

110TH CONGRESS
1ST SESSION

S. 918

To authorize appropriations for activities under the Federal railroad safety laws for fiscal years 2008 through 2011, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2007

Mr. LAUTENBERG (for himself and Mr. SMITH) (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To authorize appropriations for activities under the Federal railroad safety laws for fiscal years 2008 through 2011, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Railroad Safe-
5 ty Accountability and Improvement Act”.

6 **SEC. 2. AMENDMENT OF TITLE 49, UNITED STATES CODE.**

7 Except as otherwise expressly provided, whenever in
8 this Act an amendment or repeal is expressed in terms
9 of an amendment to, or a repeal of, a section or other

1 provision, the reference shall be considered to be made to
 2 a section or other provision of title 49, United States
 3 Code.

4 **SEC. 3. TABLE OF CONTENTS.**

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

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

TITLE I—AUTHORIZATION OF APPROPRIATIONS AND
 ESTABLISHMENT OF SAFETY RISK REDUCTION PROGRAM

- Sec. 101. Authorization of appropriations and establishment of safety risk reduction program.
- Sec. 102. Protection of railroad safety risk reduction program information.

TITLE II—HIGHWAY-RAIL CROSSING SAFETY

- Sec. 201. National crossing inventory.
- Sec. 202. Fostering introduction of new technology to improve safety at highway-rail grade crossings.
- Sec. 203. Authority to buy promotional items to improve railroad crossing safety and prevent railroad trespass.

TITLE III—RULEMAKING, INSPECTION, AND ENFORCEMENT
 AUTHORITY

- Sec. 301. Railroad security.
- Sec. 302. Emergency waivers.
- Sec. 303. Railroad radio monitoring authority and general inspection authority.
- Sec. 304. Authority to disqualify individuals from performing safety-sensitive functions in the railroad industry based on their violation of hazardous material transportation law.
- Sec. 305. Technical amendments regarding enforcement by the Attorney General.
- Sec. 306. Unified treatment of families of railroad carriers providing integrated railroad operations.
- Sec. 307. Hours of service reform.
- Sec. 308. Amendment to the movement-for-repair provision.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Technical amendments to eliminate unnecessary provisions.
- Sec. 402. Alternate names for chapters of subtitle V, part A.
- Sec. 403. Federal rail security officers' access to criminal history and other law enforcement records, systems, and communications.

1 **TITLE I—AUTHORIZATION OF**
2 **APPROPRIATIONS AND ES-**
3 **TABLISHMENT OF SAFETY**
4 **RISK REDUCTION PROGRAM**

5 **SEC. 101. AUTHORIZATION OF APPROPRIATIONS AND ES-**
6 **TABLISHMENT OF SAFETY RISK REDUCTION**
7 **PROGRAM.**

8 (a) AMENDMENT.—Section 20117(a) is amended—

9 (1) in subsection (a)(1), by striking “chapter”
10 and substituting “part and to carry out responsibil-
11 ities under chapter 51 as delegated or authorized by
12 the Secretary” and by striking subparagraphs (A)
13 through (F);

14 (2) by striking subsection (a)(2); and

15 (3) by redesignating subsection (a)(1), as
16 amended by this Act, as subsection (a), and insert-
17 ing the following at the end:

18 “(1) \$180,722,000 for the fiscal year ending
19 September 30, 2008.

20 “(2) Such sums as may be necessary for fiscal
21 years 2009 through 2011.”.

22 (b) AMENDMENT.—Section 20117, as amended by
23 this Act, is further amended by inserting at the end a new
24 subsection (f) as follows:

1 “(f) SAFETY RISK REDUCTION.—Not more than
2 \$2,363,000 of the \$180,722,000 for fiscal year 2008 and
3 such sums as may be necessary for fiscal years 2009
4 through 2011 are authorized to be appropriated to the
5 Secretary for a safety risk reduction program to be imple-
6 mented as part of the railroad safety program. The safety
7 risk reduction program shall require each railroad to sys-
8 tematically evaluate safety risks, manage those risks, and
9 implement measures to eliminate or mitigate risks in its
10 processes and procedures. The safety risk reduction pro-
11 gram, which requires different skills than the activities
12 previously undertaken in the railroad safety program,
13 shall be undertaken in addition to the current railroad
14 safety program.”.

15 **SEC. 102. PROTECTION OF RAILROAD SAFETY RISK REDUC-**
16 **TION PROGRAM INFORMATION.**

17 (a) AMENDMENT.—Chapter 201 as amended by this
18 Act is further amended by adding the following two new
19 sections:

20 **“§ 20118. Prohibition on public disclosure of required**
21 **railroad safety risk reduction records**

22 “Notwithstanding section 552 of title 5 or any other
23 provision of law, except as necessary for enforcement of
24 any provision of Federal law by the Secretary or by an-
25 other Federal agency, the Secretary shall not disclose pub-

1 pose, in any action by a private party or parties for dam-
 2 ages against the carrier, or its officers, employees, or con-
 3 tractors.”.

4 (b) TABLE OF SECTIONS AMENDMENT.—The table of
 5 sections for chapter 201 is amended by adding after the
 6 item relating to section 20117 the following new items:

“20118. Prohibition on public disclosure of required railroad safety risk reduc-
 tion records.

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

7 **TITLE II—HIGHWAY-RAIL**
 8 **CROSSING SAFETY**

9 **SEC. 201. NATIONAL CROSSING INVENTORY.**

10 (a) AMENDMENT.—Chapter 201 as amended by this
 11 Act is further amended by adding at the end the following
 12 new section:

13 **“§ 20156. National crossing inventory**

14 “(a) INITIAL REPORTING OF INFORMATION ABOUT
 15 PREVIOUSLY UNREPORTED CROSSINGS.—Not later than
 16 12 months after the date of enactment of the Federal
 17 Railroad Safety Accountability and Improvement Act or
 18 12 months after a new crossing becomes operational,
 19 whichever occurs later, each railroad carrier shall—

20 “(1) report to the Secretary of Transportation
 21 current information (including, but not limited to,
 22 information about warning devices and signage), as
 23 specified by the Secretary, concerning each pre-
 24 viously unreported crossing through which it oper-

1 ates with respect to the trackage over which it oper-
2 ates; 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 on the same
6 trackage.

