) and inserting the*
12 *following:*

13 “(a) *EVALUATION OF EXISTING LAWS.*—*In consulta-*
14 *tion with affected parties, the Secretary of Transportation*
15 *shall evaluate and review current local, State, and Federal*
16 *laws regarding trespassing on railroad property, vandalism*
17 *affecting railroad safety, and violations of highway-rail*
18 *grade crossing warning signs and develop model prevention*
19 *strategies and enforcement laws to be used for the consider-*
20 *ation of State and local legislatures and governmental enti-*
21 *ties. The first such evaluation and review concerning viola-*
22 *tions of grade crossing signals shall be completed within*
23 *1 year after the date of enactment of the Railroad Safety*
24 *Enhancement Act of 2008. The Secretary shall revise the*
25 *model prevention strategies and enforcement codes periodi-*
26 *cally.”;*

1 (3) by inserting “FOR TRESPASSING AND VAN-
2 DALISM PREVENTION” in the subsection heading of
3 subsection (b) after “OUTREACH PROGRAM”;

4 (4) in subsection (c)—

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

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

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

11 “(2) Within 18 months after the date of enactment of
12 the Railroad Safety Enhancement Act of 2008, the Sec-
13 retary, after consultation with State and local governments
14 and railroad carriers, shall develop and make available to
15 State and local governments model State legislation pro-
16 viding for civil or criminal penalties, or both, for violations
17 of highway-rail grade crossing warning signs.”; and

18 (5) by adding at the end the following new sub-
19 section:

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

1 “(1) to drive around a grade crossing gate in a
2 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, who cre-
11 ates a hazard of an accident involving injury or
12 property damage at the grade crossing.”.

13 (b) *CONFORMING AMENDMENT.*—*The chapter analysis*
14 *for chapter 201 of title 49, United States Code, is amended*
15 *by striking the item relating to section 20151 and inserting*
16 *the following:*

*“20151. Railroad trespassing, vandalism, and highway-rail grade crossing warn-
ing sign violation prevention strategy”.*

17 (c) *EDUCATIONAL OR AWARENESS PROGRAM ITEMS*
18 *FOR DISTRIBUTION.*—*Section 20134(a) is amended by add-*
19 *ing at the end of the subsection the following: “The Sec-*
20 *retary may purchase items of nominal value and distribute*
21 *them to the public without charge as part of an educational*
22 *or awareness program to accomplish the purposes of this*
23 *section and of any other sections of this title related to im-*
24 *proving the safety of highway-rail crossings and to pre-*

1 *venting trespass on railroad rights of way, and the Sec-*
2 *retary shall prescribe guidelines for the administration of*
3 *this authority.”.*

4 **SEC. 209. FOSTERING INTRODUCTION OF NEW TECH-**
5 **NOLOGY TO IMPROVE SAFETY AT HIGHWAY-**
6 **RAIL GRADE CROSSINGS.**

7 *(a) AMENDMENT.—Subchapter II of chapter 201, as*
8 *amended by section 204 of this Act, is further amended by*
9 *adding at the end the following:*

10 **“§20161. Fostering introduction of new technology to**
11 **improve safety at highway-rail grade**
12 **crossings**

13 *“(a) POLICY.—It is the policy of the Department of*
14 *Transportation to encourage the development of new tech-*
15 *nology that can prevent loss of life and injuries at highway-*
16 *rail grade crossings. The Secretary of Transportation shall*
17 *carry out this policy in consultation with States and nec-*
18 *essary public and private entities.*

19 *“(b) SUBMISSION OF NEW TECHNOLOGY PRO-*
20 *POSALS.—Railroad carriers and railroad suppliers may*
21 *submit for review and approval to the Secretary such new*
22 *technology designed to improve safety at highway-rail grade*
23 *crossings. The Secretary shall approve the new technology*
24 *designed to improve safety at highway-rail grade crossings*
25 *in accordance with Federal Railroad Administration stand-*

1 ards for the development and use of processor-based signal
2 and train control systems and shall consider the effects on
3 safety of highway-user interface with the new technology.

4 “(c) *EFFECT OF SECRETARIAL APPROVAL.*—If the Sec-
5 retary approves new technology to provide warning to high-
6 way users at a highway-rail grade crossing and such tech-
7 nology is installed at a highway-rail grade crossing in ac-
8 cordance with the conditions of the approval, this deter-
9 mination preempts any State law concerning the adequacy
10 of the technology in providing warning at the crossing.
11 Under no circumstances may a person (including a State,
12 other public authority, railroad carrier, system designer, or
13 supplier of the technology) be held liable for damages for
14 any harm to persons or property because of an accident
15 or incident at the crossing protected by such technology
16 based upon the carrier’s failure to properly inspect and
17 maintain such technology, if the carrier has inspected and
18 maintained the technology in accordance with the terms of
19 the Secretary’s approval.”.

20 (b) *CONFORMING AMENDMENT.*—The chapter analysis
21 for chapter 201, as amended by section 204 of this Act, is
22 further amended by inserting after the item relating to sec-
23 tion 20160, the following:

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

1 **TITLE III—FEDERAL RAILROAD**
2 **ADMINISTRATION**

3 **SEC. 301. HUMAN CAPITAL INCREASES.**

4 (a) *IN GENERAL.*—*The Secretary shall increase the*
5 *number of Federal Railroad Administration employees by*
6 *25 employees in each of fiscal years 2008 through 2013.*

7 (b) *FUNCTIONS.*—*In increasing the number of employ-*
8 *ees pursuant to subsection (a), the Secretary shall focus on*
9 *hiring employees—*

10 (1) *specifically trained to conduct on-site rail-*
11 *road and highway-rail grade crossing accident inves-*
12 *tigations;*

13 (2) *to implement the Railroad Safety Strategy;*

14 (3) *to administer and implement the Railroad*
15 *Safety Risk Reduction Pilot Program and the Rail-*
16 *road Safety Risk Reduction Program;*

17 (4) *to implement section 20166 of title 49,*
18 *United States Code, and to focus on encouragement*
19 *and oversight of the use of new or novel rail safety*
20 *technology;*

21 (5) *to conduct routine inspections and audits of*
22 *railroad and hazardous materials facilities and*
23 *records for compliance with railroad safety laws and*
24 *regulations;*

1 (6) to inspect railroad bridges, tunnels, and re-
2 lated infrastructure, and to review or analyze rail-
3 road bridge, tunnel, and related infrastructure inspec-
4 tion reports;

5 (7) to prevent or respond to natural or manmade
6 emergency situations or events involving rail infra-
7 structure or employees; and

8 (8) to support the Federal Railroad Administra-
9 tion's safety mission.

10 **SEC. 302. CIVIL PENALTY INCREASES.**

11 (a) *GENERAL VIOLATIONS OF CHAPTER 201.*—Section
12 *21301(a)(2)* is amended—

13 (1) by striking “\$10,000.” and inserting
14 “\$25,000.”; and

15 (2) by striking “\$20,000.” and inserting
16 “\$100,000.”.

17 (b) *ACCIDENT AND INCIDENT VIOLATIONS OF CHAPTER*
18 *201; VIOLATIONS OF CHAPTERS 203 THROUGH 209.*—Sec-
19 *tion 21302(a)(2)* is amended—

20 (1) by striking “\$10,000.” and inserting
21 “\$25,000.”; and

22 (2) by striking “\$20,000.” and inserting
23 “\$100,000.”.

24 (c) *VIOLATIONS OF CHAPTER 211.*—Section
25 *21303(a)(2)* is amended—

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

3 (2) by striking “\$20,000.” and inserting
4 “\$100,000.”.

5 **SEC. 303. ENFORCEMENT REPORT.**

6 (a) *IN GENERAL.*—Subchapter I of chapter 201, as
7 amended by section 107 of this Act, is amended by adding
8 at the end the following:

9 **“§ 20120. Enforcement Report.**

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

14 “(1) provides a summary of railroad safety and
15 hazardous materials compliance inspections and au-
16 dits that Federal or State inspectors conducted in the
17 prior fiscal year organized by type of alleged viola-
18 tion, including track, motive power and equipment,
19 signal, grade crossing, operating practices, accident
20 and incidence reporting, and hazardous materials;

21 “(2) provides a summary of all enforcement ac-
22 tions taken by the Secretary or the Federal Railroad
23 Administration during the prior fiscal year,
24 including—

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

4 “(B) the initial amount of civil penalties
5 assessed against railroad carriers, hazardous ma-
6 terials shippers, and individuals;

7 “(C) the number of civil penalty cases set-
8 tled against railroad carriers, hazardous mate-
9 rial shippers, and individuals;

10 “(D) the final amount of civil penalties as-
11 sessed against railroad carriers, hazardous mate-
12 rials shippers, and individuals;

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

17 “(F) the number of administrative hearings
18 requested and completed related to hazardous
19 materials transportation law violations or en-
20 forcement actions against individuals;

21 “(G) the number of cases referred to the At-
22 torney General for civil or criminal prosecution;

23 “(H) the number and subject matter of all
24 compliance orders, emergency orders or precursor
25 agreements;

1 “(3) analyzes the effect of the number of inspec-
2 tions conducted and enforcement actions taken on the
3 number and rate of reported accidents and incidents
4 and railroad safety;

5 “(4) identifies the number of locomotive engineer
6 certification denial or revocation cases appealed to
7 and the average length of time it took to be decided
8 by—

9 “(A) the Locomotive Engineer Review
10 Board;

11 “(B) an Administrative Hearing Officer or
12 Administrative Law Judge; or

13 “(C) the Administrator of the Federal Rail-
14 road Administration;

15 “(5) provides any explanation regarding changes
16 in the Secretary’s or the Federal Railroad Adminis-
17 tration’s enforcement programs or policies that may
18 substantially affect the information reported; and

19 “(6) includes any additional information that
20 the Secretary determines is useful to improve the
21 transparency of its enforcement program.”.

22 (b) *CONFORMING AMENDMENT.*—The chapter analysis
23 for chapter 201, as amended by section 107 of this Act, is
24 amended by inserting after the item relating to section
25 20119 the following:

“20120. Enforcement report”.

