**Public Law 110–432**

**110th Congress**

**AT THE SECOND SESSION**

***Begun and held at the City of Washington on Thursday,***

***the third day of January, two thousand and eight***

An Act

To amend title 49, United States Code, to prevent railroad fatalities, injuries,

and hazardous materials releases, to authorize the Federal Railroad Safety Administration,

and for other purposes.

*Be it enacted by the Senate and House of Representatives of*

*the United States of America in Congress assembled,*

**DIVISION A—RAIL SAFETY**

**SEC. 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENT OF TITLE**

**49.**

(a) SHORT TITLE.—This division may be cited as the ‘‘Rail

Safety Improvement Act of 2008’’.

(b) TABLE OF CONTENTS.—The table of contents for this division

is as follows:

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

Sec. 2. Definitions.

Sec. 3. Authorization of appropriations.

TITLE I—RAILROAD SAFETY IMPROVEMENTS

Sec. 101. Federal Railroad Administration officers and duties.

Sec. 102. Railroad safety strategy.

Sec. 103. Railroad safety risk reduction program.

Sec. 104. Implementation of positive train control.

Sec. 105. Railroad safety technology grants.

Sec. 106. Reports on statutory mandates and recommendations.

Sec. 107. Rulemaking process.

Sec. 108. Hours-of-service reform.

Sec. 109. Protection of railroad safety risk analyses information.

Sec. 110. Pilot projects.

**SEC. 103. RAILROAD SAFETY RISK REDUCTION PROGRAM.**

(a) IN GENERAL.—Subchapter II of chapter 201 is amended

by adding at end thereof the following:

**‘‘§ 20156. Railroad safety risk reduction program**

‘‘(a) IN GENERAL.—

‘‘(1) PROGRAM REQUIREMENT.—Not later than 4 years after

the date of enactment of the Rail Safety Improvement Act

of 2008, the Secretary of Transportation, by regulation, shall

require each railroad carrier that is a Class I railroad, a railroad

carrier that has inadequate safety performance (as determined

by the Secretary), or a railroad carrier that provides intercity

rail passenger or commuter rail passenger transportation—

‘‘(A) to develop a railroad safety risk reduction program

under subsection (d) that systematically evaluates railroad

safety risks on its system and manages those risks in

order to reduce the numbers and rates of railroad accidents,

incidents, injuries, and fatalities;

‘‘(B) to submit its program, including any required

plans, to the Secretary for review and approval; and

‘‘(C) to implement the program and plans approved

by the Secretary.

‘‘(2) RELIANCE ON PILOT PROGRAM.—The Secretary may conduct

behavior-based safety and other research, including pilot

programs, before promulgating regulations under this subsection

and thereafter. The Secretary shall use any information

and experience gathered through such research and pilot programs

under this subsection in developing regulations under

this section.

‘‘(3) REVIEW AND APPROVAL.—The Secretary shall review

and approve or disapprove railroad safety risk reduction program

plans within a reasonable period of time. If the proposed

plan is not approved, the Secretary shall notify the affected

railroad carrier as to the specific areas in which the proposed

plan is deficient, and the railroad carrier shall correct all deficiencies

within a reasonable period of time following receipt

of written notice from the Secretary. The Secretary shall

annually conduct a review to ensure that the railroad carriers

are complying with their plans.

‘‘(4) VOLUNTARY COMPLIANCE.—A railroad carrier that is

not required to submit a railroad safety risk reduction program

under this section may voluntarily submit a program that meets

the requirements of this section to the Secretary. The Secretary

shall approve or disapprove any program submitted under this

paragraph.

‘‘(b) CERTIFICATION.—The chief official responsible for safety

of each railroad carrier required to submit a railroad safety risk

reduction program under subsection (a) shall certify that the contents

of the program are accurate and that the railroad carrier

will implement the contents of the program as approved by the

Secretary.

‘‘(c) RISK ANALYSIS.—In developing its railroad safety risk

reduction program each railroad carrier required to submit such

a program pursuant to subsection (a) shall identify and analyze

the aspects of its railroad, including operating rules and practices,

infrastructure, equipment, employee levels and schedules, safety

culture, management structure, employee training, and other matters,

including those not covered by railroad safety regulations

or other Federal regulations, that impact railroad safety.

‘‘(d) PROGRAM ELEMENTS.—

‘‘(1) IN GENERAL.—Each railroad carrier required to submit

a railroad safety risk reduction program under subsection (a)

shall develop a comprehensive safety risk reduction program

to improve safety by reducing the number and rates of

accidents, incidents, injuries, and fatalities that is based on

the risk analysis required by subsection (c) through—

‘‘(A) the mitigation of aspects that increase risks to

railroad safety; and

‘‘(B) the enhancement of aspects that decrease risks

to railroad safety.