7 “(b) UPDATING OF CROSSING INFORMATION.—(1)
8 On a periodic basis beginning not later than 3 years after
9 the date of enactment of the Federal Railroad Safety Ac-
10 countability and Improvement Act and on or before Sep-
11 tember 30 of every third year thereafter, or as otherwise
12 specified by the Secretary, each railroad carrier shall—

13 “(A) report to the Secretary current informa-
14 tion (including, but not limited to, information about
15 warning devices and signage), as specified by the
16 Secretary, concerning each crossing through which it
17 operates with respect to the trackage over which it
18 operates; or

19 “(B) ensure that the information has been re-
20 ported to the Secretary by another railroad carrier
21 that operates through the crossing on the same
22 trackage.

23 “(2) A railroad carrier that sells a crossing, or any
24 part of a crossing, on or after the date of enactment of
25 the Federal Railroad Safety Accountability and Improve-

1 ment Act, shall, not later than the date that is 3 years
2 after the date of enactment of the Act or 3 months after
3 the sale, whichever occurs later, or as otherwise specified
4 by the Secretary, report to the Secretary current informa-
5 tion, as specified by the Secretary, concerning the change
6 in ownership of the crossing or the part of the crossing.

7 “(c) RULEMAKING AUTHORITY.—The Secretary shall
8 prescribe the regulations necessary to implement this sec-
9 tion. This rulemaking shall consider the expected benefits
10 to the inventory of, and costs of, alternative information-
11 collection requirements (including the distribution of bene-
12 fits and costs) and shall consider the collection of informa-
13 tion for categories of crossings that pose lower risks that
14 is less extensive or less frequent, or both, than that pro-
15 vided for in subsection (b). The Secretary may enforce
16 each provision of the Department of Transportation’s
17 statement of the national highway-rail crossing inventory
18 policy, procedures, and instructions for States and rail-
19 roads that is in effect on the date of enactment of this
20 section, until such provision is superseded by a regulation
21 issued under this section.

22 “(d) DEFINITIONS.—In this section—

23 “(1) ‘crossing’ means a location within a state,
24 other than a location where one or more railroad

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

3 “(A) a public highway, road, or street, or
4 a private roadway, including associated side-
5 walks and pathways, crosses one or more rail-
6 road tracks either at grade or grade-separated;
7 or

8 “(B) a pathway dedicated for the use of
9 non-vehicular traffic, including pedestrians,
10 bicyclists, and others, that is not associated
11 with a public highway, road, or street, or a pri-
12 vate roadway, crosses one or more railroad
13 tracks either at grade or grade-separated; and

14 “(2) ‘State’ means a State of the United
15 States, the District of Columbia, or Puerto Rico.”.

16 (b) TABLE OF SECTIONS AMENDMENT.—The table of
17 sections for chapter 201 as amended by this Act is further
18 amended by adding after the item relating to section
19 20155 the following new item:

“20156. National crossing inventory.”.

20 (c) AMENDMENT.—Section 130 of title 23, United
21 States Code, is amended by inserting the following new
22 subsection at the end:

23 “(l) NATIONAL CROSSING INVENTORY.—

24 “(1) INITIAL REPORTING OF INFORMATION
25 ABOUT PREVIOUSLY UNREPORTED PUBLIC CROSS-

1 INGS.—Not later than 12 months after the date of
2 enactment of the Federal Railroad Safety Account-
3 ability and Improvement Act or within 12 months of
4 a new crossing becoming operational, whichever oc-
5 curs later, each State shall report to the Secretary
6 current information (including, but not limited to,
7 information about warning devices and signage), as
8 specified by the Secretary, concerning each pre-
9 viously unreported public crossing located within its
10 borders.

11 “(2) UPDATING OF PUBLIC CROSSING INFORMA-
12 TION; REPORT 3 YEARS AFTER ENACTMENT, THEN
13 TWO-TIER SYSTEM FOR FURTHER UPDATES.—Each
14 State shall report to the Secretary current informa-
15 tion (including, but not limited to, information about
16 warning devices and signage), as specified by the
17 Secretary, concerning each crossing located within
18 its borders involving a public street, road, or high-
19 way. Each report shall be made on a periodic basis
20 beginning not later than 3 years after the date of
21 enactment of the Federal Railroad Safety Account-
22 ability and Improvement Act and on or before Sep-
23 tember 30 of—

24 “(A) every third year thereafter, or as
25 specified by the Secretary, for a crossing involv-

1 ing a public street, road, or highway, other than
2 a local or county street, road, or highway; and

3 “(B) every fifth year thereafter, or as spec-
4 ified by the Secretary, for a crossing involving
5 a public local or county street, road, or highway
6 or involving a publicly owned pathway dedicated
7 for the use of non-vehicular traffic, including
8 pedestrians, bicyclists, and others, that is not
9 associated with a public highway, road, or
10 street, or a private roadway.

11 “(3) RULEMAKING AUTHORITY.—The Secretary
12 shall prescribe the regulations necessary to imple-
13 ment this subsection. This rulemaking shall consider
14 the expected benefits to the inventory of, and costs
15 of, alternative information-collection requirements
16 (including the distribution of benefits and costs) and
17 shall consider the collection of information for cat-
18 egories of crossings that pose lower risks that is less
19 extensive or less frequent, or both, than that pro-
20 vided for in paragraph (2) of this subsection. The
21 Secretary may enforce each provision of the Depart-
22 ment of Transportation’s statement of the national
23 highway-rail crossing inventory policy, procedures,
24 and instructions for States and railroads that is in
25 effect on the date of enactment of this subsection,

1 until such provision is superseded by a regulation
2 issued under this subsection.

