FEDERAL RAIL SAFETY IMPROVEMENTS

[[Page 122 STAT. 4848]]

Public Law 110-432
110th Congress

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. <<NOTE: Oct. 16, 2008 - [H.R. 2095]>>

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

DIVISION A-- <<NOTE: Rail Safety Improvement Act of 2008.>> RAIL SAFETY
SEC. 1. SHORT TITLE; TABLE OF CONTENTS; AMENDMENT OF TITLE 49.

(a) Short Title.--This <<NOTE: 49 USC 20101 note.>> 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. 108. HOURS-OF-SERVICE REFORM.

(a) Change in Definition of Signal Employee.--Section 21101(4) <<NOTE: 49 USC 21101.>> is amended by striking ``employed by a railroad carrier''.

(b) Limitation on Duty Hours of Train Employees.--Section 21103 is amended--

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

``(a) In General.--Except as provided in subsection (d) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to--

``(1) remain on duty, go on duty, wait for deadhead transportation, be in deadhead transportation from a duty assignment to the place of final release, or be in any other mandatory service for the carrier in any calendar month where the employee has spent a total of 276 hours--

``(A) on duty;

``(B) waiting for deadhead transportation, or in deadhead transportation from a duty assignment to the place of final release; or

``(C) in any other mandatory service for the carrier;

``(2) remain or go on duty for a period in excess of 12 consecutive hours;

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

``(4) remain or go on duty after that employee has initiated an on-duty period each day for--

``(A) 6 consecutive days, unless that employee has had at least 48 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier except that--

``(i) an employee may work a seventh consecutive day if that employee completed his or her final period of on-duty time on his or her sixth consecutive day at a terminal other than his or her home terminal; and

``(ii) any employee who works a seventh consecutive day pursuant to subparagraph (i) shall have at least 72 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier; or

``(B) except as provided in subparagraph (A), 7 consecutive days, unless that employee has had at least 72 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier, if--

``(i) for a period of 18 months following the date of enactment of the Rail Safety Improvement Act of 2008, an existing collective bargaining agreement expressly provides for such a schedule or, following the expiration of 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, collective

[[Page 122 STAT. 4861]]

bargaining agreements entered into during such

period expressly provide for such a schedule;

``(ii) such a schedule is provided for by a pilot program authorized by a collective bargaining agreement; or

``(iii) such a schedule is provided for by a pilot program under section 21108 of this chapter related to employees' work and rest cycles.

The Secretary may waive <<NOTE: Waiver authority.>> paragraph (4), consistent with the procedural requirements of section 20103, if a collective bargaining agreement provides a different arrangement and such an arrangement is in the public interest and consistent with railroad safety.'';

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

``(c) Limbo Time Limitation and Additional Rest Requirement.--

``(1) A railroad carrier may not require or allow an employee--

``(A) to exceed a total of 40 hours per calendar month spent--

``(i) waiting for deadhead transportation; or

``(ii) in deadhead transportation from a duty assignment to the place of final release,

following a period of 12 consecutive hours on duty that is neither time on duty nor time off duty, not including interim rest periods, during the period from the date of enactment of the Rail Safety Improvement Act of 2008 to one year after such date of enactment; and

``(B) to exceed a total of 30 hours per calendar month spent--

``(i) waiting for deadhead transportation; or

``(ii) in deadhead transportation from a duty assignment to the place of final release,

following a period of 12 consecutive hours on duty that is neither time on duty nor time off duty, not including interim rest periods, during the period beginning one year after the date of enactment of the Rail Safety Improvement Act of 2008 except that the Secretary may further limit the monthly limitation pursuant to regulations prescribed under section 21109.

``(2) <<NOTE: Applicability.>> The limitations in paragraph (1) shall apply unless the train carrying the employee is directly delayed by--

``(A) a casualty;

``(B) an accident;

``(C) an act of God;

``(D) a derailment;

``(E) a major equipment failure that prevents the train from advancing; or

``(F) a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.

``(3) <<NOTE: Reports. Procedures.>> Each railroad carrier

shall report to the Secretary, in accordance with procedures established by the Secretary, each instance where an employee subject to this section spends time waiting for deadhead transportation or in deadhead

[[Page 122 STAT. 4862]]

transportation from a duty assignment to the place of final release in excess of the requirements of paragraph (1).

``(4) If--

``(A) the time spent waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release that is not time on duty, plus

``(B) the time on duty,

exceeds 12 consecutive hours, the railroad carrier and its officers and agents shall provide the employee with additional time off duty equal to the number of hours by which such sum exceeds 12 hours.''; and

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

``(e) Communication During Time Off Duty.--During a train employee's minimum off-duty period of 10 consecutive hours, as provided under subsection (a) or during an interim period of at least 4 consecutive hours available for rest under subsection (b)(7) or during additional off-duty hours under subsection (c)(4), a railroad carrier, and its officers and agents, shall not communicate with the train employee by telephone, by pager, or in any other manner that could reasonably be expected to disrupt the employee's rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary. The Secretary may <<NOTE: Waiver authority.>> waive the requirements of this paragraph for commuter or intercity passenger railroads if the Secretary determines that such a waiver will not reduce safety and is necessary to maintain such railroads' efficient operations and on-time performance of its trains.''.