1 **SEC. 304. PROHIBITION OF INDIVIDUALS FROM PER-**
2 **FORMING SAFETY-SENSITIVE FUNCTIONS**
3 **FOR A VIOLATION OF HAZARDOUS MATE-**
4 **RIALS TRANSPORTATION LAW.**

5 *Section 20111(c) is amended to read as follows:*

6 *“(c) ORDERS PROHIBITING INDIVIDUALS FROM PER-*
7 *FORMING SAFETY-SENSITIVE FUNCTIONS.—*

8 *“(1) If an individual’s violation of this part,*
9 *chapter 51 of this title, or a regulation prescribed, or*
10 *an order issued, by the Secretary under this part or*
11 *chapter 51 of this title is shown to make that indi-*
12 *vidual unfit for the performance of safety-sensitive*
13 *functions, the Secretary, after providing notice and*
14 *an opportunity for a hearing, may issue an order*
15 *prohibiting the individual from performing safety-*
16 *sensitive functions in the railroad industry for a spec-*
17 *ified period of time or until specified conditions are*
18 *met.*

19 *“(2) This subsection does not affect the Sec-*
20 *retary’s authority under section 20104 of this title to*
21 *act on an emergency basis.”.*

22 **SEC. 305. RAILROAD RADIO MONITORING AUTHORITY.**

23 *Section 20107 is amended by inserting at the end the*
24 *following:*

25 *“(c) RAILROAD RADIO COMMUNICATIONS.—*

1 “(1) *IN GENERAL.*—*To carry out the Secretary’s*
2 *responsibilities under this part and under chapter 51,*
3 *the Secretary may authorize officers, employees, or*
4 *agents of the Secretary to conduct, with or without*
5 *making their presence known, the following activities*
6 *in circumstances the Secretary finds to be reasonable:*

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

12 “(i) *authorized for use by one or more*
13 *railroad carriers by the Federal Commu-*
14 *nications Commission; and*

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

18 “(B) *Communicating the existence, contents,*
19 *substance, purport, effect, or meaning of the com-*
20 *munication, subject to the restrictions in para-*
21 *graph (3).*

22 “(C) *Receiving or assisting in receiving the*
23 *communication (or any information therein con-*
24 *tained).*

1 “(D) *Disclosing the contents, substance,*
2 *purport, effect, or meaning of the communication*
3 *(or any part thereof of such communication) or*
4 *using the communication (or any information*
5 *contained therein), subject to the restrictions in*
6 *paragraph (3), after having received the commu-*
7 *nication or acquired knowledge of the contents,*
8 *substance, purport, effect, or meaning of the com-*
9 *munication (or any part thereof).*

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

12 “(2) *ACCIDENT PREVENTION AND ACCIDENT IN-*
13 *VESTIGATION.—The Secretary, and officers, employ-*
14 *ees, and agents of the Department of Transportation*
15 *authorized by the Secretary, may engage in the ac-*
16 *tivities authorized by paragraph (1) for the purpose*
17 *of accident prevention and accident investigation.*

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

22 “(i) *in a prosecution of a felony under Fed-*
23 *eral or State criminal law; or*

24 “(ii) *to impeach evidence offered by a party*
25 *other than the Federal Government regarding the*

1 *existence, electronic characteristics, content, sub-*
2 *stance, purport, effect, meaning, or timing of, or*
3 *identity of parties to, a communication inter-*
4 *cepted pursuant to paragraphs (1) and (2) in*
5 *proceedings pursuant to section 5122, 5123,*
6 *20702(b), 20111, 20112, 20113, or 20114 of this*
7 *title.*

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

17 “(C) *No evidence shall be excluded in an admin-*
18 *istrative or judicial proceeding solely because the gov-*
19 *ernment would not have learned of the existence of or*
20 *obtained such evidence but for the interception of in-*
21 *formation that is not admissible in such proceeding*
22 *under subparagraph (A).*

23 “(D) *Information obtained through activities set*
24 *forth in paragraphs (1) and (2) shall not be subject*

1 *to publication or disclosure, or search or review in*
2 *connection therewith, under section 552 of title 5.*

3 “(E) *Nothing in this subsection shall be con-*
4 *strued to impair or otherwise affect the authority of*
5 *the United States to intercept a communication, and*
6 *collect, retain, analyze, use, and disseminate the in-*
7 *formation obtained thereby, under a provision of law*
8 *other than this subsection.*

9 “(4) *APPLICATION WITH OTHER LAW.—Section*
10 *705 of the Communications Act of 1934 (47 U.S.C.*
11 *605) and chapter 119 of title 18 shall not apply to*
12 *conduct authorized by and pursuant to this sub-*
13 *section.”.*

14 **SEC. 306. EMERGENCY WAIVERS.**

15 *Section 20103 is amended—*

16 (1) *by striking subsection (e) and inserting the*
17 *following:*

18 “(e) *HEARINGS.—Except as provided in subsection (g)*
19 *of this section, the Secretary shall conduct a hearing as pro-*
20 *vided by section 553 of title 5 when prescribing a regulation*
21 *or issuing an order under this chapter, including a regula-*
22 *tion or order establishing, amending, or waiving compli-*
23 *ance with a railroad safety regulation prescribed or order*
24 *issued under this chapter. An opportunity for an oral pres-*
25 *entation shall be provided.”; and*

1 (2) *by adding at the end thereof the following:*

2 “(g) *EMERGENCY WAIVERS.*—

3 “(1) *IN GENERAL.*—*The Secretary shall prescribe*
4 *procedures concerning the handling of requests for*
5 *waivers of regulations prescribed or orders issued*
6 *under this chapter in emergency situations and may*
7 *prescribe temporary emergency waiver procedures*
8 *without first providing an opportunity for public*
9 *comment. The Secretary may grant a waiver request*
10 *if the waiver is directly related to the emergency event*
11 *or necessary to aid in any recovery efforts and is in*
12 *the public interest and consistent with railroad safety.*
13 *The relief shall not extend for a period of more than*
14 *9 months, including the period of the relief granted*
15 *under any renewal of the waiver pursuant to the*
16 *emergency waiver procedures. For matters that may*
17 *impact the missions of the Department of Homeland*
18 *Security, the Secretary of Transportation shall con-*
19 *sult and coordinate with the Secretary of Homeland*
20 *Security as soon as practicable.*

21 “(2) *WAIVER BEFORE HEARING.*—*If, under the emer-*
22 *gency waiver procedures established under paragraph (1)*
23 *of this subsection, the Secretary determines the public inter-*
24 *est would be better served by addressing a request for waiver*
25 *prior to providing an opportunity for a hearing under sec-*

1 *tion 553 of title 5 and an oral presentation, the Secretary*
2 *may act on the waiver request and, if the request is granted,*
3 *the Secretary shall subsequently provide notice and an op-*
4 *portunity for a hearing and oral presentation pursuant to*
5 *procedures prescribed under paragraph (1) of this sub-*
6 *section. Should the Secretary receive comment or a request*
7 *for oral presentation on a waiver request after granting the*
8 *waiver, the Secretary may take any necessary action with*
9 *regard to that waiver (including rescission or modification)*
10 *based on the newly acquired information.*

11 “(3) *EMERGENCY SITUATION; EMERGENCY EVENT.—In*
12 *this subsection, the terms ‘emergency situation’ and ‘emer-*
13 *gency event’ mean a natural or manmade disaster, such as*
14 *a hurricane, flood, earthquake, mudslide, forest fire, snow-*
15 *storm, terrorist act, biological outbreak, release of a dan-*
16 *gerous radiological, chemical, explosive, or biological mate-*
17 *rial, or a war-related activity, that poses a risk of death,*
18 *serious illness, severe injury, or substantial property dam-*
19 *age. The disaster may be local, regional, or national in*
20 *scope.”.*

21 **SEC. 307. FEDERAL RAIL SECURITY OFFICERS’ ACCESS TO**
22 **INFORMATION.**

23 (a) *AMENDMENT.—Chapter 281 is amended by adding*
24 *at the end thereof the following:*

1 **“§28104. Federal rail security officers’ access to infor-**
2 **mation**

3 “(a) *ACCESS TO RECORDS OR DATABASE SYSTEMS BY*
4 *THE ADMINISTRATOR OF THE FEDERAL RAILROAD ADMIN-*
5 *ISTRATION.*—

6 “(1) *IN GENERAL.*—*The Administrator of the*
7 *Federal Railroad Administration is authorized to*
8 *have access to a system of documented criminal jus-*
9 *tice information maintained by the Department of*
10 *Justice or by a State for the purpose of carrying out*
11 *the civil and administrative responsibilities of the*
12 *Administrator to protect the safety, including secu-*
13 *rity, of railroad operations and for other purposes au-*
14 *thorized by law, including the National Crime Pre-*
15 *vention and Privacy Compact (42 U.S.C. 14611-*
16 *14616). The Administrator shall be subject to the*
17 *same conditions or procedures established by the De-*
18 *partment of Justice or State for access to such an in-*
19 *formation system by other governmental agencies with*
20 *access to the system.*

21 “(2) *LIMITATION.*—*The Administrator may not*
22 *use the access authorized under paragraph (1) to con-*
23 *duct criminal investigations.*

24 “(b) *DESIGNATED EMPLOYEES OF THE FEDERAL*
25 *RAILROAD ADMINISTRATION.*—*The Administrator shall, by*
26 *order, designate each employee of the Administration whose*

1 *primary responsibility is rail security who shall carry out*
2 *the authority described in subsection (a). The Adminis-*
3 *trator shall strictly limit access to a system of documented*
4 *criminal justice information to persons with security re-*
5 *sponsibilities and with appropriate security clearances.*
6 *Such a designated employee may, insofar as authorized or*
7 *permitted by the National Crime Prevention and Privacy*
8 *Compact or other law or agreement governing an affected*
9 *State with respect to such a State—*

10 “(1) *have access to and receive criminal history,*
11 *driver, vehicle, and other law enforcement informa-*
12 *tion contained in the law enforcement databases of the*
13 *Department of Justice, or of any jurisdiction in a*
14 *State in the same manner as a police officer employed*
15 *by a State or local authority of that State who is cer-*
16 *tified or commissioned under the laws of that State;*

17 “(2) *use any radio, data link, or warning system*
18 *of the Federal Government and of any jurisdiction in*
19 *a State that provides information about wanted per-*
20 *sons, be-on-the-lookout notices, or warrant status or*
21 *other officer safety information to which a police offi-*
22 *cer employed by a State or local authority in that*
23 *State who is certified or commissioned under the laws*
24 *of that State has access and in the same manner as*
25 *such police officer; or*

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

7 “(c) *SYSTEM OF DOCUMENTED CRIMINAL JUSTICE IN-*
8 *FORMATION DEFINED.*—*In this section, the term ‘system of*
9 *documented criminal justice information’ means any law*
10 *enforcement database, systems, or communications con-*
11 *taining information concerning identification, criminal*
12 *history, arrests, convictions, arrest warrants, or wanted or*
13 *missing persons, including the National Crime Information*
14 *Center and its incorporated criminal history databases and*
15 *the National Law Enforcement Telecommunications Sys-*
16 *tem.’.*”.