3 “(4) DEFINITION.—In this subsection—

4 “(A) ‘public crossing’ means a location
5 within a state, other than a location where one
6 or more railroad tracks cross one or more rail-
7 road tracks either at grade or grade-separated,
8 where—

9 “(i) a public highway, road, or street,
10 including associated sidewalks and path-
11 ways, crosses one or more railroad tracks
12 either at grade or grade-separated; or

13 “(ii) a publicly owned pathway dedi-
14 cated for the use of non-vehicular traffic,
15 including pedestrians, bicyclists, and oth-
16 ers, that is not associated with a public
17 highway, road, or street, or a private road-
18 way, crosses one or more railroad tracks
19 either at grade or grade-separated; and

20 “(B) ‘State’ means a State of the United
21 States, the District of Columbia, or Puerto
22 Rico.”.

23 (d) CIVIL PENALTIES.—(1) Section 21301(a)(1) is
24 amended—

1 (A) by striking the period at the end of the first
 2 sentence and substituting “or with section 20156 of
 3 this title.”; and

4 (B) in the second sentence, by inserting “or vio-
 5 lating section 20156 of this title” between “chapter
 6 201” and “is liable”.

7 (2) Section 21301(a)(2) is amended by inserting after
 8 the first sentence the following: “The Secretary shall sub-
 9 ject a person to a civil penalty for a violation of section
 10 20156 of this title.”.

11 **SEC. 202. FOSTERING INTRODUCTION OF NEW TECH-**
 12 **NOLOGY TO IMPROVE SAFETY AT HIGHWAY-**
 13 **RAIL GRADE CROSSINGS.**

14 (a) AMENDMENT.—Chapter 201 as amended by this
 15 Act is further amended by adding at the end a new section
 16 20157 to read as follows:

17 **“§ 20157. Fostering introduction of new technology to**
 18 **improve safety at highway-rail grade**
 19 **crossings**

20 “(a) FINDINGS.—(1) Collisions between highway
 21 users and trains at highway-rail grade crossings continue
 22 to cause an unacceptable loss of life and serious personal
 23 injury and also threaten the safety of rail transportation.

24 “(2) While elimination of at-grade crossings through
 25 consolidation of crossings and grade separations offers the

1 greatest long-term promise for optimizing the safety and
2 efficiency of the two modes of transportation, over
3 140,000 public grade crossings remain on the general rail
4 system—approximately one for each route mile on the
5 general rail system.

6 “(3) Conventional highway traffic control devices
7 such as flashing lights and gates are effective in warning
8 motorists of a train’s approach to an equipped crossing
9 but require considerable expense to install and to main-
10 tain.

11 “(4) Since enactment of the Highway Safety Act of
12 1973, over \$4,200,000,000 of Federal funding has been
13 invested in safety improvements at highway-rail grade
14 crossings, yet a majority of public highway-rail grade
15 crossings are not yet equipped with active warning sys-
16 tems.

17 “(5) The emergence of new technologies supporting
18 Intelligent Transportation Systems presents opportunities
19 for more effective and affordable warnings and safer pas-
20 sage of highway users and trains at remaining highway-
21 rail grade crossings.

22 “(6) Implementation of new crossing safety tech-
23 nology will require extensive cooperation between highway
24 authorities and railroad carriers.

1 “(7) Uncertainty concerning potential liability in tort
2 threatens to arrest development and implementation of
3 lifesaving systems, discouraging suppliers, State and local
4 authorities, and railroad carriers from moving forward
5 with systems that have strong potential to save lives and
6 prevent personal injuries.

7 “(8) Federal Railroad Administration regulations es-
8 tablishing performance standards for processor-based sig-
9 nal and train control systems provide a suitable framework
10 for qualification of new or novel technology at highway-
11 rail grade crossings, and the Federal Highway Adminis-
12 tration’s Manual on Uniform Traffic Control Devices pro-
13 vides an appropriate means of determining highway user
14 interface with such new technology.

15 “(b) POLICY.—It is the policy of the United States
16 to encourage the development of new technology that can
17 prevent loss of life and injuries at highway-rail grade
18 crossings. The Secretary of Transportation is designated
19 to carry out this policy in consultation with States and
20 necessary public and private entities.

21 “(c) PREEMPTIVE EFFECT OF FEDERAL ACTION.—
22 If the Secretary approves new technology to provide warn-
23 ing to highway users at a highway-rail grade crossing and
24 such technology is installed at a highway-rail grade cross-
25 ing in accordance with the conditions of the approval, this

1 determination preempts any State law concerning the ade-
 2 quacy of the technology in providing warning at the cross-
 3 ing. Under no circumstances may a person (including a
 4 State, other public authority, railroad carrier, system de-
 5 signer, or supplier of the technology) be held liable for
 6 damages for any harm to persons or property because of
 7 an accident or incident at the crossing based upon selec-
 8 tion of such technology. Nor shall a railroad carrier be
 9 found liable in damages because of an accident or incident
 10 at a crossing protected by such technology based upon the
 11 carrier’s failure to properly inspect and maintain such
 12 technology, if the carrier has inspected and maintained the
 13 technology in accordance with the terms of the Secretary’s
 14 approval. Nor shall any party be found liable for damages
 15 for failure to apply such technology at a different grade
 16 crossing location.”.

17 (b) TABLE OF SECTIONS AMENDMENT.—The table of
 18 sections for chapter 201 as amended by this Act is further
 19 amended by adding the following new item:

“20157. Fostering introduction of new technology to improve safety at highway-
 rail grade crossings.”.

20 **SEC. 203. AUTHORITY TO BUY PROMOTIONAL ITEMS TO IM-**
 21 **PROVE RAILROAD CROSSING SAFETY AND**
 22 **PREVENT RAILROAD TRESPASS.**

23 Section 20134(a) is amended by adding at the end
 24 of the subsection the following sentence: “The Secretary

1 may purchase promotional items of nominal value and dis-
2 tribute them to the public without charge as part of an
3 educational or awareness program to accomplish the pur-
4 poses of this section and of any other sections of this title
5 related to improving the safety of highway-rail crossings
6 and to preventing trespass on railroad rights of way, and
7 the Secretary shall prescribe guidelines for the administra-
8 tion of this authority.”.

