A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Railroad Safety Accountability and Improvement Act".

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

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

SEC. 3. TABLE OF CONTENTS.

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.

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TITLE III–RULEMAKING, INSPECTION, AND ENFORCEMENT AUTHORITY

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Sec. 303. Railroad radio monitoring authority and general inspection authority.

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Sec. 306. Unified treatment of families of railroad carriers providing integrated railroad operations.

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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.

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

SEC. 101. AUTHORIZATION OF APPROPRIATIONS AND ESTABLISHMENT OF SAFETY RISK REDUCTION PROGRAM.

(a) AMENDMENT.--Section 20117(a) is amended–

(1) in subsection (a)(1), by striking "chapter" and substituting "part and to carry out chapter 51 of this title in all modes of transportation but with particular emphasis on the transportation or shipment of hazardous materials by railroad" and by striking subparagraphs (A) through (F);

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

(3) by redesignating subsection (a)(1), as amended by this Act, as subsection (a), and inserting the following at the end:

"(1) $180,722,000 for the fiscal year ending September 30, 2008.

"(2) Such sums as may be necessary for fiscal years 2009 through 2011.".

(b) AMENDMENT.--Section 20117, as amended by this Act, is further amended by inserting at the end a new paragraph (f) as follows:

"(f) Safety risk reduction.–Not more than $2,363,000 of the $180,722,000 for fiscal year 2008 and such sums as may be necessary for fiscal years 2009 through 2011 are authorized to be appropriated to the Secretary for a safety risk reduction program to be implemented as part of the railroad safety program. The safety risk reduction program shall require each railroad to systematically evaluate safety risks, manage those risks, and implement measures to eliminate or mitigate risks in its processes and procedures. The safety risk reduction program, which requires different skills than the activities previously

undertaken in the railroad safety program, shall be undertaken in addition to the current railroad safety program.".

SEC. 102. PROTECTION OF RAILROAD SAFETY RISK REDUCTION PROGRAM INFORMATION.

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

"Sec. 20118. Prohibition on public disclosure of required railroad safety risk reduction records

"Notwithstanding section 552 of title 5 or any other provision of law, except as necessary for enforcement of any provision of Federal law by the Secretary or by another Federal agency, the Secretary shall not disclose publicly any part of any record (including, but not limited to, a railroad carrier's analysis of its safety risks and its statement of the mitigation measures it has identified with which to address those risks) that the Secretary has obtained pursuant to a regulation or order under this chapter that requires the establishment, implementation, or modification of a railroad safety risk reduction program if the record is required to be–

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

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

"Sec. 20119. Discovery and admission into evidence of certain reports and surveys

"Notwithstanding any other provision of law, no part of any report, survey, schedule, list, or data compiled or collected for the purpose of identifying, evaluating, planning, or implementing a railroad safety risk reduction program pursuant to a regulation or order under

this chapter (including, but not limited to, a railroad carrier's analysis of its safety risks and its statement of the mitigation measures with which it will address those risks) shall be subject to discovery or admitted into evidence in a Federal or State court proceeding, or considered for another purpose, in any action by a private party or parties for damages against the carrier, or its officers, employees, or contractors.".

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

"20118. Prohibition on public disclosure of required railroad safety risk reduction records.

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

TITLE II–HIGHWAY-RAIL CROSSING SAFETY

SEC. 201. NATIONAL CROSSING INVENTORY.

