

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 Notification.

Deadline.

Regulations.

Deadline.

122 STAT. 4854 PUBLIC LAW 110–432—OCT. 16, 2008
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 Deadline.

PUBLIC LAW 110–432—OCT. 16, 2008 122 STAT. 4855
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 shortterm or sustained response to emergency situations, such as derailments and natural disasters, or engagement in other intensive working conditions.

Deadline.

Deadline.

122 STAT. 4856 PUBLIC LAW 110–432—OCT. 16, 2008

“(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 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.”.