9 **TITLE III—RULEMAKING, IN-**
10 **SPECTION, AND ENFORCE-**
11 **MENT AUTHORITY**

12 **SEC. 301. RAILROAD SECURITY.**

13 Section 20103(a) is amended to read as follows:

14 “(a) REGULATIONS AND ORDERS.—The Secretary of
15 Transportation, as necessary, shall prescribe regulations
16 and issue orders for every area of railroad safety
17 supplementing laws and regulations in effect on October
18 16, 1970. Any regulation prescribed or order issued by
19 the Secretary of Transportation involving railroad safety
20 shall not be subject to challenge, under section 20114(c)
21 of this chapter or under any other provision of law by
22 which such a regulation or order may be subject to judicial
23 review, on the ground that it impacts security.”.

1 **SEC. 302. EMERGENCY WAIVERS.**

2 Section 20103 as amended by this Act is further
3 amended by—

4 (1) revising subsection (e) to read as follows:

5 “(e) HEARINGS.—Except as provided in subsection
6 (g) of this section, the Secretary shall conduct a hearing
7 as provided by section 553 of title 5 when prescribing a
8 regulation or issuing an order under this chapter, includ-
9 ing a regulation or order establishing, amending, or
10 waiving compliance with a railroad safety regulation pre-
11 scribed or order issued under this chapter. An opportunity
12 for an oral presentation shall be provided.”; and

13 (2) adding at the end a new subsection (g) to
14 read as follows:

15 “(g) EMERGENCY WAIVERS.—(1) The Secretary
16 shall prescribe procedures concerning the handling of re-
17 quests for waivers of regulations prescribed or orders
18 issued under this chapter in emergency situations and may
19 prescribe temporary emergency waiver procedures without
20 first providing an opportunity for public comment. The
21 Secretary may grant a waiver request if the waiver is di-
22 rectly related to the emergency event or necessary to aid
23 in any recovery efforts and is in the public interest and
24 consistent with railroad safety. The relief shall not extend
25 for a period of more than nine months, including the pe-
26 riod of the relief granted under any renewal of the waiver

1 pursuant to the emergency waiver procedures. For matters
2 that may impact the missions of the Department of Home-
3 land Security, the Secretary of Transportation shall con-
4 sult and coordinate with the Secretary of Homeland Secu-
5 rity as soon as practicable.

6 “(2) If, under the emergency waiver procedures es-
7 tablished under paragraph (1) of this subsection, the Sec-
8 retary determines the public interest would be better
9 served by addressing a request for waiver prior to pro-
10 viding an opportunity for a hearing under section 553 of
11 title 5 and an oral presentation, the Secretary may act
12 on the waiver request and, if the request is granted, the
13 Secretary shall subsequently provide notice and an oppor-
14 tunity for a hearing and oral presentation pursuant to pro-
15 cedures prescribed under paragraph (1) of this subsection.
16 Should the Secretary receive comment or a request for
17 oral presentation on a waiver request after granting the
18 waiver, the Secretary may take any necessary action with
19 regard to that waiver (including rescission or modification)
20 based on the newly acquired information.

21 “(3) For purposes of this subsection, the terms
22 ‘emergency situation’ and ‘emergency event’ refer to a nat-
23 ural or manmade disaster, such as a hurricane, flood,
24 earthquake, mudslide, forest fire, snowstorm, terrorist act,
25 biological outbreak, release of a dangerous radiological,

1 chemical, explosive, or biological material, or a war-related
2 activity, that poses a risk of death, serious illness, severe
3 injury, or substantial property damage. The disaster may
4 be local, regional, or national in scope.”.

5 **SEC. 303. RAILROAD RADIO MONITORING AUTHORITY AND**
6 **GENERAL INSPECTION AUTHORITY.**

7 (a) AMENDMENT.—Section 20107 is amended by in-
8 serting at the end the following new subsection:

9 “(c) RAILROAD RADIO COMMUNICATIONS.—(1) To
10 carry out the Secretary’s responsibilities under this part
11 and under chapter 51, the Secretary may authorize offi-
12 cers, employees, or agents of the Secretary to conduct the
13 following activities in circumstances determined by the
14 Secretary in the Secretary’s discretion to be reasonable:

15 “(A) Intercepting a radio communication that
16 is broadcast or transmitted over a frequency author-
17 ized for the use of one or more railroad carriers by
18 the Federal Communications Commission, with or
19 without making their presence known to the sender
20 or other receivers of the communication and with or
21 without obtaining the consent of the sender or other
22 receivers of the communication.

23 “(B) Communicating the existence, contents,
24 substance, purport, effect, or meaning of the com-

1 munication, subject to the restrictions in paragraph
2 (3).

3 “(C) Receiving or assisting in receiving the
4 communication (or any information therein con-
5 tained).

6 “(D) Disclosing the contents, substance, pur-
7 port, effect, or meaning of the communication (or
8 any part thereof of such communication) or using
9 the communication (or any information contained
10 therein), subject to the restrictions in paragraph (3),
11 after having received the communication or acquired
12 knowledge of the contents, substance, purport, ef-
13 fect, or meaning of the communication (or any part
14 thereof).

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

17 “(2) The Secretary and officers, employees, and
18 agents of the Department of Transportation authorized by
19 the Secretary may engage in the activities authorized by
20 paragraph (1) for the purpose of accident prevention, in-
21 cluding, but not limited to, accident investigation.

22 “(3)(A) Information obtained through activities au-
23 thorized by paragraphs (1) and (2) shall not be admitted
24 into evidence in any administrative or judicial proceeding
25 except—

1 “(i) in a prosecution for a felony under Federal
2 or State criminal law; or

3 “(ii) to impeach evidence offered by a party
4 other than the Federal Government regarding the
5 existence, electronic characteristics, content, sub-
6 stance, purport, effect, meaning, or timing of, or
7 identity of parties to, a communication intercepted
8 pursuant to paragraphs (1) and (2) in proceedings
9 pursuant to section 5122, 5123, 20702(b), 20111,
10 20112, 20113, or 20114 of this title.