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

"Sec. 20156. National crossing inventory

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

"(1) report to the Secretary of Transportation current information (including, but not limited to, information about warning devices and signage), as specified by the Secretary, concerning each previously unreported crossing through which it operates with respect to the trackage over which it operates; or

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

"(b) UPDATING OF CROSSING INFORMATION.–(1) On a periodic basis beginning not later than 3 years after the date of enactment of the Federal Railroad Safety Accountability and Improvement Act and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall–

"(A) report to the Secretary current information (including, but not limited to, information about warning devices and signage), as specified by the Secretary, concerning each crossing through which it operates with respect to the trackage over which it operates; or

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

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

"(c) RULEMAKING AUTHORITY.–The Secretary shall prescribe the regulations necessary to implement this section. This rulemaking shall consider the expected benefits to the inventory of, and costs of, alternative information-collection requirements (including the distribution of benefits and costs) and shall consider the collection of information for categories of crossings that pose lower risks that is less extensive or less frequent, or both,

than that provided for in subsection (b). The Secretary may enforce each provision of the United States Department of Transportation's statement of the national highway-rail crossing inventory policy, procedures, and instructions for States and railroads that is in effect on the date of enactment of this section, until such provision is superseded by a regulation issued under this section.

"(d) DEFINITIONS.–In this section–

"(1) 'crossing' means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where–

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

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

"(2) 'State' means a State of the United States, the District of Columbia, or Puerto Rico.".

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

"20156. National crossing inventory.".

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

"(l) NATIONAL CROSSING INVENTORY.–(1) Initial Reporting of Information about Previously Unreported Public Crossings.--Not later than 12 months after the date of enactment of the Federal Railroad Safety Accountability and Improvement Act or within 12 months of a new crossing becoming operational, whichever occurs later, each State shall report to the Secretary current information (including, but not limited to, information about warning devices and signage), as specified by the Secretary, concerning each previously unreported public crossing located within its borders.

"(2) Updating of Public Crossing Information; Report 3 Years after Enactment, then Two-Tier System for Further Updates.–Each State shall report to the Secretary current information (including, but not limited to, information about warning devices and signage), as specified by the Secretary, concerning each crossing located within its borders involving a public street, road, or highway. Each report shall be made on a periodic basis beginning not later than 3 years after the date of enactment of the Federal Railroad Safety Accountability and Improvement Act and on or before September 30 of–

(A) every third year thereafter, or as specified by the Secretary, for a crossing involving a public street, road, or highway, other than a local or county street, road, or highway; and

(B) every fifth year thereafter, or as specified by the Secretary, for a crossing involving a public local or county street, road, or highway or involving a publicly owned pathway dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway.

"(3) Rulemaking Authority.–The Secretary shall prescribe the regulations necessary to implement this subsection. This rulemaking shall consider the expected benefits to the

inventory of, and costs of, alternative information-collection requirements (including the distribution of benefits and costs) and shall consider the collection of information for categories of crossings that pose lower risks that is less extensive or less frequent, or both, than that provided for in paragraph (2) of this subsection (l). The Secretary may enforce each provision of the United States Department of Transportation's statement of the national highway-rail crossing inventory policy, procedures, and instructions for States and railroads that is in effect on the date of enactment of this subsection, until such provision is superseded by a regulation issued under this subsection.

"(4) Definition.–In this subsection--

"(A) 'public crossing' means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where–

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

"(ii) a publicly owned pathway dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated.

"(B) 'State" means a State of the United States, the District of Columbia, or Puerto Rico.".

(d) CIVIL PENALTIES.–(1) Section 21301(a)(1) is amended–

(A) by striking the period at the end of the first sentence and substituting "or with section 20156 of this title."; and

(B) in the second sentence, by inserting "or violating section 20156 of this title" between "chapter 201" and "is liable".

(2) Section 21301(a)(2) is amended by inserting after the first sentence the following: "The Secretary shall subject a person to a civil penalty for a violation of section 20156 of this title.".

SEC. 202. FOSTERING INTRODUCTION OF NEW TECHNOLOGY TO IMPROVE SAFETY AT HIGHWAY-RAIL GRADE CROSSINGS.

(a) AMENDMENT.–Chapter 201 as amended by this Act is further amended by adding new section 20157 to read as follows:

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

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

"(2) While elimination of at-grade crossings through consolidation of crossings and grade separations offers the greatest long-term promise for optimizing the safety and efficiency of the two modes of transportation, over 140,000 public grade crossings remain on the general rail system–approximately one for each route mile on the general rail system.