‘‘(2) REQUIRED COMPONENTS.—Each railroad carrier’s safety

risk reduction program shall include a risk mitigation plan

in accordance with this section, a technology implementation

plan that meets the requirements of subsection (e), and a

fatigue management plan that meets the requirements of subsection

(f).

‘‘(e) TECHNOLOGY IMPLEMENTATION PLAN.—

‘‘(1) IN GENERAL.—As part of its railroad safety risk reduction

program, a railroad carrier required to submit a railroad

safety risk reduction program under subsection (a) shall

develop, and periodically update as necessary, a 10-year technology

implementation plan that describes the railroad carrier’s

plan for development, adoption, implementation, maintenance,

and use of current, new, or novel technologies on its system

over a 10-year period to reduce safety risks identified under

the railroad safety risk reduction program. Any updates to

the plan are subject to review and approval by the Secretary.

‘‘(2) TECHNOLOGY ANALYSIS.—A railroad carrier’s technology

implementation plan shall include an analysis of the

safety impact, feasibility, and cost and benefits of implementing

technologies, including processor-based technologies, positive

train control systems (as defined in section 20157(i)), electronically

controlled pneumatic brakes, rail integrity inspection systems,

rail integrity warning systems, switch position monitors

and indicators, trespasser prevention technology, highway-rail

grade crossing technology, and other new or novel railroad

safety technology, as appropriate, that may mitigate risks to

railroad safety identified in the risk analysis required by subsection

(c).

‘‘(3) IMPLEMENTATION SCHEDULE.—A railroad carrier’s technology

implementation plan shall contain a prioritized

implementation schedule for the development, adoption,

implementation, and use of current, new, or novel technologies

on its system to reduce safety risks identified under the railroad

safety risk reduction program.

‘‘(4) POSITIVE TRAIN CONTROL.—Except as required by section

20157 (relating to the requirements for implementation

of positive train control systems), the Secretary shall ensure

that—

‘‘(A) each railroad carrier’s technology implementation

plan required under paragraph (1) that includes a schedule

for implementation of a positive train control system complies

with that schedule; and

‘‘(B) each railroad carrier required to submit such a

plan implements a positive train control system pursuant

to such plan by December 31, 2018.

‘‘(f) FATIGUE MANAGEMENT PLAN.—

‘‘(1) IN GENERAL.—As part of its railroad safety risk reduction

program, a railroad carrier required to submit a railroad

safety risk reduction program under subsection (a) shall develop

and update at least once every 2 years a fatigue management

plan that is designed to reduce the fatigue experienced by

safety-related railroad employees and to reduce the likelihood

of accidents, incidents, injuries, and fatalities caused by fatigue.

Any such update shall be subject to review and approval by

the Secretary.

‘‘(2) TARGETED FATIGUE COUNTERMEASURES.—A railroad

carrier’s fatigue management plan shall take into account the

varying circumstances of operations by the railroad on different

parts of its system, and shall prescribe appropriate fatigue

countermeasures to address those varying circumstances.

‘‘(3) ADDITIONAL ELEMENTS.—A railroad shall consider the

need to include in its fatigue management plan elements

addressing each of the following items, as applicable:

‘‘(A) Employee education and training on the physiological

and human factors that affect fatigue, as well as

strategies to reduce or mitigate the effects of fatigue, based

on the most current scientific and medical research and

literature.

‘‘(B) Opportunities for identification, diagnosis, and

treatment of any medical condition that may affect alertness

or fatigue, including sleep disorders.

‘‘(C) Effects on employee fatigue of an employee’s short term

or sustained response to emergency situations, such

as derailments and natural disasters, or engagement in

other intensive working conditions.

‘‘(D) Scheduling practices for employees, including

innovative scheduling practices, on-duty call practices,

work and rest cycles, increased consecutive days off for

employees, changes in shift patterns, appropriate scheduling

practices for varying types of work, and other aspects

of employee scheduling that would reduce employee fatigue

and cumulative sleep loss.

‘‘(E) Methods to minimize accidents and incidents that

occur as a result of working at times when scientific and

medical research have shown increased fatigue disrupts

employees’ circadian rhythm.

‘‘(F) Alertness strategies, such as policies on napping,

to address acute drowsiness and fatigue while an employee

is on duty.

‘‘(G) Opportunities to obtain restful sleep at lodging

facilities, including employee sleeping quarters provided

by the railroad carrier.