11 “(B) If information obtained through activities set
12 forth in paragraphs (1) and (2) is admitted into evidence
13 for impeachment purposes in accordance with paragraph
14 (3)(A), the court, administrative law judge, or other offi-
15 cer before whom the proceeding is conducted may make
16 such protective orders regarding the confidentiality or use
17 of the information as may be appropriate in the cir-
18 cumstances to protect privacy and administer justice.

19 “(C) Information obtained through activities set forth
20 in paragraphs (1) and (2) shall not be subject to publica-
21 tion or disclosure under section 552 of title 5.

22 “(D) No evidence shall be excluded in an administra-
23 tive or judicial proceeding solely because the government
24 would not have learned of the existence of or obtained such

1 evidence but for the interception of information that is not
2 admissible in such proceeding under paragraph (3)(A).

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

9 “(4) Section 705 of the Communications Act of 1934
10 (47 U.S.C. 605) and chapter 119 of title 18, United States
11 Code, shall not apply to conduct authorized by and pursu-
12 ant to this subsection.”.

13 (b) AMENDMENT.—Section 2511(2) of title 18,
14 United States Code, is amended by adding after para-
15 graph (i), the following new paragraph:

16 “(j) Notwithstanding any other provision of this
17 chapter or section 605 of title 47, the Secretary of Trans-
18 portation and officers, employees, or agents of the Depart-
19 ment of Transportation authorized by the Secretary of
20 Transportation, in furtherance of the Federal railroad
21 safety laws at subtitle V, part A, of title 49 and at chapter
22 51 of title 49, for the purpose of accident prevention, in-
23 cluding, but not limited to, accident investigation, may
24 intercept radio communications broadcast or transmitted
25 over a frequency authorized for the use of one or more

1 railroad carriers by the Federal Communications Commis-
 2 sion and may disclose or use the information thereby ob-
 3 tained, for the purposes and to the extent permitted by
 4 section 20107(c) of title 49.”.

5 (c) AMENDMENT.—Section 20107(b) is amended by
 6 striking “at reasonable times” and inserting in its place
 7 the following: “in circumstances determined by the Sec-
 8 retary in the Secretary’s discretion to be reasonable”.

9 **SEC. 304. AUTHORITY TO DISQUALIFY INDIVIDUALS FROM**
 10 **PERFORMING SAFETY-SENSITIVE FUNCTIONS**
 11 **IN THE RAILROAD INDUSTRY BASED ON**
 12 **THEIR VIOLATION OF HAZARDOUS MATERIAL**
 13 **TRANSPORTATION LAW.**

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

15 “(c) ORDERS PROHIBITING INDIVIDUALS FROM PER-
 16 FORMING SAFETY-SENSITIVE FUNCTIONS.—(1) If an in-
 17 dividual’s violation of this part, chapter 51 of this title,
 18 or a regulation prescribed, or an order issued, by the Sec-
 19 retary under this part or chapter 51 of this title is shown
 20 to make that individual unfit for the performance of safe-
 21 ty-sensitive functions, the Secretary, after providing notice
 22 and an opportunity for a hearing, may issue an order pro-
 23 hibiting the individual from performing safety-sensitive
 24 functions in the railroad industry for a specified period
 25 of time or until specified conditions are met.

1 “(2) This subsection does not affect the Secretary’s
2 authority under section 20104 of this title to act on an
3 emergency basis.”.

4 **SEC. 305. TECHNICAL AMENDMENTS REGARDING EN-**
5 **FORCEMENT BY THE ATTORNEY GENERAL.**

6 Section 20112(a) is amended—

7 (1) in paragraph (1), by inserting “this part,
8 except for section 20109 of this title, or” before “a
9 railroad safety regulation”;

10 (2) in paragraph (2), by inserting “, 21302, or
11 21303” after “section 21301”; and

12 (3) in paragraph (3), by inserting after “sub-
13 pena” the following: “request for admissions, re-
14 quest for production of documents or other tangible
15 things, or request for testimony by deposition” and
16 by striking “chapter” and substituting “part”.

17 **SEC. 306. UNIFIED TREATMENT OF FAMILIES OF RAILROAD**
18 **CARRIERS PROVIDING INTEGRATED RAIL-**
19 **ROAD OPERATIONS.**

20 Section 20102(2) is amended to read as follows:

21 “(2) ‘railroad carrier’ means a person providing
22 railroad transportation, except that upon petition by
23 a group of commonly controlled railroad carriers
24 that the Secretary determines is operating within the
25 United States as a single, integrated rail system, the

1 Secretary may, by order, treat the group of railroad
2 carriers as a single railroad carrier for purposes of
3 one or more provisions of part A, subtitle V, of this
4 title and implementing regulations and orders, sub-
5 ject to any appropriate conditions that the Secretary
6 may impose.”.

7 **SEC. 307. HOURS OF SERVICE REFORM.**

8 (a) REPEAL.—Chapter 211 is repealed and reserved
9 upon the effective date of the regulations prescribed under
10 section 20158, as added by subsection (c) of this section.

11 (b) AMENDMENT.—Upon the effective date of the
12 regulations prescribed under section 20158, as added by
13 subsection (c) of this section—

14 (1) the first sentence of section 20103(a) as
15 amended by this Act is further amended to read as
16 follows:

17 “(1) The Secretary of Transportation, as nec-
18 essary, shall prescribe regulations and issue orders
19 for every area of railroad safety—

20 “(A) superseding the Federal hours of
21 service laws formerly codified at chapter 211 of
22 this title and regulations and orders pursuant
23 to those laws; and

24 “(B) supplementing other regulations and
25 other laws in effect on October 16, 1970.”; and

1 (2) the second sentence of section 20103(a) as
2 amended by this Act is designated as paragraph (2).