"(3) Conventional highway traffic control devices such as flashing lights and gates are effective in warning motorists of a train's approach to an equipped crossing but require considerable expense to install and to maintain.

"(4) Since enactment of the Highway Safety Act of 1973, over $4.2 billion of Federal funding has been invested in safety improvements at highway-rail grade crossings, yet a

majority of public highway-rail grade crossings are not yet equipped with active warning systems.

"(5) The emergence of new technologies supporting Intelligent Transportation Systems presents opportunities for more effective and affordable warnings and safer passage of highway users and trains at remaining highway-rail grade crossings.

"(6) Implementation of new crossing safety technology will require extensive cooperation between highway authorities and railroad carriers.

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

"(8) Federal Railroad Administration regulations establishing performance standards for processor-based signal and train control systems provide a suitable framework for qualification of new or novel technology at highway-rail grade crossings, and the Federal Highway Administration's Manual on Uniform Traffic Control Devices provides an appropriate means of determining highway user interface with such new technology.

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

"(c) PREEMPTIVE EFFECT OF FEDERAL ACTION.–If the Secretary approves new technology to provide warning to highway users at a highway-rail grade crossing and such technology is installed at a highway-rail grade crossing in accordance with the

conditions of the approval, this determination preempts any State law concerning the adequacy of the technology in providing warning at the crossing. Under no circumstances may a person (including a State, other public authority, railroad carrier, system designer, or supplier of the technology) be held liable for damages for any harm to persons or property because of an accident or incident at the crossing based upon selection of such technology. Nor shall a railroad carrier be found liable in damages because of an accident or incident at a crossing protected by such technology based upon the carrier's failure to properly inspect and maintain such technology, if the carrier has inspected and maintained the technology in accordance with the terms of the Secretary's approval. Nor shall any party be found liable for damages for failure to apply such technology at a different grade crossing location.".

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

"20157. 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.

Section 20134(a) is amended by adding at the end of the subsection the following sentence: "The Secretary may purchase promotional items of nominal value and distribute them to the public without charge as part of an educational or awareness program to accomplish the purposes of this section and of any other sections of this title related to improving the safety of highway-rail crossings and to preventing trespass on railroad rights of way, and the Secretary shall prescribe guidelines for the administration of this authority.".

TITLE III--RULEMAKING, INSPECTION, AND ENFORCEMENT AUTHORITY

SEC. 301. RAILROAD SECURITY.

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

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

SEC. 302. EMERGENCY WAIVERS.

Section 20103 as amended by this Act is further amended by--

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

"(e) HEARINGS.–Except as provided in subsection (g) of this section, the Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided."; and

(2) adding a new subsection (g) to read as follows:

"(g) EMERGENCY WAIVERS.–(1) The Secretary shall prescribe procedures concerning the handling of requests for waivers of regulations prescribed or orders issued under this chapter in emergency situations and may prescribe temporary emergency waiver procedures without first providing an opportunity for public comment. The Secretary may grant a waiver request if the waiver is directly related to the emergency event or necessary to

aid in any recovery efforts and is in the public interest and consistent with railroad safety. The relief shall not extend for a period of more than nine months, including the period of the relief granted under any renewal of the waiver pursuant to the emergency waiver procedures. For matters that may impact the missions of the Department of Homeland Security, the Secretary of Transportation shall consult and coordinate with the Secretary of Homeland Security as soon as practicable.

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

"(3) For purposes of this subsection, the terms 'emergency situation' and 'emergency event' refer to a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, explosive, or biological material, or a war-related activity, that poses a risk of death, serious illness, severe injury, or substantial property damage. The disaster may be local, regional, or national in scope.".

SEC. 303. RAILROAD RADIO MONITORING AUTHORITY AND GENERAL INSPECTION AUTHORITY.