17 (b) *CONFORMING AMENDMENT.*—*The chapter analysis*
18 *for chapter 281 is amended by adding at the end the fol-*
19 *lowing:*

 “28104. *Federal rail officers’ access to information.*”.

20 **SEC. 308. UPDATE OF FEDERAL RAILROAD ADMINISTRA-**
21 **TION’S WEBSITE.**

22 (a) *IN GENERAL.*—*The Secretary shall update the Fed-*
23 *eral Railroad Administration’s public website to better fa-*
24 *cilitate the ability of the public, including those individuals*
25 *who are not regular users of the public website, to find cur-*

1 *rent information regarding the Federal Railroad Adminis-*
2 *tration’s activities.*

3 **(b) PUBLIC REPORTING OF VIOLATIONS.**—*On the Fed-*
4 *eral Railroad Administration’s public website’s home page,*
5 *the Secretary shall provide a mechanism for the public to*
6 *submit written reports of potential violations of Federal*
7 *railroad safety and hazardous materials transportation*
8 *laws, regulations and orders to the Federal Railroad Ad-*
9 *ministration.*

10 **TITLE IV—RAILROAD SAFETY**
11 **ENHANCEMENTS**

12 **SEC. 401. EMPLOYEE TRAINING.**

13 **(a) IN GENERAL.**—*Subchapter II of chapter 201, as*
14 *amended by section 208 of this Act, is further amended by*
15 *adding at the end the following:*

16 **“§ 20162. Employee training**

17 **“(a) IN GENERAL.**—*Not later than 1 year after the*
18 *date of enactment of the Railroad Safety Enhancement Act*
19 *of 2008, the Secretary of Transportation shall prescribe reg-*
20 *ulations requiring railroad carriers and railroad carrier*
21 *contractors and subcontractors to develop training plans for*
22 *crafts and classes of employees, as the Secretary determines*
23 *appropriate.*

24 **“(b) CONTENTS.**—*The Secretary shall require that*
25 *each training plan—*

1 “(1) clearly identify the class of craft of employ-
2 ees to which the plan applies;

3 “(2) require that employees be trained on the re-
4 quirements of relevant Federal railroad safety laws,
5 regulations, and orders;

6 “(3) require employees to be tested or otherwise
7 demonstrate their proficiency in the subject matter of
8 the training; and

9 “(4) contain any other relevant information that
10 the Secretary deems appropriate.

11 “(c) *SUBMISSION FOR APPROVAL.*—The Secretary
12 shall require each railroad carrier, railroad carrier con-
13 tractor, and railroad carrier subcontractor to submit its
14 training plan to the Federal Railroad Administration for
15 review and approval.

16 “(d) *EXEMPTION.*—The Secretary may exempt rail-
17 road carriers and railroad carrier contractors and sub-
18 contractors from submitting training plans covering em-
19 ployees for which the Secretary has issued training regula-
20 tions before the date of enactment of the Railroad Safety
21 Enhancement Act of 2008.”.

22 (b) *CONFORMING AMENDMENT.*—The chapter analysis
23 for chapter 201, as amended by section 208 of this Act, is
24 further amended by adding at the end thereof the following:

“20162. Employee training”.

1 **SEC. 402. CERTIFICATION OF CERTAIN CRAFTS OR CLASSES**
2 **OF EMPLOYEES.**

3 (a) *REPORT.*—Not later than 1 year after the date of
4 enactment of this Act, the Secretary shall issue a report to
5 the Senate Committee on Commerce, Science, and Trans-
6 portation and the House of Representatives Committee on
7 Transportation and Infrastructure about whether the cer-
8 tification of certain crafts or classes of railroad carrier or
9 railroad carrier contractor or subcontractor employees is
10 necessary to reduce the number and rate of accidents and
11 incidents or to improve railroad safety.

12 (b) *CRAFTS AND CLASSES TO BE CONSIDERED.*—As
13 part of the report, the Secretary shall consider—

14 (1) *conductors;*

15 (2) *car repair and maintenance employees;*

16 (3) *onboard service workers;*

17 (4) *rail welders;*

18 (5) *dispatchers;*

19 (6) *signal repair and maintenance employees;*

20 *and*

21 (7) *any other craft or class of employees that the*
22 *Secretary determines appropriate.*

23 (c) *REGULATIONS.*—The Secretary may prescribe reg-
24 *ulations requiring the certification of certain crafts or class-*
25 *es of employees that the Secretary determines pursuant to*
26 *the report required by subsection (a) are necessary to reduce*

1 *the number and rate of accidents and incidents or to im-*
2 *prove railroad safety.*

3 **SEC. 403. TRACK INSPECTION TIME STUDY.**

4 (a) *STUDY.*—*Not later than 2 years after the date of*
5 *enactment of this Act, the Secretary shall—*

6 (1) *complete a study to determine whether—*

7 (A) *the required intervals of track inspec-*
8 *tions for each class of track should be amended;*

9 (B) *track remedial action requirements*
10 *should be amended;*

11 (C) *different track inspection and repair*
12 *priorities or methods should be required; and*

13 (2) *issue recommendations for changes to the*
14 *Federal track safety standards in part 213 of title 49,*
15 *Code of Federal Regulations, based on the results of*
16 *the study.*

17 (b) *CONSIDERATIONS.*—*In conducting the study the*
18 *Secretary shall consider—*

19 (1) *the most current rail flaw, rail defect growth,*
20 *rail fatigue, and other relevant track- or rail-related*
21 *research and studies;*

22 (2) *the availability and feasibility of developing*
23 *and implementing new or novel rail inspection tech-*
24 *nology for routine track inspections;*

1 (3) *information from National Transportation*
 2 *Safety Board or Federal Railroad Administration ac-*
 3 *cident investigations where track defects were the*
 4 *cause or a contributing cause; and*

5 (4) *other relevant information, as determined by*
 6 *the Secretary.*

7 (c) *UPDATE OF REGULATIONS.—Not later than 2 years*
 8 *after the completion of the study required by subsection (b),*
 9 *the Secretary shall prescribe regulations implementing the*
 10 *recommendations of the study.*

11 **SEC. 404. STUDY OF METHODS TO IMPROVE OR CORRECT**
 12 **STATION PLATFORM GAPS.**

13 *Not later than 2 years after the enactment of this Act,*
 14 *the Secretary shall complete a study to determine the most*
 15 *safe, efficient, and cost-effective way to improve the safety*
 16 *of rail passenger station platforms gaps in order to increase*
 17 *compliance with the requirements under the Americans*
 18 *with Disabilities Act (42 U.S.C. 12101 et seq.), including*
 19 *regulations issued pursuant to section 504 of such Act (42*
 20 *U.S.C. 12204) and to minimize the safety risks associated*
 21 *with such gaps for railroad passengers and employees.*

22 **SEC. 405. LOCOMOTIVE CAB STUDIES.**

23 (a) *IN GENERAL.—Not later than 1 year after the date*
 24 *of enactment of this Act, the Secretary, through the Rail-*
 25 *road Safety Advisory Committee if the Secretary makes*

1 *such a request, shall complete a study on the safety impact*
2 *of the use of personal electronic devices, including cell*
3 *phones, video games, and other distracting devices, by safe-*
4 *ty-related railroad employees (as defined in section*
5 *20102(4) of title 49, United States Code), during the per-*
6 *formance of such employees' duties. The study shall consider*
7 *the prevalence of the use of such devices.*

8 **(b) LOCOMOTIVE CAB ENVIRONMENT.**—*The Secretary*
9 *may also study other elements of the locomotive cab environ-*
10 *ment and their effect on an employee's health and safety.*

11 **(c) REPORT.**—*Not later than 6 months after the com-*
12 *pletion of any study under this section, the Secretary shall*
13 *issue a report on the study to the Senate Committee on*
14 *Commerce, Science, and Transportation and the House of*
15 *Representatives Committee on Transportation and Infra-*
16 *structure.*

17 **(d) AUTHORITY.**—*Based on the conclusions of the*
18 *study required under (a), the Secretary of Transportation*
19 *may prohibit the use of personal electronic devices, such as*
20 *cell phones, video games, or other electronic devices that*
21 *may distract employees from safely performing their duties,*
22 *unless those devices are being used according to railroad*
23 *operating rules or for other work purposes. Based on the*
24 *conclusions of other studies conducted under subsection (b),*
25 *the Secretary may prescribe regulations to improve ele-*

1 *ments of the cab environment to protect an employee’s*
2 *health and safety.*

3 **SEC. 406. RAILROAD SAFETY TECHNOLOGY GRANTS.**

4 *(a) IN GENERAL.—Subchapter II of chapter 201, as*
5 *amended by section 401 of this Act, is further amended by*
6 *adding at the end thereof the following:*

7 **“§ 20163. Railroad safety technology grants**

8 *“(a) GRANT PROGRAM.—The Secretary of Transpor-*
9 *tation shall establish a grant program for the deployment*
10 *of train control technologies, train control component tech-*
11 *nologies, processor-based technologies, electronically con-*
12 *trolled pneumatic brakes, rail integrity inspection systems,*
13 *rail integrity warning systems, switch position indicators,*
14 *remote control power switch technologies, track integrity*
15 *circuit technologies, and other new or novel railroad safety*
16 *technology.*

17 *“(b) GRANT CRITERIA.—*

18 *“(1) ELIGIBILITY.—Grants shall be made under*
19 *this section to eligible passenger and freight railroad*
20 *carriers, railroad suppliers, and State and local gov-*
21 *ernments for projects described in subsection (a) that*
22 *have a public benefit of improved safety and network*
23 *efficiency.*

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

1 “(A) *focus on making technologies inter-*
2 *operable between railroad systems, such as train*
3 *control technologies;*

4 “(B) *provide incentives for train control*
5 *technology deployment on high-risk corridors,*
6 *such as those that have high volumes of haz-*
7 *ardous materials shipments or over which com-*
8 *muter or passenger trains operate; or*

9 “(C) *benefit both passenger and freight safe-*
10 *ty and efficiency.*

11 “(3) *TECHNOLOGY IMPLEMENTATION PLAN.—*
12 *Grants may not be awarded under this section to en-*
13 *tities that fail to develop and submit to the Secretary*
14 *a technology implementation plan as required by sec-*
15 *tion 20157(d)(2).*

16 “(4) *MATCHING REQUIREMENTS.—Federal funds*
17 *for any eligible project under this section shall not ex-*
18 *ceed 50 percent of the total cost of such project.*

19 “(c) *AUTHORIZATION OF APPROPRIATIONS.—There are*
20 *authorized to be appropriated to the Secretary of Transpor-*
21 *tation \$10,000,000 for each of fiscal years 2008 through*
22 *2013 to carry out this section. Amounts appropriated pur-*
23 *suant to this section shall remain available until ex-*
24 *pended.”.*

1 **(b) CONFORMING AMENDMENT.**—*The chapter analysis*
2 *for chapter 201, as amended by section 401 of this Act, is*
3 *further amended by inserting after the item relating to sec-*
4 *tion 20163 the following:*

“20163. *Railroad safety technology grants*”.