3 (c) AMENDMENT.—Chapter 201 as amended by this
4 Act is further amended by adding at the end the following
5 new section:

6 **“§ 20158. Fatigue, including hours of service**

7 “(a) MANDATE TO CONVERT STATUTE TO REGULA-
8 TIONS; NONREVIEWABILITY; REPEAL OF CHAPTER 211.—
9 (1) The Secretary of Transportation shall prescribe regu-
10 lations embodying the substantive provisions of the Fed-
11 eral hours of service laws codified at sections 21101–
12 21106 and 21108 of this title and in so doing may make
13 changes necessary to transform those provisions into regu-
14 latory form.

15 “(2) Notwithstanding any other provision of law,
16 these regulations shall not be subject to judicial review.

17 “(3) Upon the effective date of the regulations pre-
18 scribed under this subsection (a) (the status quo regula-
19 tions), chapter 211 of this title is repealed and reserved.

20 “(b) AUTHORITY TO PRESCRIBE AMENDMENTS TO
21 THE STATUS QUO REGULATIONS.—After the Secretary
22 has prescribed the regulations mandated by subsection (a)
23 and after the regulations mandated by subsection (a) have
24 become effective, the Secretary may amend the regulations
25 as the Secretary deems necessary in accordance with the

1 Secretary’s general authority under section 20103 of this
2 title, to prevent and mitigate fatigue among individuals
3 performing safety-critical duties in train and engine serv-
4 ice, signal or train control service, or dispatching service,
5 whether or not directly employed by a railroad carrier,
6 providing however that, before prescribing any initial
7 amendments to the regulations mandated by subsection
8 (a) for a particular category of employees, the Secretary
9 shall follow the procedures set forth in subsection (c).

10 “(c) PROCEDURES FOR PRESCRIBING INITIAL REGU-
11 LATORY AMENDMENTS.—(1) Prior to proposing any ini-
12 tial regulatory amendment to the regulations mandated by
13 subsection (a), the Secretary shall request—

14 “(A) that the Railroad Safety Advisory Com-
15 mittee accept the task of developing consensus rec-
16 ommendations to the Secretary on the problem of fa-
17 tigue experienced by individuals performing any one
18 or more of the following types of service: train and
19 engine service, signal or train control service, or dis-
20 patching service; and

21 “(B) that the Committee communicate in writ-
22 ing to the Secretary its decision whether or not to
23 accept the task.

24 “(2) If the Committee timely accepts the task with
25 respect to a particular type of service, it shall assist the

1 Secretary in conducting the review described in sub-
2 sections (c)(3) and (c)(6) with respect to the particular
3 type of service. If the Committee does not timely accept
4 the task with respect to a particular type of service, the
5 Secretary may proceed with proposing to prescribe any
6 amendments with respect to the particular type of service
7 without the assistance of the Committee.

8 “(3) The Secretary shall review the problem of fa-
9 tigue experienced by individuals performing train and en-
10 gine service, signal or train control service, and dis-
11 patching service or any combination of such types of serv-
12 ice and shall consider how the likelihood of accidents and
13 injuries caused by that fatigue can be reduced. The review
14 shall take into account current and evolving scientific
15 knowledge and literature relating to fatigue, and shall in-
16 clude an evaluation of the following:

17 “(A) The varying circumstances of railroad car-
18 rier operations and the appropriate fatigue counter-
19 measures to address those varying circumstances,
20 based on current and evolving scientific and medical
21 research on circadian rhythms and human sleep and
22 rest requirements.

23 “(B) The benefits and costs of a revised regu-
24 latory program.

1 “(C) Ongoing and planned voluntary initiatives
2 by railroad carriers and rail labor organizations to
3 address fatigue management, including the extent to
4 which voluntary activities undertaken by railroad
5 carriers and labor organizations representing their
6 employees are minimizing fatigue and ameliorating
7 its effects and the extent to which such activities are
8 likely to be sustained absent regulatory action.

9 “(D) The extent to which railroad carriers are
10 using valid fatigue risk assessment tools and other
11 methodologies to assist them in making informed de-
12 cisions on any or all of the subjects described in sub-
13 paragraphs (A)–(C) of this paragraph.

14 “(E) Any other matters that the Secretary
15 deems relevant.

16 “(4) If the Railroad Safety Advisory Committee time-
17 ly accepts a task specified in this section and presents the
18 Secretary with a written consensus recommendation with-
19 in 24 months after accepting the task, the Secretary shall
20 consider the recommendation. The Secretary shall propose
21 an initial amendment to the regulation consistent with the
22 extent to which the Secretary agrees with Committee’s
23 recommendation.

24 “(5) If the Committee fails to provide a consensus
25 recommendation with respect to a task specified in this

1 section within 24 months after accepting the task, the Sec-
2 retary may proceed without the assistance of the Com-
3 mittee and may propose and prescribe any amendment to
4 the regulation that the Secretary deems necessary in ac-
5 cordance with the Secretary's authority under section
6 20103 of this title or may decide not to propose or to pre-
7 scribe any amendment.

8 “(6)(A) In adopting any amendments under this sec-
9 tion for any individuals performing safety-critical duties
10 in a particular service, the Secretary shall prescribe max-
11 imum hours of service and such additional requirements
12 as the Secretary deems necessary to provide a reasonable
13 level of fatigue prevention or fatigue mitigation, or both.

14 “(B) Recognizing the diversity of working conditions
15 within the railroad industry and the need for flexibility
16 in applying strategies for fatigue prevention and mitiga-
17 tion, the Secretary may provide by regulation for submis-
18 sion and consideration, with respect to any group of indi-
19 viduals providing service covered by the regulation, of a
20 written fatigue management plan proposed by one or more
21 railroad carriers or other applicable employers. If the Sec-
22 retary so provides, and if the Secretary determines that
23 the plan would provide a level of safety equal to or better
24 than the level of safety that would be provided by the regu-
25 lation, the Secretary may authorize and enforce compli-

1 ance with the plan in lieu of compliance with the regula-
2 tion.