(a) AMENDMENT.--Section 20107 is amended by inserting at the end the following new subsection:

"(c) RAILROAD RADIO COMMUNICATIONS.--(1) To carry out the Secretary's responsibilities under this part and under chapter 51, the Secretary may authorize officers, employees, or agents of the Secretary to conduct the following activities in circumstances determined by the Secretary in the Secretary's discretion to be reasonable:

"(A) Intercepting a radio communication that is broadcast or transmitted over a frequency authorized for the use of one or more railroad carriers by the Federal Communications Commission, with or without making their presence known to the sender or other receivers of the communication and with or without obtaining the consent of the sender or other receivers of the communication.

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

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

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

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

"(2) The Secretary and officers, employees, and agents of the Department of Transportation authorized by the Secretary may engage in the activities authorized by paragraph (1) for the purpose of accident prevention, including, but not limited to, accident investigation.

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

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

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

"(B) If information obtained through activities set forth in paragraphs (1) and (2) is admitted into evidence for impeachment purposes in accordance with paragraph (3)(A), the court, administrative law judge, or other officer before whom the proceeding is conducted may make such protective orders regarding the confidentiality or use of the information as may be appropriate in the circumstances to protect privacy and administer justice.

"(C) Information obtained through activities set forth in paragraphs (1) and (2) shall not be subject to publication or disclosure under section 552 of title 5.

"(D) No evidence shall be excluded in an administrative or judicial proceeding solely because the government would not have learned of the existence of or obtained such

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

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

"(4) Section 705 of the Communications Act of 1934 (47 U.S.C. 605) and chapter 119 of title 18, United States Code, shall not apply to conduct authorized by and pursuant to this subsection.".

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

"(j) Notwithstanding any other provision of this chapter or section 605 of title 47, United States Code, the Secretary of Transportation and officers, employees, or agents of the Department of Transportation authorized by the Secretary of Transportation, in furtherance of the Federal railroad safety laws at subtitle V, part A, of title 49 and at chapter 51 of title 49, for the purpose of accident prevention, including, but not limited to, accident investigation, may intercept radio communications broadcast or transmitted over a frequency authorized for the use of one or more railroad carriers by the Federal Communications Commission and may disclose or use the information thereby obtained, for the purposes and to the extent permitted by section 20107(c) of title 49.".

(c) AMENDMENT.—Section 20107(b) is amended by striking "at reasonable times" and inserting in its place the following: "in circumstances determined by the Secretary in the Secretary's discretion to be reasonable".

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

Section 20111(c) is amended by revising it to read as follows:

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

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

SEC. 305. TECHNICAL AMENDMENTS REGARDING ENFORCEMENT BY THE ATTORNEY GENERAL.

Section 20112(a) is amended–

(1) in paragraph (1), by inserting "this part, except for section 20109 of this title, or" before "a railroad safety regulation";

(2) in paragraph (2), by inserting ", 21302, or 21303" after "section 21301"; and

(3) in paragraph (3), by inserting after "subpena" the following: "request for admissions, request for production of documents or other tangible things, or request for testimony by deposition" and by striking "chapter" and substituting "part".

SEC. 306. UNIFIED TREATMENT OF FAMILIES OF RAILROAD CARRIERS PROVIDING INTEGRATED RAILROAD OPERATIONS.

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

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

SEC. 307. HOURS OF SERVICE REFORM.

(a) REPEAL.–Chapter 211 is repealed and reserved upon the effective date of the regulations prescribed by subsection (c) of this section.

(b) AMENDMENT.–Upon the effective date of the regulations prescribed by subsection (c) of this section–

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

"(1) The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety–

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

"(B) supplementing other regulations and other laws in effect on October 16, 1970."; and

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

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

"Sec. 20158. Fatigue, including hours of service

"(a) MANDATE TO CONVERT STATUTE TO REGULATIONS; NONREVIEWABILITY; REPEAL OF CHAPTER 211.–(1) The Secretary of Transportation shall prescribe regulations embodying the substantive provisions of the Federal hours of service laws codified at sections 21101-21106 and 21108 of this title and in so doing may make changes necessary to transform those provisions into regulatory form.