5 **SEC. 407. RAILROAD SAFETY INFRASTRUCTURE IMPROVE-**
6 **MENT GRANTS.**

7 **(a) IN GENERAL.**—*Subchapter II of chapter 201, as*
8 *amended by section 406 of this Act, is further amended by*
9 *adding at the end thereof the following:*

10 **“§20164. Railroad safety infrastructure improvement**
11 **grants**

12 **“(a) GRANT PROGRAM.**—*The Secretary of Transpor-*
13 *tation shall establish a grant program for safety improve-*
14 *ments to railroad infrastructure, including the acquisition,*
15 *improvement, or rehabilitation of intermodal or rail equip-*
16 *ment or facilities, including track, bridges, tunnels, yards,*
17 *buildings, passenger stations, facilities, and maintenance*
18 *and repair shops.*

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

23 **“(c) CONSIDERATIONS.**—*In awarding grants the Sec-*
24 *retary shall consider, at a minimum—*

1 “(1) *the age and condition of the rail infrastruc-*
2 *ture of the applicant;*

3 “(2) *the railroad’s safety record, including acci-*
4 *dent and incident numbers and rates;*

5 “(3) *the volume of hazardous materials trans-*
6 *ported by the railroad;*

7 “(4) *the operation of passenger trains over the*
8 *railroad; and*

9 “(5) *whether the railroad has submitted a rail-*
10 *road safety risk reduction program, as required by*
11 *section 20157.*

12 “(d) *MATCHING REQUIREMENTS.—Federal funds for*
13 *any eligible project under this section shall not exceed 50*
14 *percent of the total cost of such project.*

15 “(e) *AUTHORIZATION OF APPROPRIATIONS.—There are*
16 *authorized to be appropriated to the Secretary of Transpor-*
17 *tation \$7,500,000 for each of fiscal years 2008 through 2013*
18 *to carry out this section. Amounts appropriated pursuant*
19 *to this subsection shall remain available until expended.”.*

20 “(b) *CONFORMING AMENDMENT.—The chapter analysis*
21 *for chapter 201, as amended by section 406 of this Act, is*
22 *amended by inserting after the item relating to section*
23 *20163 the following:*

 “20164. *Railroad safety infrastructure improvement grants”.*

1 **SEC. 408. AMENDMENT TO THE MOVEMENT-FOR-REPAIR**
2 **PROVISION.**

3 *Section 20303 is amended by adding at the end the*
4 *following:*

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

7 “(1) *IN GENERAL.—The Secretary of Transpor-*
8 *tation may impose conditions for the movement of a*
9 *defective or insecure vehicle to make repairs in addi-*
10 *tion to those conditions set forth in subsection (a) by*
11 *prescribing regulations or issuing orders as necessary.*

12 “(2) *NECESSITY OF MOVEMENT.—The movement*
13 *of a defective or insecure vehicle from a location may*
14 *be necessary to make repairs of the vehicle even*
15 *though a mobile repair truck capable of making the*
16 *repairs has gone to the location on an irregular basis*
17 *(as specified in regulations prescribed by the Sec-*
18 *retary).*

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

20 “(1) *NEAREST.—The term ‘nearest’ means the*
21 *closest in the forward direction of travel for the defec-*
22 *tive or insecure vehicle.*

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

1 “(A) a location with a fixed facility for con-
2 ducting the repairs that are necessary to bring
3 the defective or insecure vehicle into compliance
4 with this chapter; or

5 “(B) a location where a mobile repair truck
6 capable of making the repairs that are necessary
7 to bring the defective or insecure vehicle into
8 compliance with this chapter makes the same
9 kind of repair at the location regularly (as speci-
10 fied in regulations prescribed by the Sec-
11 retary).”.

12 **SEC. 409. DEVELOPMENT AND USE OF RAIL SAFETY TECH-**
13 **NOLOGY.**

14 (a) *IN GENERAL.*—Subchapter II of chapter 201, as
15 amended by section 407 of this Act, is further amended by
16 adding at the end the following new section:

17 **“§20165. Development and use of rail safety tech-**
18 **nology**

19 “(a) *IN GENERAL.*—Not later than 1 year after enact-
20 ment of the Railroad Safety Enhancement Act of 2008, the
21 Secretary of Transportation shall prescribe standards,
22 guidance, regulations, or orders governing the development,
23 use, and implementation of rail safety technology in dark
24 territory, in arrangements not defined in section 20501 or

1 *otherwise not covered by Federal standards, guidance, regu-*
 2 *lations, or orders that ensures its safe operation, such as—*

3 “(1) *switch position monitoring devices;*

4 “(2) *radio, remote control or other power-assisted*
 5 *switches;*

6 “(3) *hot box, high water or earthquake detectors;*

7 “(4) *remote control locomotive zone limiting de-*
 8 *vices;*

9 “(5) *slide fences;*

10 “(6) *grade crossing video monitors;*

11 “(7) *track integrity warning systems;*

12 “(8) *or other similar rail safety technologies, as*
 13 *determined by the Secretary.*

14 “(b) *DARK TERRITORY DEFINED.—In this section, the*
 15 *term ‘dark territory’ means any territory in a railroad sys-*
 16 *tem that does not have a signal or train control system in-*
 17 *stalled or operational.”.*

18 (b) *CONFORMING AMENDMENT.—The chapter analysis*
 19 *for chapter 201, as amended by section 407 of this Act, is*
 20 *amended by inserting after the item relating to section*
 21 *20164 the following:*

 “20165. *Development and use of rail safety technology”.*

22 **SEC. 410. EMPLOYEE SLEEPING QUARTERS.**

23 Section 21106 is amended—

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

1 (2) by striking “sanitary and give those employ-
2 ees and individuals an opportunity for rest free from
3 the interruptions caused by noise under the control of
4 the carrier;” in paragraph (1) and inserting “sani-
5 tary, give those employees and individuals an oppor-
6 tunity for rest free from the interruptions caused by
7 noise under the control of the carrier, and provide in-
8 door toilet facilities, potable water, and other features
9 to protect the health of employees;” and

10 (3) by adding at the end the following:

11 “(b) **CAMP CARS.**—No later than 12 months after the
12 date of enactment of the Railroad Safety Enhancement Act
13 of 2008, the Secretary, in consultation with the Secretary
14 of Labor, shall prescribe regulations governing the use of
15 camp cars, pursuant to subsection (a)(1), for employees and
16 any individuals employed to maintain the right of way of
17 a railroad carrier. The regulations may also prohibit the
18 use of camp cars, if necessary, to protect the health and
19 safety of the employees.”.

20 **SEC. 411. EMPLOYEE PROTECTIONS.**

21 Section 20109(a) is amended—

22 (1) by redesignating paragraphs (5) through (7)
23 as paragraphs (6) through (8), respectively; and

24 (2) by inserting after paragraph (4) the fol-
25 lowing:

1 “(5) to request that a railroad carrier provide
2 *first aid, prompt medical treatment, or transpor-*
3 *tation to an appropriate medical facility or hospital*
4 *after being injured during the course of employment,*
5 *or to comply with treatment prescribed by a physi-*
6 *cian or licensed health care professional, except that*
7 *a railroad carrier’s refusal to permit an employee to*
8 *return to work upon that employee’s release by his or*
9 *her physician or licensed health care professional*
10 *shall not be considered discrimination if the refusal is*
11 *in compliance with the carrier’s medical standards*
12 *for fitness for duty;”.*

13 **SEC. 412. UNIFIED TREATMENT OF FAMILIES OF RAILROAD**
14 **CARRIERS.**

15 *Section 20102(3), as redesignated by section 2(b) of*
16 *this Act, is amended to read as follows:*

17 “(3) ‘railroad carrier’ means a person providing
18 *railroad transportation, except that, upon petition by*
19 *a group of commonly controlled railroad carriers that*
20 *the Secretary determines is operating within the*
21 *United States as a single, integrated rail system, the*
22 *Secretary may by order treat the group of railroad*
23 *carriers as a single railroad carrier for purposes of*
24 *one or more provisions of part A, subtitle V of this*
25 *title and implementing regulations and order, subject*

1 to any appropriate conditions that the Secretary may
2 impose.”.

3 **SEC. 413. STUDY OF REPEAL OF CONRAIL PROVISION.**

4 Within 1 year after the date of enactment of this Act,
5 the Secretary shall complete a study of the impacts of re-
6 pealing section 711 of the Regional Rail Reorganization Act
7 of 1973 (45 U.S.C. 797j). Within 6 months after completing
8 the study, the Secretary shall transmit a report with the
9 Secretary’s findings, conclusions, and recommendations to
10 the Senate Committee on Commerce, Science, and Trans-
11 portation and the House of Representatives Committee on
12 Transportation and Infrastructure.

13 **SEC. 414. LIMITATIONS ON NON-FEDERAL ALCOHOL AND**
14 **DRUG TESTING BY RAILROAD CARRIERS.**

15 (a) *IN GENERAL.*—Chapter 20l, as amended by section
16 409, is further amended by adding at the end the following:

17 **“§20166. Limitations on non-Federal alcohol and**
18 **drug testing**

19 “(a) *TESTING REQUIREMENTS.*—Any non-Federal al-
20 cohol and drug testing program of a railroad carrier must
21 provide that all post-employment tests of the specimens of
22 employees who are subject to both the program and chapter
23 211 of this title be conducted using a scientifically recog-
24 nized method of testing capable of determining the presence

1 *of the specific analyte at a level above the cut-off level estab-*
2 *lished by the carrier.*

3 “(b) *REDRESS PROCESS.*—*Each railroad carrier that*
4 *has a non-Federal alcohol and drug testing program must*
5 *provide a redress process to its employees who are subject*
6 *to both the alcohol and drug testing program and chapter*
7 *211 of this title for such an employee to petition for and*
8 *receive a carrier hearing to review his or her specimen test*
9 *results that were determined to be in violation of the pro-*
10 *gram. A dispute or grievance raised by a railroad carrier*
11 *or its employee, except a probationary employee, in connec-*
12 *tion with the carrier’s alcohol and drug testing program*
13 *and the application of this section is subject to resolution*
14 *under section 3 of the Railway Labor Act (45 U.S.C. 153).”.*

15 “(b) *CONFORMING AMENDMENT.*—*The chapter analysis*
16 *for chapter 201, as amended by section 409 of this Act, is*
17 *further amended by inserting after the item relating to sec-*
18 *tion 20165 the following:*

“20166. Limitations on non-Federal alcohol and drug testing by railroad car-
riers”.