3 “(d) REVIEWABILITY EXCLUSIVELY UNDER THE
4 CONGRESSIONAL REVIEW ACT.—Notwithstanding any
5 other provision of law, any final rule amendment by the
6 Secretary to the regulations mandated by subsection (a)
7 of this section or to the regulations authorized by sub-
8 section (b) of this section—

9 “(1) shall not be subject to judicial review.

10 “(2) shall be subject to review under the Con-
11 gressional Review Act (5 U.S.C. 801) as the sole
12 and exclusive means of review.”.

13 (d) TABLE OF SECTIONS AMENDMENT.—The table
14 of sections for chapter 201, as amended by this Act, is
15 further amended by adding at the end the following new
16 item:

“20158. Fatigue, including hours of service.”.

17 (e) AMENDMENT.—Effective upon the repeal of chap-
18 ter 211, chapter 201, as amended by this Act, is further
19 amended by adding at the end the following new section:

20 **“§ 20159. Maximum duty hours and subjects of collec-**
21 **tive bargaining**

22 “The number of hours that an employee may be re-
23 quired or allowed to be on duty (a number formerly estab-
24 lished by the Federal hours of service laws, formerly codi-
25 fied at chapter 211 of this title, and presently established

1 under section 20158 of this title) is the maximum number
 2 of hours consistent with safety. Shorter hours of service
 3 and time on duty of an employee are proper subjects for
 4 collective bargaining between a railroad carrier and its em-
 5 ployees.”.

6 (f) TABLE OF SECTIONS AMENDMENT.—Effective
 7 upon the repeal of chapter 211, the table of sections for
 8 chapter 201 as amended by this Act is further amended
 9 by adding at the end the following new item:

“20159. Maximum duty hours and subjects of collective bargaining.”.

10 **SEC. 308. AMENDMENT TO THE MOVEMENT-FOR-REPAIR**
 11 **PROVISION.**

12 Section 20303 is amended by adding the following
 13 new subsections:

14 “(d) DEFINITIONS AND CLARIFICATION.—In sub-
 15 section (a)—

16 “(1) ‘place at which the repairs can be made’
 17 means—

18 “(A) a location with a fixed facility for
 19 conducting the repairs that are necessary to
 20 bring the defective or insecure vehicle into com-
 21 pliance with this chapter; or

22 “(B) a location where a mobile repair
 23 truck capable of making the repairs that are
 24 necessary to bring the defective or insecure ve-
 25 hicle into compliance with this chapter makes

1 the same kind of repair at the location regularly
2 (as specified in regulations prescribed by the
3 Secretary).

4 “(2) ‘nearest’ means the closest in the forward
5 direction of travel for the defective or insecure vehi-
6 cle.

7 “(3) movement of a defective or insecure vehicle
8 from a location is ‘necessary to make repairs’ of the
9 vehicle even though a mobile repair truck capable of
10 making the repairs has gone to the location on an
11 irregular basis (as specified in regulations prescribed
12 by the Secretary).

13 “(e) **ADDITIONAL CONDITIONS FOR MOVEMENT TO**
14 **MAKE REPAIRS.**—The Secretary of Transportation may
15 impose conditions for the movement of a defective or inse-
16 cure vehicle to make repairs in addition to those conditions
17 set forth in subsection (a) by prescribing regulations or
18 issuing orders as necessary.”.

19 **TITLE IV—MISCELLANEOUS**
20 **PROVISIONS**

21 **SEC. 401. TECHNICAL AMENDMENTS TO ELIMINATE UNNEC-**
22 **CESSARY PROVISIONS.**

23 (a) **AMENDMENTS.**—Chapter 201 as amended by this
24 Act is further amended by—

1 (1) striking the second sentence of section
2 20103(f);

3 (2) striking and reserving sections 20115,
4 20131, 20133, 20136–20139, 20141–20146, 20148,
5 and 20150;

6 (3) striking and reserving subsection (b) of sec-
7 tion 20134 as amended by this Act; and

8 (4) striking the second sentence of section
9 20151(a) and striking section 20151(c).

10 (b) TABLE OF SECTIONS AMENDMENTS.—The table
11 of sections for chapter 201 as amended by this Act is fur-
12 ther amended by striking and reserving the items relating
13 to the following sections: 20115, 20131, 20133, 20136–
14 20139, 20141–20146, 20148, and 20150.

15 **SEC. 402. ALTERNATE NAMES FOR CHAPTERS OF SUBTITLE**

16 **V, PART A.**

17 (a) AMENDMENT.—Section 20101 as amended by
18 this Act is further amended by—

19 (1) revising the section heading to read as fol-
20 lows:

21 **“§ 20101. Purpose and title of chapter”;**

22 (2) designating the text of the section as sub-
23 section (a) and adding a subsection heading “PUR-
24 POSE.—”; and

1 (3) adding at the end of the section the fol-
2 lowing new subsection:

3 “(b) TITLE OF CHAPTER.—This chapter may be
4 cited as the ‘Federal Railroad Safety Act’.”.

5 (b) AMENDMENT.—Section 20301 is amended by—

6 (1) revising the section heading to read as fol-
7 lows:

8 **“§ 20301. Definition; nonapplication; and titles of pro-
9 visions in chapter”;**

10 (2) adding at the end of the section the fol-
11 lowing new subsection:

12 “(c) TITLES OF PROVISIONS IN CHAPTER.— Collec-
13 tively, sections 20301–20304 and 20306 of this chapter
14 may be cited as the ‘Safety Appliance Act’. Section 20305
15 may be cited as the ‘Mail Car Inspection Act’.”.

16 (c) AMENDMENT.—Section 20501 is amended by—

17 (1) revising the section heading to read as fol-
18 lows:

19 **“§ 20501. Definition; title of chapter”;**

20 (2) designating the text of the section as sub-
21 section (a) and adding the subsection heading “DEF-
22 INITION.—”; and

23 (3) adding at the end of the section the fol-
24 lowing new subsection:

1 “(b) TITLE OF CHAPTER.—This chapter may be
2 cited as the ‘Signal Inspection Act’.”.