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

"(3) Upon the effective date of the regulations prescribed under this subsection (a) (the status quo regulations), chapter 211 of this title is repealed and reserved.

"(b) AUTHORITY TO PRESCRIBE AMENDMENTS TO THE STATUS QUO REGULATIONS.–After the Secretary has prescribed the regulations mandated by subsection (a) and after the regulations mandated by subsection (a) have become effective, the Secretary may amend the regulations as the Secretary deems necessary in accordance with the Secretary's general authority under section 20103 of this title, to prevent and mitigate fatigue among individuals performing safety-critical duties in train and engine service, signal or train control service, or dispatching service, whether or not directly employed by a railroad carrier, providing however that, before prescribing any initial amendments to the regulations

mandated by subsection (a) for a particular category of employees, the Secretary shall follow the procedures set forth in subsection (c).

"(c) PROCEDURES FOR PRESCRIBING INITIAL REGULATORY AMENDMENTS.--(1) Prior to proposing any initial regulatory amendment to the regulations mandated by subsection (a), the Secretary shall request–

"(A) that the Railroad Safety Advisory Committee accept the task of developing consensus recommendations to the Secretary on the problem of fatigue experienced by individuals performing any one or more of the following types of service: train and engine service, signal or train control service, or dispatching service; and

"(B) that the Committee communicate in writing to the Secretary its decision whether or not to accept the task.

"(2) If the Committee timely accepts the task with respect to a particular type of service, it shall assist the Secretary in conducting the review described in subsections (c)(3) and (c)(6) with respect to the particular type of service. If the Committee does not timely accept the task with respect to a particular type of service, the Secretary may proceed with proposing to prescribe any amendments with respect to the particular type of service without the assistance of the Committee.

"(3) The Secretary shall review the problem of fatigue experienced by individuals performing train and engine service, signal or train control service, and dispatching service or any combination of such types of service and shall consider how the likelihood of accidents and injuries caused by that fatigue can be reduced. The review shall take into account current and evolving scientific knowledge and literature relating to fatigue, and shall include an evaluation of the following:

"(A) the varying circumstances of railroad carrier operations and the appropriate fatigue countermeasures to address those varying circumstances, based on current and evolving scientific and medical research on circadian rhythms and human sleep and rest requirements;

"(B) the benefits and costs of a revised regulatory program;

"(C) ongoing and planned voluntary initiatives by railroad carriers and rail labor organizations to address fatigue management, including the extent to which voluntary activities undertaken by railroad carriers and labor organizations representing their employees are minimizing fatigue and ameliorating its effects and the extent to which such activities are likely to be sustained absent regulatory action;

"(D) the extent to which railroad carriers are using valid fatigue risk assessment tools and other methodologies to assist them in making informed decisions on any or all of the subjects described in paragraphs (A)-(C) of this subsection (c)(3); and

"(E) any other matters that the Secretary deems relevant."

"(4) If the Railroad Safety Advisory Committee timely accepts a task specified in this section and presents the Secretary with a written consensus recommendation within 24 months after accepting the task, the Secretary shall consider the recommendation. The Secretary shall propose an initial amendment to the regulation consistent with the extent to which the Secretary agrees with Committee's recommendation.

"(5) If the Committee fails to provide a consensus recommendation with respect to a task specified in this section within 24 months after accepting the task, the Secretary may proceed without the assistance of the Committee and may propose and prescribe any

amendment to the regulation that the Secretary deems necessary in accordance with the Secretary's authority under section 20103 of this title or may decide not to propose or to prescribe any amendment.