19 **SEC. 415. CRITICAL INCIDENT STRESS PLAN.**

20 “(a) *IN GENERAL.*—*The Secretary of Transportation,*
21 *in consultation with the Secretary of Labor and the Sec-*
22 *retary of Health and Human Services, as appropriate, shall*
23 *require each Class I railroad carrier, each intercity pas-*
24 *senger railroad carrier, and each commuter railroad carrier*

1 *to develop and submit for approval to the Secretary a crit-*
2 *ical incident stress plan that provides for debriefing, coun-*
3 *seling, guidance, and other appropriate support services to*
4 *be offered to an employee affected by a critical incident.*

5 (b) *PLAN REQUIREMENTS.—Each such plan shall in-*
6 *clude provisions for—*

7 (1) *relieving an employee who was involved in a*
8 *critical incident of his or her duties for the balance*
9 *of the duty tour, following any actions necessary for*
10 *the safety of persons and contemporaneous docu-*
11 *mentation of the incident;*

12 (2) *upon the employee’s request, relieving an em-*
13 *ployee who witnessed a critical incident of his or her*
14 *duties following any actions necessary for the safety*
15 *of persons and contemporaneous documentation of the*
16 *incident; and*

17 (3) *providing such leave from normal duties as*
18 *may be necessary and reasonable to receive preventive*
19 *services, treatment, or both, related to the incident.*

20 (c) *SECRETARY TO DEFINE WHAT CONSTITUTES A*
21 *CRITICAL INCIDENT.—Within 30 days after the date of en-*
22 *actment of this Act, the Secretary shall initiate a rule-*
23 *making proceeding to define the term “critical incident”*
24 *for the purposes of this section.*

1 **SEC. 416. RAILROAD CARRIER EMPLOYEE EXPOSURE TO RA-**
2 **DIATION STUDY.**

3 (a) *STUDY.*—*The Secretary of Transportation shall, in*
4 *consultation with the Secretary of Energy, the Secretary of*
5 *Labor, the Administrator of the Environmental Protection*
6 *Agency, and the Chairman of the Nuclear Regulatory Com-*
7 *mission, as appropriate, conduct a study of the potential*
8 *hazards to which employees of railroad carriers and rail-*
9 *road contractors or subcontractors are exposed during the*
10 *transportation of high-level radioactive waste and spent nu-*
11 *clear fuel (as defined in section 5101(a) of title 49, United*
12 *States Code), supplementing the report submitted under sec-*
13 *tion 5101(b) of that title, which may include—*

14 (1) *an analysis of the potential application of*
15 *“as low as reasonably achievable” principles for expo-*
16 *sure to radiation to such employees with an emphasis*
17 *on the need for special protection from radiation ex-*
18 *posure for such employees during the first trimester of*
19 *pregnancy or who are undergoing or have recently*
20 *undergone radiation therapy;*

21 (2) *the feasibility of requiring real-time dosim-*
22 *etry monitoring for such employees;*

23 (3) *the feasibility of requiring routine radiation*
24 *exposure monitoring in fixed railroad locations, such*
25 *as yards and repair facilities; and*

1 (4) *a review of the effectiveness of the Depart-*
2 *ment of Transportation packaging requirements for*
3 *radioactive materials.*

4 (b) *REPORT.—No later than 18 months after the date*
5 *of enactment of this Act, the Secretary of Transportation*
6 *shall transmit a report on the results of the study required*
7 *by subsection (a) and any recommendations to further pro-*
8 *tect employees of a railroad carrier or of a contractor or*
9 *subcontractor to a railroad carrier from unsafe exposure to*
10 *radiation during the transportation of high-level radio-*
11 *active waste and spent nuclear fuel to the Senate Committee*
12 *on Commerce, Science, and Transportation and the House*
13 *of Representatives Committee on Transportation and Infra-*
14 *structure.*

15 (c) *REGULATORY AUTHORITY.—The Secretary of*
16 *Transportation may issue regulations that the Secretary de-*
17 *termines appropriate, pursuant to the report required by*
18 *subsection (b), to protect railroad employees from unsafe ex-*
19 *posure to radiation during the transportation of radioactive*
20 *materials.*

21 **SEC. 417. ALCOHOL AND CONTROLLED SUBSTANCE TEST-**
22 **ING FOR MAINTENANCE-OF-WAY EMPLOYEES.**

23 *Not later than 2 years following the date of enactment*
24 *of this Act, the Secretary of Transportation shall complete*
25 *a rulemaking proceeding to revise the regulations prescribed*

1 *under section 20140 of title 49, United States Code, to cover*
2 *all employees of railroad carriers and contractors or sub-*
3 *contractors to railroad carriers who perform maintenance-*
4 *of-way activities.*

5 **TITLE V—RAIL PASSENGER**
6 **DISASTER FAMILY ASSISTANCE**

7 **SEC. 501. ASSISTANCE BY NATIONAL TRANSPORTATION**

8 **SAFETY BOARD TO FAMILIES OF PASSENGERS**

9 **INVOLVED IN RAIL PASSENGER ACCIDENTS.**

10 (a) *IN GENERAL.*—Chapter 11 is amended by adding
11 *at the end of subchapter III the following:*

12 **“§ 1139. Assistance to families of passengers involved**
13 ***in rail passenger accidents***

14 “(a) *IN GENERAL.*—As soon as practicable after being
15 *notified of a rail passenger accident within the United*
16 *States involving a rail passenger carrier and resulting in*
17 *a major loss of life, the Chairman of the National Transpor-*
18 *tation Safety Board shall—*

19 “(1) *designate and publicize the name and phone*
20 *number of a director of family support services who*
21 *shall be an employee of the Board and shall be re-*
22 *sponsible for acting as a point of contact within the*
23 *Federal Government for the families of passengers in-*
24 *volved in the accident and a liaison between the rail*
25 *passenger carrier and the families; and*

1 “(2) designate an independent nonprofit organi-
2 zation, with experience in disasters and posttrauma
3 communication with families, which shall have pri-
4 mary responsibility for coordinating the emotional
5 care and support of the families of passengers in-
6 volved in the accident.

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

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

12 “(2) communicating with the families of pas-
13 sengers involved in the accident as to the roles of—

14 “(A) the organization designated for an ac-
15 cident under subsection (a)(2);

16 “(B) Government agencies; and

17 “(C) the rail passenger carrier involved,
18 with respect to the accident and the post-accident ac-
19 tivities.

20 “(c) *RESPONSIBILITIES OF DESIGNATED ORGANIZA-*
21 *TION.*—The organization designated for an accident under
22 subsection (a)(2) shall have the following responsibilities
23 with respect to the families of passengers involved in the
24 accident:

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

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

7 “(3) *To meet with the families who have traveled*
8 *to the location of the accident, to contact the families*
9 *unable to travel to such location, and to contact all*
10 *affected families periodically thereafter until such*
11 *time as the organization, in consultation with the di-*
12 *rector of family support services designated for the ac-*
13 *cident under subsection (a)(1), determines that fur-*
14 *ther assistance is no longer needed.*

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

17 “(d) *PASSENGER LISTS.—*

18 “(1) *REQUESTS FOR PASSENGER LISTS.—*

19 “(A) *REQUESTS BY DIRECTOR OF FAMILY*
20 *SUPPORT SERVICES.—It shall be the responsi-*
21 *bility of the director of family support services*
22 *designated for an accident under subsection*
23 *(a)(1) to request, as soon as practicable, from the*
24 *rail passenger carrier involved in the accident a*
25 *list, which is based on the best available infor-*

1 *mation at the time of the request, of the names*
2 *of the passengers that were aboard the rail pas-*
3 *senger carrier's train involved in the accident. A*
4 *rail passenger carrier shall use reasonable efforts,*
5 *with respect to its unreserved trains, and pas-*
6 *sengers not holding reservations on its other*
7 *trains, to ascertain the names of passengers*
8 *aboard a train involved in an accident.*

9 *“(B) REQUESTS BY DESIGNATED ORGANIZA-*
10 *TION.—The organization designated for an acci-*
11 *dent under subsection (a)(2) may request from*
12 *the rail passenger carrier involved in the acci-*
13 *dent a list described in subparagraph (A).*

14 *“(2) USE OF INFORMATION.—Except as provided*
15 *in subsection (k), the director of family support serv-*
16 *ices and the organization may not release to any per-*
17 *son information on a list obtained under paragraph*
18 *(1) but may provide information on the list about a*
19 *passenger to the family of the passenger to the extent*
20 *that the director of family support services or the or-*
21 *ganization considers appropriate.*

22 *“(e) CONTINUING RESPONSIBILITIES OF THE*
23 *BOARD.—In the course of its investigation of an accident*
24 *described in subsection (a), the Board shall, to the max-*

1 *imum extent practicable, ensure that the families of pas-*
2 *sengers involved in the accident—*

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

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

9 “(f) *USE OF RAIL PASSENGER CARRIER RE-*
10 *SOURCES.—To the extent practicable, the organization des-*
11 *ignated for an accident under subsection (a)(2) shall coordi-*
12 *nate its activities with the rail passenger carrier involved*
13 *in the accident to facilitate the reasonable use of the re-*
14 *sources of the carrier.*

15 “(g) *PROHIBITED ACTIONS.—*

16 “(1) *ACTIONS TO IMPEDE THE BOARD.—No per-*
17 *son (including a State or political subdivision) may*
18 *impede the ability of the Board (including the direc-*
19 *tor of family support services designated for an acci-*
20 *dent under subsection (a)(1)), or an organization des-*
21 *ignated for an accident under subsection (a)(2), to*
22 *carry out its responsibilities under this section or the*
23 *ability of the families of passengers involved in the*
24 *accident to have contact with one another.*

1 “(2) *UNSOLICITED COMMUNICATIONS.*—No unso-
2 *licited communication concerning a potential action*
3 *for personal injury or wrongful death may be made*
4 *by an attorney (including any associate, agent, em-*
5 *ployee, or other representative of an attorney) or any*
6 *potential party to the litigation to an individual*
7 *(other than an employee of the rail passenger carrier)*
8 *injured in the accident, or to a relative of an indi-*
9 *vidual involved in the accident, before the 45th day*
10 *following the date of the accident.*

11 “(3) *PROHIBITION ON ACTIONS TO PREVENT*
12 *MENTAL HEALTH AND COUNSELING SERVICES.*—No
13 *State or political subdivision may prevent the em-*
14 *ployees, agents, or volunteers of an organization des-*
15 *ignated for an accident under subsection (a)(2) from*
16 *providing mental health and counseling services*
17 *under subsection (c)(1) in the 30-day period begin-*
18 *ning on the date of the accident. The director of fam-*
19 *ily support services designated for the accident under*
20 *subsection (a)(1) may extend such period for not to*
21 *exceed an additional 30 days if the director deter-*
22 *mines that the extension is necessary to meet the*
23 *needs of the families and if State and local authori-*
24 *ties are notified of the determination.*

25 “(h) *DEFINITIONS.*—In this section:

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

5 “(A) *interstate intercity rail passenger*
6 *transportation (as such term is defined in sec-*
7 *tion 24102); or*

8 “(B) *interstate or intrastate high-speed rail*
9 *(as such term is defined in section 26105) trans-*
10 *portation,*
11 *regardless of its cause or suspected cause.*

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

14 “(A) *interstate intercity rail passenger*
15 *transportation (as such term is defined in sec-*
16 *tion 24102); or*

17 “(B) *interstate or intrastate high-speed rail*
18 *(as such term is defined in section 26105) trans-*
19 *portation,*
20 *except that such term does not include a tourist, his-*
21 *toric, scenic, or excursion rail carrier.*

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

24 “(A) *an employee of a rail passenger car-*
25 *rier aboard a train;*

1 “(B) any other person aboard the train
2 without regard to whether the person paid for the
3 transportation, occupied a seat, or held a res-
4 ervation for the rail transportation; and

5 “(C) any other person injured or killed in
6 a rail passenger accident, as determined appro-
7 priate by the Board.