‘‘(H) The increase of the number of consecutive hours

of off-duty rest, during which an employee receives no

communication from the employing railroad carrier or its

managers, supervisors, officers, or agents.

‘‘(I) Avoidance of abrupt changes in rest cycles for

employees.

‘‘(J) Additional elements that the Secretary considers

appropriate.

‘‘(g) CONSENSUS.—

‘‘(1) IN GENERAL.—Each railroad carrier required to submit

a railroad safety risk reduction program under subsection (a)

shall consult with, employ good faith and use its best efforts

to reach agreement with, all of its directly affected employees,

including any non-profit employee labor organization representing

a class or craft of directly affected employees of

the railroad carrier, on the contents of the safety risk reduction

program.

‘‘(2) STATEMENT.—If the railroad carrier and its directly

affected employees, including any nonprofit employee labor

organization representing a class or craft of directly affected

employees of the railroad carrier, cannot reach consensus on

the proposed contents of the plan, then directly affected

employees and such organization may file a statement with

the Secretary explaining their views on the plan on which

consensus was not reached. The Secretary shall consider such

views during review and approval of the program.

‘‘(h) ENFORCEMENT.—The Secretary shall have the authority

to assess civil penalties pursuant to chapter 213 for a violation

of this section, including the failure to submit, certify, or comply

with a safety risk reduction program, risk mitigation plan, technology

implementation plan, or fatigue management plan.’’.

(b) CONFORMING AMENDMENT.—The chapter analysis for

chapter 201 is amended by inserting after the item relating to

section 20155 the following:

‘‘20156. Railroad safety risk reduction program.’’.

**SEC. 109. PROTECTION OF RAILROAD SAFETY RISK ANALYSES**

**INFORMATION.**

(a) AMENDMENT.—Subchapter I of chapter 201 is amended by

adding at the end thereof the following:

**‘‘§ 20118. Prohibition on public disclosure of railroad safety**

**analysis records**

‘‘(a) IN GENERAL.—Except as necessary for the Secretary of

Transportation or another Federal agency to enforce or carry out

any provision of Federal law, 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 provision of, or regulation or order under, this chapter

related to the establishment, implementation, or modification of

a railroad safety risk reduction program or pilot program is exempt

from the requirements of section 552 of title 5 if the record is—

‘‘(1) supplied to the Secretary pursuant to that safety risk

reduction program or pilot 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 or pilot program.

‘‘(b) EXCEPTION.—Notwithstanding subsection (a), the Secretary

may disclose any part of any record comprised of facts otherwise

available to the public if, in the Secretary’s sole discretion, the

Effective date.

49 USC 21101

note.

49 USC 21101

note.

49 USC 21303.

PUBLIC LAWS

PUBLIC LAW 110–432—OCT. 16, 2008 122 STAT. 4867

Secretary determines that disclosure would be consistent with the

confidentiality needed for that safety risk reduction program or

pilot program.

‘‘(c) DISCRETIONARY PROHIBITION OF DISCLOSURE.—The Secretary

may prohibit the public disclosure of risk analyses or risk

mitigation analyses that the Secretary has obtained under other

provisions of, or regulations or orders under, this chapter if the

Secretary determines that the prohibition of public disclosure is

necessary to promote railroad safety.

**‘‘§ 20119. Study on use of certain reports and surveys**

‘‘(a) STUDY.—The Federal Railroad Administration shall complete

a study to evaluate whether it is in the public interest,

including public safety and the legal rights of persons injured

in railroad accidents, to withhold from discovery or admission into

evidence in a Federal or State court proceeding for damages

involving personal injury or wrongful death against a carrier any

report, survey, schedule, list, or data compiled or collected for

the purpose of evaluating, planning, or implementing a railroad

safety risk reduction program required under this chapter, including

a railroad carrier’s analysis of its safety risks and its statement

of the mitigation measures with which it will address those risks.

In conducting this study, the Secretary shall solicit input from

the railroads, railroad non-profit employee labor organizations, railroad

accident victims and their families, and the general public.

‘‘(b) AUTHORITY.—Following completion of the study required

under subsection (a), the Secretary, if in the public interest,

including public safety and the legal rights of persons injured

in railroad accidents, may prescribe a rule subject to notice and

comment to address the results of the study. Any such rule prescribed

pursuant to this subsection shall not become effective until

1 year after its adoption.’’.

(b) CONFORMING AMENDMENT.—The chapter analysis for

chapter 201 is amended by inserting after the item relating to

section 20117 the following:

‘‘20118. Prohibition on public disclosure of railroad safety analysis records.

‘‘20119. Study on use of certain reports and surveys.’’.