"(6) (A) In adopting any amendments under this section for any individuals performing safety-critical duties in a particular service, the Secretary shall prescribe maximum hours of service and such additional requirements as the Secretary deems necessary to provide a reasonable level of fatigue prevention or fatigue mitigation, or both.

"(B) Recognizing the diversity of working conditions within the railroad industry and the need for flexibility in applying strategies for fatigue prevention and mitigation, the Secretary may provide by regulation for submission and consideration, with respect to any group of individuals providing service covered by the regulation, of a written fatigue management plan proposed by one or more railroad carriers or other applicable employers. If the Secretary so provides, and if the Secretary determines that the plan would provide a level of safety equal to or better than the level of safety that would be provided by the regulation, the Secretary may authorize and enforce compliance with the plan in lieu of compliance with the regulation.

"(d) REVIEWABILITY EXCLUSIVELY UNDER THE CONGRESSIONAL REVIEW ACT.–Notwithstanding any other provision of law, any final rule amendment by the Secretary to the regulations mandated by subsection (a) of this section or to the regulations authorized by subsection (b) of this section—

"(1) shall not be subject to judicial review.

"(2) shall be subject to review under the Congressional Review Act (5 U.S.C. 801) as the sole and exclusive means of review.".

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

"20158. Fatigue, including hours of service.".

(e) AMENDMENT.–Effective upon the repeal of chapter 211, chapter 201, as amended by this Act, is further amended by adding at the end the following new section:

"Sec. 20159. Maximum duty hours and subjects of collective bargaining

"The number of hours that an employee may be required or allowed to be on duty (a number formerly established by the Federal hours of service laws, formerly codified at chapter 211 of this title, and presently established under section 20158 of this title) is the maximum number of hours consistent with safety. Shorter hours of service and time on duty of an employee are proper subjects for collective bargaining between a railroad carrier and its employees.".

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

"20159. Maximum duty hours and subjects of collective bargaining.".

SEC. 308. AMENDMENT TO THE MOVEMENT-FOR-REPAIR PROVISION.

Section 20303 is amended by adding the following new subsections:

"(d) DEFINITIONS AND CLARIFICATION.--In subsection (a)--

"(1) 'place at which the repairs can be made' means--

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

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

"(2) 'nearest' means the closest in the forward direction of travel for the defective or insecure vehicle.

"(3) movement of a defective or insecure vehicle from a location is 'necessary to make repairs' of the vehicle even though a mobile repair truck capable of making the repairs has gone to the location on an irregular basis (as specified in regulations prescribed by the Secretary).

"(e) ADDITIONAL CONDITIONS FOR MOVEMENT TO MAKE REPAIRS.--The Secretary of Transportation may impose conditions for the movement of a defective or insecure vehicle to make repairs in addition to those conditions set forth in subsection (a) by prescribing regulations or issuing orders as necessary.".

TITLE IV–MISCELLANEOUS PROVISIONS

SEC. 401. TECHNICAL AMENDMENTS TO ELIMINATE UNNECESSARY PROVISIONS.

(a) AMENDMENTS.--Chapter 201 as amended by this Act is further amended by–

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

(2) striking and reserving sections 20115, 20131, 20133, 20136-20139, 20141-20146, 20148, and 20150;

(3) striking and reserving subsection (b) of section 20134 as amended by this Act; and

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

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

SEC. 402. ALTERNATE NAMES FOR CHAPTERS OF SUBTITLE V, PART A.

(a) AMENDMENT.--Section 20101 as amended by this Act is further amended by–

(1) revising the section heading to read as follows:

"**Sec. 20101. Purpose and title of chapter**";

(2) designating the text of the section as subsection (a) and adding a subsection heading "PURPOSE.–"; and

(3) adding at the end of the section the following new subsection:

"(b) TITLE OF CHAPTER.–This chapter may be cited as the 'Federal Railroad Safety Act'.".

