

**Calendar No. 711**

111TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
111-380

SURFACE TRANSPORTATION BOARD  
REAUTHORIZATION ACT OF 2009

---

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 2889



DECEMBER 21, 2010.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

99-010

WASHINGTON : 2010

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

JOHN D. ROCKEFELLER IV, West Virginia, *Chairman*

DANIEL K. INOUE, Hawaii	KAY BAILEY HUTCHISON, Texas
JOHN F. KERRY, Massachusetts	OLYMPIA J. SNOWE, Maine
BYRON L. DORGAN, North Dakota	JOHN ENSIGN, Nevada
BARBARA BOXER, California	JIM DEMINT, South Carolina
BILL NELSON, Florida	JOHN THUNE, South Dakota
MARIA CANTWELL, Washington	ROGER F. WICKER, Mississippi
FRANK R. LAUTENBERG, New Jersey	GEORGE S. LEMIEUX, Florida
MARK PRYOR, Arkansas	JOHNNY ISAKSON, Georgia
CLAIRE MCCASKILL, Missouri	DAVID VITTER, Louisiana
AMY KLOBUCHAR, Minnesota	SAM BROWNBACK, Kansas
TOM UDALL, New Mexico	MIKE JOHANNIS, Nebraska
MARK WARNER, Virginia	
MARK BEGICH, Alaska	

ELLEN DONESKI, *Staff Director*

JAMES REID, *Deputy Staff Director*

BRUCE ANDREWS, *General Counsel*

ANN BEGEMAN, *Republican Staff Director*

BRIAN HENDRICKS, *Republican General Counsel*

TODD BERTOSON, *Republican Senior Counsel*

## Calendar No. 711

111TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
111-380

---

### SURFACE TRANSPORTATION BOARD REAUTHORIZATION ACT OF 2009

---

DECEMBER 21, 2010.—Ordered to be printed

---

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 2889]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2889) to amend title 49, United States Code, to reauthorize the Surface Transportation Board and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of this legislation is to reauthorize the Surface Transportation Board for fiscal years (FYs) 2010 through 2014, and for other purposes.

#### BACKGROUND AND NEEDS

The U.S. freight railroad industry has undergone a remarkable transformation since the enactment of the Staggers Rail Act of 1980 (Staggers Act; P.L. 96-448), the last of a trio of acts passed between 1973 and 1980 that partially deregulated the U.S. railroad industry. In the decades preceding the enactment of the Staggers Act, railroads experienced traffic losses due in part to regulatory policies and procedures that prevented railroads from easily adjusting their rates to reflect changing market or cost environments, which led to financial strain in the industry, ultimately resulting in the bankruptcy of many railroads by the 1970s. The Staggers Act permitted railroads to have more freedom to set rates for rail service. More specifically, it permitted the railroads to charge lower

rates to their customers who operate in a competitive environment and higher rates to customers who are “captive” to one railroad carrier for transportation service (i.e., demand-based differential pricing). The Staggers Act also lowered many regulatory barriers to help the railroads more easily rationalize their networks, such as decreasing the difficulty for railroads to abandon unprofitable lines. Despite these extensive regulatory changes, the Staggers Act still envisioned a role for the Federal government to ensure that captive shippers were not subject to unreasonable rates or poor service and invested the Interstate Commerce Commission (ICC), later to become the Surface Transportation Board (STB, or Board), with the authority to oversee the railroad industry.

In the 30 years since the Staggers Act was enacted, the industry has evolved and the railroads’ financial viability has improved. There have been numerous acquisitions and consolidations amongst the larger railroads and a proliferation of shortline railroads. There are currently seven Class I railroads<sup>1</sup> (BNSF Railway Company, Canadian National Railway Company (Grand Trunk Corporation), Canadian Pacific (Soo Line Railroad Company), CSX Transportation Inc., Kansas City Southern Railway Company, Norfolk Southern Corporation, and Union Pacific Railroad) and approximately 550 Class II and Class III railroads. The industry has also increased its productivity, which was flat prior to the Staggers Act, but was up 172 percent from 1981 to 2009. As a result of the mergers and increased productivity, the number of Class I employees decreased from over 458,000 in 1980 to over 164,000 in 2008 and the number of road-miles decreased from 164,822 in 1980 to 94,209 in 2008.<sup>2</sup> The average Class I railroad’s return on investment increased from 1978 when it was 1.52 percent to 10.7 percent in 2008. Since the 1980s, the Class I proportion of total industry freight revenue has remained relatively constant in the mid-90 percent range versus single digit percentage of total revenues for Class II and Class III railroads.