8 “(i) *LIMITATION ON STATUTORY CONSTRUCTION.*—
9 Nothing in this section may be construed as limiting the
10 actions that a rail passenger carrier may take, or the obli-
11 gations that a rail passenger carrier may have, in pro-
12 viding assistance to the families of passengers involved in
13 a rail passenger accident.

14 “(j) *RELINQUISHMENT OF INVESTIGATIVE PRI-*
15 *ORITY.*—

16 “(1) *GENERAL RULE.*—This section (other than
17 subsection (g)) shall not apply to a railroad accident
18 if the Board has relinquished investigative priority
19 under section 1131(a)(2)(B) and the Federal agency
20 to which the Board relinquished investigative priority
21 is willing and able to provide assistance to the vic-
22 tims and families of the passengers involved in the
23 accident.

24 “(2) *BOARD ASSISTANCE.*—If this section does
25 not apply to a railroad accident because the Board

1 *has relinquished investigative priority with respect to*
2 *the accident, the Board shall assist, to the maximum*
3 *extent possible, the agency to which the Board has re-*
4 *linquished investigative priority in assisting families*
5 *with respect to the accident.*

6 “(k) *SAVINGS CLAUSE.*—*Nothing in this section shall*
7 *be construed to abridge the authority of the Board or the*
8 *Secretary of Transportation to investigate the causes or cir-*
9 *cumstances of any rail accident, including development of*
10 *information regarding the nature of injuries sustained and*
11 *the manner in which they were sustained for the purposes*
12 *of determining compliance with existing laws and regula-*
13 *tions or for identifying means of preventing similar inju-*
14 *ries in the future, or both.”.*

15 (b) *CONFORMING AMENDMENT.*—*The table of sections*
16 *for such chapter is amended by inserting after the item re-*
17 *lating to section 1138 the following:*

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

18 **SEC. 502. RAIL PASSENGER CARRIER PLAN TO ASSIST FAMI-**
19 **LIES OF PASSENGERS INVOLVED IN RAIL PAS-**
20 **SENGER ACCIDENTS.**

21 (a) *IN GENERAL.*—*Chapter 243 is amended by adding*
22 *at the end the following:*

1 **“§24316. Plans to address needs of families of pas-**
2 **engers involved in rail passenger acci-**
3 **dents**

4 “(a) *SUBMISSION OF PLAN.*—Not later than 6 months
5 after the date of the enactment of the Railroad Safety En-
6 hancement Act of 2008, a rail passenger carrier shall sub-
7 mit to the Chairman of the National Transportation Safety
8 Board, the Secretary of Transportation, and the Secretary
9 of Homeland Security a plan for addressing the needs of
10 the families of passengers involved in any rail passenger
11 accident involving a rail passenger carrier intercity train
12 and resulting in a major loss of life.

13 “(b) *CONTENTS OF PLANS.*—The plan to be submitted
14 by a rail passenger carrier under subsection (a) shall in-
15 clude, at a minimum, the following:

16 “(1) A process by which a rail passenger carrier
17 will maintain and provide to the National Transpor-
18 tation Safety Board, the Secretary of Transportation,
19 and the Secretary of Homeland Security, immediately
20 upon request, a list (which is based on the best avail-
21 able information at the time of the request) of the
22 names of the passengers aboard the train (whether or
23 not such names have been verified), and will periodi-
24 cally update the list. The plan shall include a proce-
25 dure, with respect to unreserved trains and passengers
26 not holding reservations on other trains, for a rail

1 *passenger carrier to use reasonable efforts to ascertain*
2 *the number and names of passengers aboard a train*
3 *involved in an accident.*

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

8 “(3) *A process for notifying the families of the*
9 *passengers, before providing any public notice of the*
10 *names of the passengers, by suitably trained individ-*
11 *uals.*

12 “(4) *A process for providing the notice described*
13 *in paragraph (2) to the family of a passenger as soon*
14 *as a rail passenger carrier has verified that the pas-*
15 *senger was aboard the train (whether or not the*
16 *names of all of the passengers have been verified).*

17 “(5) *A process by which the family of each pas-*
18 *senger will be consulted about the disposition of all*
19 *remains and personal effects of the passenger within*
20 *a rail passenger carrier’s control; that any possession*
21 *of the passenger within a rail passenger carrier’s con-*
22 *trol will be returned to the family unless the posses-*
23 *sion is needed for the accident investigation or any*
24 *criminal investigation; and that any unclaimed pos-*
25 *session of a passenger within a rail passenger car-*

1 *rier’s control will be retained by the rail passenger*
2 *carrier for at least 18 months.*

3 *“(6) A process by which the treatment of the*
4 *families of nonrevenue passengers will be the same as*
5 *the treatment of the families of revenue passengers.*

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

10 *“(c) USE OF INFORMATION.—Neither the National*
11 *Transportation Safety Board, the Secretary of Transpor-*
12 *tation, the Secretary of Homeland Security, nor a rail pas-*
13 *senger carrier may release any personal information on a*
14 *list obtained under subsection (b)(1) but may provide infor-*
15 *mation on the list about a passenger to the family of the*
16 *passenger to the extent that the Board or a rail passenger*
17 *carrier considers appropriate.*

18 *“(d) LIMITATION ON LIABILITY.—A rail passenger car-*
19 *rier shall not be liable for damages in any action brought*
20 *in a Federal or State court arising out of the performance*
21 *of a rail passenger carrier under this section in preparing*
22 *or providing a passenger list, or in providing information*
23 *concerning a train reservation, pursuant to a plan sub-*
24 *mitted by a rail passenger carrier under subsection (b), un-*

1 *less such liability was caused by a rail passenger carrier's*
2 *gross negligence or extreme misconduct.*

3 “(e) *LIMITATIONS ON STATUTORY CONSTRUCTION.*—

4 “(1) *RAIL PASSENGER CARRIERS.*—*Nothing in*
5 *this section may be construed as limiting the actions*
6 *that a rail passenger carrier may take, or the obliga-*
7 *tions that a rail passenger carrier may have, in pro-*
8 *viding assistance to the families of passengers in-*
9 *volved in a rail passenger accident.*

10 “(2) *INVESTIGATIONAL AUTHORITY OF BOARD*
11 *AND SECRETARY.*—*Nothing in this section shall be*
12 *construed to abridge the authority of the Board or the*
13 *Secretary of Transportation to investigate the causes*
14 *or circumstances of any rail accident, including the*
15 *development of information regarding the nature of*
16 *injuries sustained and the manner in which they were*
17 *sustained, for the purpose of determining compliance*
18 *with existing laws and regulations or identifying*
19 *means of preventing similar injuries in the future.*

20 “(f) *FUNDING.*—*Out of funds appropriated pursuant*
21 *to section 20117(a)(1)(A), there shall be made available to*
22 *the Secretary of Transportation \$500,000 for fiscal year*
23 *2008 to carry out this section. Amounts made available*
24 *pursuant to this subsection shall remain available until ex-*
25 *pended.*”.

1 **(b) CONFORMING AMENDMENT.**—*The chapter analysis*
2 *for chapter 243 is amended by adding at the end the fol-*
3 *lowing:*

 “24316. *Plan to assist families of passengers involved in rail passenger acci-*
 dents”.

4 **SEC. 503. ESTABLISHMENT OF TASK FORCE.**

5 **(a) ESTABLISHMENT.**—*The Secretary, in cooperation*
6 *with the National Transportation Safety Board, organiza-*
7 *tions potentially designated under section 1139(a)(2) of*
8 *title 49, United States Code, rail passenger carriers (as de-*
9 *finied in section 1139(h)(2) of title 49, United States Code),*
10 *and families which have been involved in rail accidents,*
11 *shall establish a task force consisting of representatives of*
12 *such entities and families, representatives of rail passenger*
13 *carrier employees, and representatives of such other entities*
14 *as the Secretary considers appropriate.*

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

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

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

23 (3) *recommendations on methods to ensure that*
24 *the families of passengers involved in a passenger rail*

1 *accident who are not citizens of the United States re-*
 2 *ceive appropriate assistance; and*

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

7 *(c) REPORT.—Not later than 1 year after the date of*
 8 *the enactment of this Act, the Secretary shall transmit to*
 9 *Congress a report containing the model plan and rec-*
 10 *ommendations developed by the task force under subsection*
 11 *(b).*

12 **TITLE VI—CLARIFICATION OF**
 13 **FEDERAL JURISDICTION**
 14 **OVER SOLID WASTE FACILI-**
 15 **TIES**

16 **SEC. 601. SHORT TITLE.**

17 *This title may be cited as the “Clean Railroads Act*
 18 *of 2007”.*

19 **SEC. 602. CLARIFICATION OF GENERAL JURISDICTION**
 20 **OVER SOLID WASTE TRANSFER FACILITIES.**

21 *Section 10501(c)(2) is amended to read as follows:*

22 *“(2) Except as provided in paragraph (3), the Board*
 23 *does not have jurisdiction under this part over—*

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

1 “(B) a solid waste rail transfer facility as
 2 defined in section 10908 of this title, except as
 3 provided under sections 10908 and 10909 of this
 4 title.