(c) Limitation on Duty Hours of Signal Employees.--Section 21104 <<NOTE: 49 USC 21104.>> is amended--

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

``(a) In General.--Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow its signal employees to remain or go on duty and a contractor or subcontractor to a railroad carrier and its officers and agents may not require or allow its signal employees to remain or go on duty --

``(1) for a period in excess of 12 consecutive hours; or

``(2) unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours.'';

(2) by striking ``duty, except that up to one hour of that time spent returning from the final trouble call of a period of continuous or broken service is time off duty.'' in subsection (b)(3) and inserting ``duty.'';

(3) by inserting ``A signal employee may not be allowed to remain or go on duty under the emergency authority provided

under this subsection to conduct routine repairs, routine maintenance, or routine inspection of signal systems.'' after ``service.'' in subsection (c); and

(4) by adding at the end the following:

``(d) Communication During Time Off Duty.--During a signal employee's minimum off-duty period of 10 consecutive hours, as provided under subsection (a), a railroad carrier or a contractor or subcontractor to a railroad carrier, and its officers and agents, shall not communicate with the signal employee by telephone, by pager, or in any other manner that could reasonably be expected to disrupt the employee's rest. Nothing in this subsection shall

[[Page 122 STAT. 4863]]

prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary.

``(e) Exclusivity.--The hours of service, duty hours, and rest periods of signal employees shall be governed exclusively by this chapter. Signal employees operating motor vehicles shall not be subject to any hours of service rules, duty hours or rest period rules promulgated by any Federal authority, including the Federal Motor Carrier Safety Administration, other than the Federal Railroad Administration.''.

(d) Alternate Hours of Service Regime.--

(1) Application of hours of service regime.--Section 21102 is <<NOTE: 49 USC 21102.>> amended--

(A) by striking the section caption and inserting the following:

``Sec. 21102. Nonapplication, exemption, and alternate hours of service regime''; and

(B) by adding at the end thereof the following:

``(c) Application of Hours of Service Regime to Commuter and Intercity Passenger Railroad Train Employees.—

``(1) When providing commuter rail passenger transportation or intercity rail passenger transportation, the limitations on duty hours for train employees of railroad carriers, including public authorities operating passenger service, shall be solely governed by old section 21103 until the earlier of--

``(A) the effective date of regulations prescribed by the Secretary under section 21109(b) of this chapter; or

``(B) the date that is 3 years following the date of enactment of the Rail Safety Improvement Act of 2008.

``(2) After the date on which old section 21103 ceases to apply, pursuant to paragraph (1), to the limitations on duty hours for train employees of railroad carriers with respect to the provision of commuter rail passenger transportation or intercity rail passenger transportation, the limitations on duty hours for train employees of such railroad carriers shall be governed by new section 21103, except as provided in paragraph (3).

``(3) After the effective date of the regulations prescribed by the Secretary under section 21109(b) of this title, such carriers shall--

``(A) comply with the limitations on duty hours for train employees with respect to the provision of commuter rail passenger transportation or intercity rail passenger transportation as prescribed by such regulations; and

``(B) be exempt from complying with the provisions of old section 21103 and new section 21103 for such employees.

``(4) In this subsection:

``(A) The terms `commuter rail passenger transportation' and `intercity rail passenger transportation' have the meaning given those terms in section 24102 of this title.

``(C) The term `new section 21103' means section 21103 of this chapter as amended by the Rail Safety Improvement Act of 2008.

[[Page 122 STAT. 4864]]

``(D) The term `old section 21103' means section 21103 of this chapter as it was in effect on the day before the enactment of that Act.''.

(2) Conforming amendment.--The chapter analysis for chapter 211 is amended by striking the item relating to section 21102 and inserting the following:

``21102. Nonapplication, exemption, and alternate hours of service regime.''.

(e) Regulatory Authority.--

(1) In general.--Chapter 211 is amended by adding at the end thereof the following:

``Sec. 21109. Regulatory authority

``(a) In General.--In order to improve safety and reduce employee fatigue, the Secretary may prescribe regulations--

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

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

``(3) to limit or eliminate the amount of time an employee spends waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release that is considered neither on duty nor off duty under this chapter;

``(4) for signal employees--

``(A) to limit or eliminate the amount of time that is considered to be neither on duty nor off duty under this chapter that an employee spends returning from an

outlying worksite after scheduled duty hours or returning from a trouble call to the employee's headquarters or directly to the employee's residence; and

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

``(5) to require other changes to railroad operating and scheduling practices, including unscheduled duty calls, that could affect employee fatigue and railroad safety.