For the majority of this same time period, railroad rates charged to most shippers largely declined; however, rates began to rise in 2001 with significant increases in recent years, particularly in 2008. According to the Christensen Associates report discussed in greater detail below, in the two-year period between 2007 and 2008, real revenue per ton-mile for the industry increased by about 12 percent. However, certain industries—coal and chemicals in particular—experienced above average increases. Additionally, railroads have also begun to shift costs to some shippers, including costs for fuel surcharges, car ownership, and liability costs. Furthermore, captive shippers have increasingly complained about the lack of competitive access and poor service from railroads.

The U.S. freight railroad industry remains important to the success of the nation’s economy and global competitiveness because the railroads play a key role in overall U.S. freight shipments, with some commodities particularly dependent on rail transportation. For example, 70 percent of domestically-produced automobiles, 70 percent of coal delivered to power plants, and about 35 percent of

<sup>1</sup>The Surface Transportation Board annually classifies railroads based on annual operating revenues reported from railroad carriers; in 2009, those thresholds were Class I, \$379 million or more, Class II, \$30 million or more, Class III, less than \$30 million.

<sup>2</sup>“Railroad Facts, 2009 Edition,” Association of American Railroads, pgs. 56,45.

the U.S. grain harvest move by rail.<sup>3</sup> Since 1980, railroads have captured an increasing share of U.S. freight shipments. Railroads accounted for about 27 percent of the ton-miles of U.S. freight movements in 1980, and that number increased to 42.7 percent in 2007. Because of the reliance of certain shippers on the freight rail industry and the overall importance of the rail industry to the U.S. economy, policy changes affecting oversight of the railroad industry are essential to ensure a proper balance between the needs of the railroads and the users of their systems.

#### **Surface Transportation Board**

The STB is the agency charged with overseeing the economic regulation of the rail industry. It is a three-member, bipartisan, independent board administratively housed within the Department of Transportation (DOT). The STB was established by the ICC Termination Act of 1995 (ICCTA; P.L. 104-88). During the 15 years following passage of the Staggers Act, the ICC—which was responsible for administering the Staggers Act—was significantly downsized. The ICCTA continued the deregulatory theme of the preceding 15 years and repealed or eliminated certain authorities granted to the ICC, dissolved the ICC, and assigned many of the ICC's remaining economic regulatory authorities to the Board.

The Board's responsibilities include jurisdiction over railroad rate and service issues and rail restructuring transactions (mergers, line sales, line construction, and line abandonments). In addition, the STB has jurisdiction over other, non-rail matters pertaining to certain trucking company, moving van, and non-contiguous ocean shipping company rate matters; certain intercity passenger bus company structure, financial, and operational matters; and rates and services of certain pipelines not regulated by the Federal Energy Regulatory Commission.

Additionally, the Board's responsibilities were expanded under the Passenger Rail Investment and Improvement Act of 2008 (PRIIA; P.L. 110-432) to include authority to investigate the causes of delays to passenger trains and to mediate disputes between commuter rail authorities and freight railroads regarding commuter rail use of freight railroad tracks and rights-of-way. The Clean Railroads Act of 2008 (P.L. 110-432) also clarified the Board's authority with regard to solid waste rail transfer facilities and the issuance of land-use exemption permits.

Through its annual budget requests, the Board has consistently sought additional staffing and funds to allow the Board to carry out the new statutory responsibilities as well as meet the increased demands of its rail economic regulatory responsibilities. In FY 2009, the Board employed 141 full-time equivalents at its headquarters office in Washington, D.C., to implement its responsibilities. From 2008 through 2010, more shippers filed rail rate disputes than in previous years and the STB's workload related to these disputes has increased.

Congress has not enacted comprehensive legislation to reauthorize the Board in the 12 years since the STB's authorization expired in 1998. However, as discussed above, the railroad industry has continued to experience changes that began following passage of the Staggers Act, and there is continued concern that the Board's

<sup>3</sup>"Railroad Facts, 2009 Edition," Association of American Railroads, p. 18.

authorities granted in ICCTA are not sufficient to keep pace with these changes. This bill is intended to make the Board's authorities consistent with the needs of the railroad industry today and to prepare it to better address the needs of the rail industry in the future.

**Recent Findings on Rail Competition and Service**

Congressional interest in ensuring the appropriate balancing of railroad and shipper interests, and the continued viability and ability of the railroad industry to fulfill demands for its services, has led the U.S. Government Accountability Office (GAO) to issue several reports on the railroad industry since the passage of the Staggers Act. In 2006, the GAO reported that while rates have declined since 1985, they have not done so uniformly, and rates for some commodities are significantly higher than rates for others. It also found that the railroads have shifted other costs, such as fuel surcharges, to shippers, and the STB has not collected sufficient data to accurately monitor the revenues the railroads have raised from some of these charges. GAO also reported that concerns about competition and captivity in the industry remain because traffic is concentrated in fewer railroads, but it was difficult to determine how many shippers are captive because the Board does not accurately collect such railroad revenue data. While the GAO found that the extent of captivity appears to be dropping, the percentage of industry traffic traveling at rates substantially over the statutory threshold for seeking rate relief has increased. The GAO concluded that its findings may reflect reasonable economic practices by the railroads in an environment of excess demand, or a possible abuse of market power.<sup>4</sup>

Based on its observations, the GAO recommended that the STB conduct an analysis of the state of U.S. railroad competition and consider the range of actions available to address problems associated with the potential abuse of market power. In response, the STB contracted with Christensen Associates to complete an analysis of the state of competition in the U.S. railroad industry.