3 (d) AMENDMENT.—Section 20701 is amended by—

4 (1) revising the section heading to read:

5 **“§ 20701. Requirements for use; title of chapter”;**

6 (2) designating the text of the section as sub-
7 section (a) and adding the subsection heading “RE-
8 QUIREMENTS FOR USE.—”; and

9 (3) adding at the end of the section the fol-
10 lowing new subsection:

11 “(c) TITLE OF CHAPTER.—This chapter may be cited
12 as the ‘Locomotive Inspection Act’.”.

13 (e) AMENDMENT.—Section 20901 is amended by—

14 (1) revising the section heading to read as fol-
15 lows:

16 **“§ 20901. Reports; title of chapter”; and**

17 (2) adding at the end of the section the fol-
18 lowing new subsection:

19 “(c) TITLE OF CHAPTER.—This chapter may be cited
20 as the ‘Accident Reports Act’.”.

21 (f) AMENDMENT.—Section 21101 as amended by this
22 Act is further amended by—

23 (1) revising the section heading to read as fol-
24 lows:

1 **“§ 21101. Definitions; title of chapter”;**

2 (2) designating the text of the section as sub-
3 section (a) and adding the subsection heading
4 “DEFINITIONS.—”; and

5 (3) adding at the end the following new sub-
6 section:

7 “(b) TITLE OF CHAPTER.—This chapter may be
8 cited as the ‘Hours of Service Act’.”.

9 (g) AMENDMENT.—Section 21301 as amended by
10 this Act is further amended by—

11 (1) revising the section heading to read as fol-
12 lows:

13 **“§ 21301. Chapter 201 general violations; title of chap-
14 ter”; and**

15 (2) adding at the end of the section the fol-
16 lowing new subsection:

17 “(d) TITLE OF CHAPTER.—This chapter may be
18 cited as ‘Penalties for Railroad Safety Violations’.”.

19 (h) TABLES OF SECTIONS AMENDMENTS.—(1) The
20 table of sections for chapter 201 as amended by this Act
21 is further amended by striking the existing item for sec-
22 tion 20101 and substituting:

“20101. Purpose and title of chapter.”.

23 (2) The tables of sections for chapters 203–213, re-
24 spectively, are amended by respectively—

1 (A) striking the existing item for section 20301
2 and substituting:

“20301. Definition; nonapplication; and titles of provisions in chapter.”;

3 (B) striking the existing item for section 20501
4 and substituting:

“20501. Definition; title of chapter.”;

5 (C) striking the existing item for section 20701
6 and substituting:

“20701. Requirements for use; title of chapter.”;

7 (D) striking the existing item for section 20901
8 and substituting:

“20901. Reports; title of chapter.”;

9 (E) striking the existing item for section 21101
10 and substituting:

“21101. Definitions; title of chapter.”; and

11 (F) striking the existing item for section 21301
12 and substituting:

“21301. Chapter 201 general violations; title of chapter.”.

13 **SEC. 403. FEDERAL RAIL SECURITY OFFICERS’ ACCESS TO**
14 **CRIMINAL HISTORY AND OTHER LAW EN-**
15 **FORCEMENT RECORDS, SYSTEMS, AND COM-**
16 **MUNICATIONS.**

17 (a) AMENDMENT.—Chapter 281 is revised by adding
18 new section 28104 to read as follows:

1 **“§ 28104 Federal rail security officers’ access to**
2 **criminal history and other law enforce-**
3 **ment and other law enforcement records,**
4 **systems, and communications**

5 “(a) ACCESS TO RECORDS OR DATABASE SYSTEMS
6 BY THE ADMINISTRATOR OF THE FEDERAL RAILROAD
7 ADMINISTRATION.—(1) The Administrator of the Federal
8 Railroad Administration is authorized to have access to
9 a system of documented criminal justice information
10 maintained by the Department of Justice or by a State
11 for the purpose of carrying out the civil and administrative
12 responsibilities of the Administrator to protect the safety,
13 including security, of railroad operations and for other
14 purposes authorized by law, including the National Crime
15 Prevention and Privacy Compact (42 U.S.C. 14611–
16 14616). The Administrator shall be subject to the same
17 conditions or procedures established by the Department
18 of Justice or State for access to such an information sys-
19 tem by other governmental agencies with access to the sys-
20 tem.

21 “(2) The Administrator may not use the access au-
22 thorized under paragraph (1) to conduct criminal inves-
23 tigations.

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

1 whose primary responsibility is rail security who shall
2 carry out the authority described in subsection (a). The
3 Administrator shall strictly limit access to a system of doc-
4 umented criminal justice information to persons with secu-
5 rity responsibilities and with appropriate security clear-
6 ances. Such a designated employee may, insofar as author-
7 ized or permitted by the National Crime Prevention and
8 Privacy Compact or other law or agreement governing an
9 affected 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
13 the Department of Justice, or of any jurisdiction in
14 a State in the same manner as a police officer em-
15 ployed by a State or local authority of that State
16 who is certified or commissioned under the laws of
17 that State;

18 “(2) use any radio, data link, or warning sys-
19 tem of the Federal Government and of any jurisdic-
20 tion in a State that provides information about
21 wanted persons, be-on-the-lookout notices, or war-
22 rant status or other officer safety information to
23 which a police officer employed by a State or local
24 authority in that State who is certified or commis-

1 sioned under the laws of that State has access and
2 in the same manner as such police officer; or

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

9 “(c) DEFINITION.—For purposes of this section, ‘sys-
10 tem of documented criminal justice information’ means
11 any law enforcement database, systems, or communica-
12 tions containing information concerning identification,
13 criminal history, arrests, convictions, arrest warrants, or
14 wanted or missing persons, including the National Crime
15 Information Center (NCIC) and its incorporated criminal
16 history databases and the National Law Enforcement
17 Telecommunications System (NLETS).”.

18 (b) TABLE OF SECTIONS AMENDMENT.—The table of
19 sections for chapter 281 is amended by adding at the end
20 the following new item:

“28104. Federal rail security officers’ access to criminal history and other law
enforcement records, systems, and communications.”.

○