5 **SEC. 603. REGULATION OF SOLID WASTE RAIL TRANSFER**
 6 **FACILITIES.**

7 (a) *IN GENERAL.*—Chapter 109 is amended by adding
 8 at the end thereof the following:

9 “§ 10908. **Regulation of solid waste rail transfer facili-**
 10 **ties**

11 “(a) *IN GENERAL.*—Each solid waste rail transfer fa-
 12 cility shall be subject to and shall comply with all applica-
 13 ble Federal and State requirements, both substantive and
 14 procedural, including judicial and administrative orders
 15 and fines, respecting the prevention and abatement of pollu-
 16 tion, the protection and restoration of the environment, and
 17 the protection of public health and safety, including laws
 18 governing solid waste, to the same extent as required for
 19 any similar solid waste management facility, as defined in
 20 section 1004(29) of the Solid Waste Disposal Act (42 U.S.C.
 21 6903(29)) that is not owned or operated by or on behalf
 22 of a rail carrier, except as provided for in section 10909
 23 of this chapter.

24 “(b) *EXISTING FACILITIES.*—

1 “(1) *STATE LAWS AND STANDARDS.*—*Within 90*
2 *days after the date of enactment of the Clean Rail-*
3 *roads Act of 2008, a solid waste rail transfer facility*
4 *operating as of such date of enactment shall comply*
5 *with all Federal and State requirements pursuant to*
6 *subsection (a) other than those provisions requiring*
7 *permits.*

8 “(2) *PERMIT REQUIREMENTS.*—

9 “(A) *STATE NON-SITING PERMITS.*—*Any*
10 *solid waste rail transfer facility operating as of*
11 *the date of enactment of the Clean Railroads Act*
12 *of 2008 that does not possess a permit required*
13 *pursuant to subsection (a), other than a siting*
14 *permit for the facility, as of the date of enact-*
15 *ment of the Clean Railroads Act of 2008 shall*
16 *not be required to possess any such permits in*
17 *order to operate the facility—*

18 “(i) *if, within 180 days after such date*
19 *of enactment, the solid waste rail transfer*
20 *facility has submitted, in good faith, a com-*
21 *plete application for all permits, except*
22 *siting permits, required pursuant to sub-*
23 *section (a) to the appropriate permitting*
24 *agency authorized to grant such permits;*
25 *and*

1 “(i) until the permitting agency has
2 either approved or denied the solid waste
3 rail transfer facility’s application for each
4 permit.

5 “(B) *SITING PERMITS AND REQUIRE-*
6 *MENTS.—A solid waste rail transfer facility op-*
7 *erating as of the date of enactment of the Clean*
8 *Railroads Act of 2008 that does not possess a*
9 *State siting permit required pursuant to sub-*
10 *section (a) as of such date of enactment shall not*
11 *be required to possess any siting permit to con-*
12 *tinue to operate or comply with any State land*
13 *use requirements. The Governor of a State in*
14 *which the facility is located or his or her des-*
15 *ignee may petition the Board to require the fa-*
16 *ility to apply for a land-use exemption pursu-*
17 *ant to section 10909 of this chapter. The Board*
18 *shall accept the petition, and the facility shall be*
19 *required to have a Board-issued land-use exemp-*
20 *tion in order to continue to operate, pursuant to*
21 *section 10909 of this chapter.*

22 “(c) *COMMON CARRIER OBLIGATION.—No prospective*
23 *or current rail carrier customer may demand solid waste*
24 *rail transfer service from a rail carrier at a solid waste*
25 *rail transfer facility that does not already possess the nec-*

1 *essary Federal land use exemption and State permits at*
2 *the location where service is requested.*

3 “(d) *NON-WASTE COMMODITIES.*—*Nothing in this sec-*
4 *tion or section 10909 of this chapter shall affect a rail car-*
5 *rier’s ability to conduct transportation-related activities*
6 *with respect to commodities other than solid waste.*

7 “(e) *DEFINITIONS.*—

8 “(1) *IN GENERAL.*—*In this section:*

9 “(A) *COMMERCIAL AND RETAIL WASTE.*—
10 *The term ‘commercial and retail waste’ means*
11 *material discarded by stores, offices, restaurants,*
12 *warehouses, nonmanufacturing activities at in-*
13 *dustrial facilities, and other similar establish-*
14 *ments or facilities.*

15 “(B) *CONSTRUCTION AND DEMOLITION DE-*
16 *BRIS.*—*The term ‘construction and demolition*
17 *debris’ means waste building materials, pack-*
18 *aging, and rubble resulting from construction,*
19 *remodeling, repair, and demolition operations on*
20 *pavements, houses, commercial buildings, and*
21 *other structures.*

22 “(C) *HOUSEHOLD WASTE.*—*The term*
23 *‘household waste’ means material discarded by*
24 *residential dwellings, hotels, motels, and other*

1 *similar permanent or temporary housing estab-*
2 *lishments or facilities.*

3 “(D) *INDUSTRIAL WASTE.*—*The term ‘in-*
4 *ustrial waste’ means the solid waste generated*
5 *by manufacturing and industrial and research*
6 *and development processes and operations, in-*
7 *cluding contaminated soil, nonhazardous oil spill*
8 *cleanup waste and dry nonhazardous pesticides*
9 *and chemical waste, but does not include haz-*
10 *ardous waste regulated under subtitle C of the*
11 *Solid Waste Disposal Act (42 U.S.C. 6921 et*
12 *seq.), mining or oil and gas waste.*

13 “(E) *INSTITUTIONAL WASTE.*—*The term ‘in-*
14 *stitutional waste’ means material discarded by*
15 *schools, nonmedical waste discarded by hospitals,*
16 *material discarded by nonmanufacturing activi-*
17 *ties at prisons and government facilities, and*
18 *material discarded by other similar establish-*
19 *ments or facilities.*

20 “(F) *MUNICIPAL SOLID WASTE.*—*The term*
21 *‘municipal solid waste’ means—*

22 “(i) *household waste;*

23 “(ii) *commercial and retail waste; and*

24 “(iii) *institutional waste.*

1 “(G) *SOLID WASTE*.—*With the exception of*
2 *waste generated by a rail carrier during track,*
3 *track structure, or right-of-way construction,*
4 *maintenance, or repair (including railroad ties*
5 *and line-side poles) or waste generated as a re-*
6 *sult of a railroad accident, incident, or derail-*
7 *ment, the term ‘solid waste’ means—*

8 “(i) *construction and demolition de-*
9 *bris;*

10 “(ii) *municipal solid waste;*

11 “(iii) *household waste;*

12 “(iv) *commercial and retail waste;*

13 “(v) *institutional waste;*

14 “(vi) *sludge;*

15 “(vii) *industrial waste; and*

16 “(viii) *other solid waste, as determined*
17 *appropriate by the Board.*

18 “(H) *SOLID WASTE RAIL TRANSFER FACIL-*
19 *ITY*.—*The term ‘solid waste rail transfer*
20 *facility’—*

21 “(i) *means the portion of a facility*
22 *owned or operated by or on behalf of a rail*
23 *carrier (as defined in section 10102 of this*
24 *title) where solid waste, as a commodity to*
25 *be transported for a charge, is collected,*

1 *stored, separated, processed, treated, man-*
2 *aged, disposed of, or transferred, when the*
3 *activity takes place outside of original ship-*
4 *ping containers; but*

5 “(ii) does not include—

6 “(I) the portion of a facility to the
7 *extent that activities taking place at*
8 *such portion are comprised solely of*
9 *the railroad transportation of solid*
10 *waste after the solid waste is loaded for*
11 *shipment on or in a rail car, including*
12 *railroad transportation for the purpose*
13 *of interchanging railroad cars con-*
14 *taining solid waste shipments; or*

15 “(II) a facility where solid waste
16 *is solely transferred or transloaded*
17 *from a tank truck directly to a rail*
18 *tank car.*

19 “(I) *SLUDGE.*—*The term ‘sludge’ means*
20 *any solid, semi-solid or liquid waste generated*
21 *from a municipal, commercial, or industrial*
22 *wastewater treatment plant, water supply treat-*
23 *ment plant, or air pollution control facility ex-*
24 *clusive of the treated effluent from a wastewater*
25 *treatment plant.*

1 “(2) *EXCEPTIONS.*—*Notwithstanding paragraph*
 2 *(1), the terms ‘household waste’, ‘commercial and re-*
 3 *tail waste’, and ‘institutional waste’ do not include—*

4 “(A) *yard waste and refuse-derived fuel;*

5 “(B) *used oil;*

6 “(C) *wood pallets;*

7 “(D) *clean wood;*

8 “(E) *medical or infectious waste; or*

9 “(F) *motor vehicles (including motor vehicle*
 10 *parts or vehicle fluff).*

11 “(3) *STATE REQUIREMENTS.*—*In this section the*
 12 *term ‘State requirements’ does not include the laws,*
 13 *regulations, ordinances, orders, or other requirements*
 14 *of a political subdivision of a State, including a lo-*
 15 *cality or municipality, unless a State expressly dele-*
 16 *gates such authority to such political subdivision.”.*

17 (b) *CONFORMING AMENDMENT.*—*The chapter analysis*
 18 *for chapter 109 is amended by inserting after the item relat-*
 19 *ing to section 10907 the following:*

 “10908. *Regulation of solid waste rail transfer facilities*”.

20 **SEC. 604. SOLID WASTE RAIL TRANSFER FACILITY LAND-**
 21 **USE EXEMPTION AUTHORITY.**

22 (a) *IN GENERAL.*—*Chapter 109 is further amended by*
 23 *adding at the end thereof the following:*

1 **“§ 10909. Solid waste rail transfer facility land-use ex-**
2 **emption**

3 “(a) *AUTHORITY.*—*The Board may issue a land-use*
4 *exemption for a solid waste rail transfer facility that is or*
5 *is proposed to be operated by or on behalf of a rail carrier*
6 *if—*

7 “(1) *the Board finds that a State, local, or mu-*
8 *nicipal law, regulation, order, or other requirement*
9 *affecting the siting of such facility unreasonably bur-*
10 *dens the interstate transportation of solid waste by*
11 *railroad, discriminates against the railroad transpor-*
12 *tation of solid waste and a solid waste rail transfer*
13 *facility, or a rail carrier that owns or operates such*
14 *a facility petitions the Board for such an exemption;*
15 *or*

16 “(2) *the Governor of a State in which a facility*
17 *that is operating as of the date of enactment of the*
18 *Clean Railroads Act of 2008 is located, or his or her*
19 *designee, petitions the Board to initiate a permit pro-*
20 *ceeding for that particular facility.*

21 “(b) *LAND-USE EXEMPTION PROCEDURES.*—*No later*
22 *than 90 days after the date of enactment of the Clean Rail-*
23 *road Act of 2008, the Board shall publish procedures gov-*
24 *erning the submission and review of applications for solid*
25 *waste rail transfer facility land-use exemptions. At a min-*
26 *imum, the procedures shall address—*

1 “(1) the information that each application
2 should contain to explain how the solid waste rail
3 transfer facility will not pose an unreasonable risk to
4 public health, safety or the environment;

5 “(2) the opportunity for public notice and com-
6 ment including notification of the municipality, the
7 State, and any relevant Federal or State regional
8 planning entity in the jurisdiction of which the solid
9 waste rail transfer facility is proposed to be located;

10 “(3) the timeline for Board review, including a
11 requirement that the Board approve or deny an ex-
12 emption within 90 days after the full record for the
13 application is developed;

14 “(4) the expedited review timelines for petitions
15 for modifications, amendments, or revocations of
16 granted exemptions;

17 “(5) the process for a State to petition the Board
18 to require a solid waste transfer facility or a rail car-
19 rier that owns or operates such a facility to apply for
20 a siting permit; and

21 “(6) the process for a solid waste transfer facility
22 or a rail carrier that owns or operates such a facility
23 to petition the Board for a land-use exemption.