(b) AMENDMENT.--Section 20301 is amended by–

(1) revising the section heading to read as follows:

"**Sec. 20301. Definition; nonapplication; and titles of provisions in chapter**"; and

(2) adding at the end of the section the following new subsection:

"(c) TITLES OF PROVISIONS IN CHAPTER.--Collectively, sections 20301-20304 and 20306 of this chapter may be cited as the 'Safety Appliance Act'. Section 20305 may be cited as the 'Mail Car Inspection Act'.".

(c) AMENDMENT.--Section 20501 is amended by–

(1) revising the section heading to read as follows:

"**Sec. 20501. Definition; title of chapter**";

(2) designating the text of the section as subsection (a) and adding the subsection heading "DEFINITION.–"; and

(3) adding at the end of the section the following new subsection:

"(b) TITLE OF CHAPTER.–This chapter may be cited as the 'Signal Inspection Act'.".

(d) AMENDMENT.--Section 20701 is amended by–

(1) revising the section heading to read:

"**Sec. 20701. Requirements for use; title of chapter**";

(2) designating the text of the section as subsection (a) and adding the subsection heading "REQUIREMENTS FOR USE.–"; and

(3) adding at the end of the section the following new subsection:

"(c) TITLE OF CHAPTER.–This chapter may be cited as the 'Locomotive Inspection Act'.".

(e) AMENDMENT.--Section 20901 is amended by–

(1) revising the section heading to read as follows:

"**Sec. 20901. Reports; title of chapter**"; and

(2) adding at the end of the section the following new subsection:

"(c) TITLE OF CHAPTER.--This chapter may be cited as the 'Accident Reports Act'.".

(f) AMENDMENT.--Section 21101 as amended by this Act is further amended by–

(1) revising the section heading to read as follows:

"**Sec. 21101. Definitions; title of chapter**";

(2) designating the text of the section as subsection (a) and adding the subsection heading "DEFINITIONS.–"; and

(3) adding at the end the following new subsection:

"(b) TITLE OF CHAPTER.--This chapter may be cited as the 'Hours of Service Act'.".

(g) AMENDMENT.--Section 21301 as amended by this Act is further amended by–

(1) revising the section heading to read as follows:

"**Sec. 21301. Chapter 201 general violations; title of chapter**"; and

(2) adding at the end of the section the following new subsection:

"(d) TITLE OF CHAPTER.--This chapter may be cited as 'Penalties for Railroad Safety Violations'.".

(h) TABLES OF SECTIONS AMENDMENTS.–(1) The table of sections for chapter 201 as amended by this Act is further amended by striking the existing item for section 20101 and substituting:

"20101. Purpose and title of chapter.".

(2) The tables of sections for chapters 203-213, respectively, are amended by respectively–

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

"20301. Definition; nonapplication; and titles of provisions in chapter.";

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

"20501. Definition; title of chapter.";

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

"20701. Requirements for use; title of chapter.";

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

"20901. Reports; title of chapter.";

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

"21101. Definitions; title of chapter."; and

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

"21301. Chapter 201 general violations; title of chapter.".

SEC. 403. FEDERAL RAIL SECURITY OFFICERS' ACCESS TO CRIMINAL HISTORY AND OTHER LAW ENFORCEMENT RECORDS, SYSTEMS, AND COMMUNICATIONS.

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

"Sec. 28104 Federal rail security officers' access to criminal history and other law enforcement and other law enforcement records, systems, and communications

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

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

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

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

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

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

that State.

"(c) DEFINITION.—For purposes of this section, 'system of documented criminal justice information' means any law enforcement database, systems, or communications containing information concerning identification, criminal history, arrests, convictions, arrest warrants, or wanted or missing persons, including the National Crime Information Center (NCIC) and its incorporated criminal history databases and the National Law Enforcement Telecommunications System (NLETS).".

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

"28104. Federal rail security officers' access to criminal history and other law enforcement records, systems, and communications.".