``(b) Regulations Governing the Hours of Service of Train Employees of Commuter and Intercity Passenger Railroad Carriers.--

Within <<NOTE: Deadline. Orders.>> 3 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary shall prescribe regulations and issue orders to establish hours of service requirements for train employees engaged in commuter rail passenger transportation and intercity rail passenger transportation (as defined in section 24102 of this title) that may differ from the requirements of this chapter. Such regulations and orders may address railroad operating and scheduling practices, including unscheduled duty calls, communications during time off duty, and time spent waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release, that could affect employee fatigue and railroad safety.

``(c) Considerations.--In issuing regulations under subsection (a) the Secretary shall consider scientific and medical research related to fatigue and fatigue abatement, railroad scheduling and operating practices that improve safety or reduce employee fatigue,

[[Page 122 STAT. 4865]]

a railroad's use of new or novel technology intended to reduce or eliminate human error, the variations in freight and passenger railroad scheduling practices and operating conditions, the variations in duties and operating conditions for employees subject to this chapter, a railroad's required or voluntary use of fatigue management plans covering employees subject to this chapter, and any other relevant factors.

``(d) Time Limits.--

``(1) If the Secretary determines that regulations are necessary under subsection (a), the Secretary shall first request that the Railroad Safety Advisory Committee develop proposed regulations and, if the Committee accepts the task, provide the Committee with a reasonable time period in which to complete the task.

``(2) <<NOTE: Deadline.>> If the Secretary requests that the Railroad Safety Advisory Committee accept the task of developing regulations under subsection (b) and the Committee accepts the task, the Committee shall reach consensus on the rulemaking within 18 months after accepting the task.

If <<NOTE: Regulations. Deadline.>> the Committee does not reach

consensus within 18 months after the Secretary makes the request, the Secretary shall prescribe appropriate regulations within 18 months.

``(3) If <<NOTE: Regulations. Deadline.>> the Secretary does not request that the Railroad Safety Advisory Committee accept the task of developing regulations under subsection (b), the Secretary shall prescribe regulations within 3 years after the date of enactment of the Rail Safety Improvement Act of 2008.

``(e) Pilot Projects.--

``(1) In general.--Not <<NOTE: Deadline.>> later than 2 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary shall conduct at least 2 pilot projects of sufficient size and scope to analyze specific practices which may be used to reduce fatigue for train and engine and other railroad employees as follows:

``(A) A pilot project at a railroad or railroad facility to evaluate the efficacy of communicating to employees notice of their assigned shift time 10 hours prior to the beginning of their assigned shift as a method for reducing employee fatigue.

``(B) A pilot project at a railroad or railroad facility to evaluate the efficacy of requiring railroads who use employee scheduling practices that subject employees to periods of unscheduled duty calls to assign employees to defined or specific unscheduled call shifts that are followed by shifts not subject to call, as a method for reducing employee fatigue.

``(2) Waiver.--The Secretary may temporarily waive the requirements of this section, if necessary, to complete a pilot project under this subsection.

``(f) Duty Call Defined.--In this section the term `duty call' means a telephone call that a railroad places to an employee to notify the employee of his or her assigned shift time.''.

(2) Conforming amendments.--

(A) The chapter analysis for chapter 211 is amended by adding at the end thereof the following:

``21109. Regulatory authority.''.

(B) The first sentence of section 21303(a)(1) <<NOTE: 49 USC 21303.>> is amended by inserting ``including section 21103 (as such section was in effect on the day before the date of enactment of the Rail Safety Improvement Act of 2008),'' after ``this title,'' the second place it appears.

(f) Record <<NOTE: 49 USC 21101 note.>> Keeping and Reporting.--

(1) Regulations.--Not later than 180 days after the date of enactment of this Act, the Secretary shall prescribe a

regulation revising the requirements for recordkeeping and reporting for Hours of Service of Railroad Employees contained in part 228 of title 49, Code of Federal Regulations--

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

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

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

(2) Procedure.--In lieu of issuing a notice of proposed rulemaking as contemplated by section 553 of title 5, United States Code, the Secretary may utilize the Railroad Safety Advisory Committee to assist in development of the regulation. The Secretary may propose and adopt amendments to the revised regulations thereafter as may be necessary in light of experience under the revised requirements.

(g) Delay <<NOTE: 49 USC 21101 note.>> in Implementation of Duty Hours Limitation Changes.--The <<NOTE: Effective date.>> amendments made by subsections (a), (b), and (c) shall take effect 9 months after the date of enactment of this Act.

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:

``Sec. 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

[[Page 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.

``Sec. 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 <<NOTE: Effective date.>> 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:

``