24 (c) STANDARD FOR REVIEW.—

1 “(1) *The Board may only issue a land use ex-*
2 *emption if it determines that the facility at the exist-*
3 *ing or proposed location does not pose an unreason-*
4 *able risk to public health, safety, or the environment.*
5 *In deciding whether a solid waste rail transfer facil-*
6 *ity that is or proposed to be constructed or operated*
7 *by or on behalf of a rail carrier poses an unreason-*
8 *able risk to public health, safety, or the environment,*
9 *the Board shall weigh the particular facility’s poten-*
10 *tial benefits to and the adverse impacts on public*
11 *health, public safety, the environment, interstate com-*
12 *merce, and transportation of solid waste by rail.*

13 “(2) *The Board may not grant a land-use ex-*
14 *emption for a solid waste rail transfer facility pro-*
15 *posed to be located on land within any unit of or*
16 *land affiliated with the National Park System, the*
17 *National Wildlife Refuge System, the National Wil-*
18 *derness Preservation System, the National Trails Sys-*
19 *tem, the National Wild and Scenic Rivers System, a*
20 *National Reserve, a National Monument, or lands ref-*
21 *erenced in Public Law 108–421 for which a State has*
22 *implemented a conservation management plan, if op-*
23 *eration of the facility would be inconsistent with re-*
24 *strictions placed on such land.*

1 “(d) *CONSIDERATIONS.*—When evaluating an applica-
2 tion under this section, the Board shall consider and give
3 due weight to the following, as applicable:

4 “(1) the land use, zoning, and siting regulations
5 or solid waste planning requirements of the State or
6 State subdivision in which the facility is or will be
7 located that are applicable to solid waste transfer fa-
8 cilities, including those that are not owned or oper-
9 ated by or on behalf of a rail carrier;

10 “(2) the land use, zoning, and siting regulations
11 or solid waste planning requirements applicable to
12 the property where the solid waste rail transfer facil-
13 ity is proposed to be located;

14 “(3) regional transportation planning require-
15 ments developed pursuant to Federal and State law;

16 “(4) regional solid waste disposal plans devel-
17 oped pursuant to State or Federal law;

18 “(5) any Federal and State environmental pro-
19 tection laws or regulations applicable to the site;

20 “(6) any unreasonable burdens imposed on the
21 interstate transportation of solid waste by railroad,
22 or the potential for discrimination against the rail-
23 road transportation of solid waste, a solid waste rail
24 transfer facility, or a rail carrier that owns or oper-
25 ates such a facility; and

1 “(7) *any other relevant factors, as determined by*
2 *the Board.*

3 “(e) *EXISTING FACILITIES.*—*Upon the granting of peti-*
4 *tion from the State in which a solid waste rail transfer*
5 *facility is operating as of the date of enactment of the Clean*
6 *Railroads Act of 2008 by the Board, the facility shall sub-*
7 *mit a complete application for a siting permit to the Board*
8 *pursuant to the procedures issued pursuant to subsection*
9 *(b). No State may enforce a law, regulation, order, or other*
10 *requirement affecting the siting of a facility that is oper-*
11 *ating as of the date of enactment of the Clean Railroads*
12 *Act of 2008 until the Board has approved or denied a per-*
13 *mit pursuant to subsection (c).*

14 “(f) *EFFECT OF LAND-USE EXEMPTION.*—*If the Board*
15 *grants a land-use exemption to a solid waste rail transfer*
16 *facility, all State laws, regulations, orders, or other require-*
17 *ments affecting the siting of a facility are preempted with*
18 *regard to that facility. An exemption may require compli-*
19 *ance with such State laws, regulations, orders, or other re-*
20 *quirements.*

21 “(g) *INJUNCTIVE RELIEF.*—*Nothing in this section*
22 *precludes a person from seeking an injunction to enjoin a*
23 *solid waste rail transfer facility from being constructed or*
24 *operated by or on behalf of a rail carrier if that facility*
25 *has materially violated, or will materially violate, its land*

1 *use exemption or if it failed to receive a valid land-use ex-*
2 *emption under this section.*

3 “(h) *FEES.*—*The Board may charge permit applicants*
4 *reasonable fees to implement this section, including the costs*
5 *of third-party consultants.*

6 “(i) *DEFINITIONS.*—*In this section the terms ‘solid*
7 *waste’, ‘solid waste rail transfer facility’, and ‘State re-*
8 *quirements’ have the meaning given such terms in section*
9 *10908(e).”.*

10 (b) *CONFORMING AMENDMENT.*—*The chapter analysis*
11 *for chapter 109, as amended by section 603 of this Act, is*
12 *amended by inserting after the item relating to section*
13 *10908 the following:*

“10909. Solid waste rail transfer facility land-use exemption”.

14 **SEC. 605. EFFECT ON OTHER STATUTES AND AUTHORITIES.**

15 (a) *IN GENERAL.*—*Chapter 109 is further amended by*
16 *adding at the end thereof the following:*

17 **“§ 10910. Effect on other statutes and authorities**

18 *“Nothing in section 10908 or 10909 is intended to af-*
19 *fect the traditional police powers of the State to require a*
20 *rail carrier to comply with State and local environmental,*
21 *public health, and public safety standards that are not un-*
22 *reasonably burdensome to interstate commerce and do not*
23 *discriminate against rail carriers.”.*

24 (b) *CONFORMING AMENDMENT.*—*The chapter analysis*
25 *for chapter 109, as amended by section 604 of this Act, is*

1 *amended by inserting after the item relating to section*
2 *10909 the following:*

“10910. Effect on other statutes and authorities”.

3 **TITLE VII—TECHNICAL**
4 **CORRECTIONS**

5 **SEC. 701. TECHNICAL CORRECTIONS.**

6 *(a) LIMITATIONS ON FINANCIAL ASSISTANCE.—Section*
7 *22106 is amended—*

8 *(1) by striking the second sentence of subsection*
9 *(a);*

10 *(2) by striking subsection (b) and inserting the*
11 *following:*

12 *“(b) STATE USE OF REPAID FUNDS AND CONTINGENT*
13 *INTEREST RECOVERIES.—The State shall place the United*
14 *States Government’s share of money that is repaid and any*
15 *contingent interest that is recovered in an interest-bearing*
16 *account. The repaid money, contingent interest, and any*
17 *interest thereof shall be considered to be State funds. The*
18 *State shall use such funds to make other grants and loans,*
19 *consistent with the purposes for which financial assistance*
20 *may be used under subsection (a), as the State considers*
21 *to be appropriate.”; and*

22 *(3) by striking subsections (c) and (e) and redess-*
23 *ignating subsection (d) as subsection (c).*

1 (b) *GRANTS FOR CLASS II AND III RAILROADS.*—Sec-
2 tion 22301(a)(1)(A)(iii) is amended by striking “and” and
3 inserting “or”.

4 (c) *RAIL TRANSPORTATION OF RENEWABLE FUEL*
5 *STUDY.*—Section 245(a)(1) of the *Energy Independence*
6 *and Security Act of 2007* is amended by striking “Sec-
7 retary, in coordination with the Secretary of Transpor-
8 tation,” and inserting “Secretary and the Secretary of
9 Transportation”.

10 (d) *MOTOR CARRIER DEFINITION.*—

11 Section 14504a of title 49, *United States Code*, is
12 amended—

13 (1) in subsection (a)—

14 (A) in the matter preceding paragraph (1),
15 by inserting “(except as provided in paragraph
16 (5))” after “14506”;

17 (B) in paragraph (1), by striking subpara-
18 graph (A) and inserting the following:

19 “(A) *IN GENERAL.*—Except as provided in
20 subparagraph (B), the term ‘commercial motor
21 vehicle’—

22 “(i) for calendar years 2008 and 2009,
23 has the meaning given the term in section
24 31101; and

1 “(ii) for years beginning after Decem-
2 ber 31, 2009, means a self-propelled vehicle
3 described in section 31101.”; and

4 (C) by striking paragraph (5) and inserting
5 the following:

6 “(5) *MOTOR CARRIER*.—

7 “(A) *THIS SECTION*.—In this section:

8 “(i) *IN GENERAL*.—The term ‘motor
9 carrier’ includes all carriers that are other-
10 wise exempt from this part—

11 “(I) under subchapter I of chapter
12 135; or

13 “(II) through exemption actions
14 by the former Interstate Commerce
15 Commission under this title.

16 “(ii) *EXCLUSIONS*.—In this section, the
17 term ‘motor carrier’ does not include—

18 “(I) any carrier subject to section
19 13504; or

20 “(II) any other carrier that the
21 board of directors of the unified carrier
22 registration plan determines to be ap-
23 propriate pursuant to subsection
24 (d)(4)(C).

1 “(B) SECTION 14506.—In section 14506, the
2 term ‘motor carrier’ includes all carriers that
3 are otherwise exempt from this part—

4 “(i) under subchapter I of chapter 135;

5 or

6 “(ii) through exemption actions by the
7 former Interstate Commerce Commission
8 under this title.”; and

9 (2) in subsection (d)(4)(C), by inserting before
10 the period at the end the following: “, except that a
11 decision to approve the exclusion of carriers from the
12 definition of the term ‘motor carrier’ under subsection
13 (a)(5) shall require an affirmative vote of $\frac{3}{4}$ of all
14 such directors.”.

Attest:

Secretary.

110TH CONGRESS
2^D SESSION

H. R. 2095

AMENDMENT