In 2008, Christensen Associates released its report and issued subsequent revisions in November 2009 and January 2010.<sup>5</sup> The report found that weak reporting and data collection by the Board prevented a stronger analysis of ongoing shipper concerns, such as effective competition, service quality, shifting of costs from railroads to shippers, captivity and network access, capacity and demand, and fuel surcharge issues. The report recommended the Board collect additional data to evaluate such concerns. The report also recommended the Board take additional steps to address complaints, including reporting complaint statistics on its website, to better identify and help rectify service quality issues. Christensen Associates also found a weak relationship between revenue to variable cost (R/VC) ratios and market structure factors, making it difficult to correctly assess the presence of market-dominant behavior

<sup>4</sup> GAO, "Freight Railroads: Industry Health Has Improved, but Concerns about Competition and Capacity Should Be Addressed," (GAO-07-94) 2006.

<sup>5</sup> Christensen Associates, "A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that Might Enhance Competition," November 2008. The STB asked that Christensen revise the reports to make corrections to the initial report using corrected masked versus unmasked customer waybill sample data and updated data from 2007 and 2008.

and recommended a better empirical understanding of the economic dimensions of rail shipper captivity.

Finally, the report makes recommendations about policy changes that would have a positive impact by increasing competition. The report advocates that the current structure and performance of the railroad industry would favor reciprocal switching and terminal access agreements with STB oversight. It also advocates the increased use of arbitration to improve the functioning of private markets, as long as the arbitrators are conversant in the complexities of railroads economics. It also cautions that a potential challenge in implementing policy changes would be establishing the details of access terms and pricing in a manner that promotes economic efficiency and prevents economically harmful outcomes.

#### **Competitive Access**

Currently, the STB has the statutory authority to mandate three competitive access remedies to complaining shippers or carriers in certain circumstances; however, ICC regulatory and judicial decisions have made it very difficult for shippers to succeed in challenges to receive such remedies. In fact, shippers have not filed cases requesting such remedies because some perceive that they will be unsuccessful in any challenge. The first form of access is a bottleneck rate, whereby the Board can order an incumbent railroad to interline traffic with another railroad and provide a through route and through rate for that traffic if that route is more efficient or economic than the incumbent route. The second form of access is a reciprocal switching arrangement, whereby the incumbent railroad, for a fee, must transport the cars of a competing carrier, enabling the latter carrier, even though it cannot physically serve the shipper's facility, to offer a single-line rate to compete with the incumbent's single-line service. The third form of access is a terminal trackage rights arrangement, whereby the incumbent railroad, for a fee, must permit physical access over its lines to the trains and crews of a competing carrier.

The STB has ruled that railroads are not required to provide rates for the bottleneck segments pursuant to the railroads' discretion to set rates and specify routes (*Central Power & Light Co. v. Southern Pacific Transportation Co., et al.*, 1 STB 1059 (1996), modified in part, 2 STB 235 (1997), *aff'd sub nom. MidAmerican Energy Co. v. STB*, 169 F.3d 1099 (8th Cir. 1999), cert. denied, 528 U.S. 950). The Board determined that it was precluded from requiring a railroad to provide service on a portion of its route when the railroad serves both the origin and destination points and provides a rate for such movement. STB requires a railroad to provide service for the bottleneck segment only if the shipper had prior arrangements or a contract for the remaining portion of the shipment route. In practice, however, shippers report that the non-bottleneck railroad has generally not been willing to enter into a contract with a shipper under these circumstances or has provided a rate for service that is so high that it is not economically feasible for the shipper to accept the rate offered.

Although access to more routing options could provide additional competition to captive shippers, the ICC ruled in *Midtec Paper Corp. v. Chicago & N.W. Transp. Co.* (3 I.C.C.2d 171 (1986), *aff'd sub nom. Midtec Paper Corp. v. United States*, 857 F.2d 1487 (D.C. Cir. 1988)) that it is not required to provide these access remedies

on demand; a showing of need is required. The ICC decided that before it would order a railroad to provide access to another, a shipper must first demonstrate that the incumbent railroad has engaged in anticompetitive conduct by showing that the railroad has either (1) used its market power to extract unreasonable terms or (2) shown a disregard for the shipper's needs by rendering inadequate service because of its monopoly position. Many captive shippers contend that the anticompetitive conduct standard is too onerous, effectively precluding use of the competitive access remedy in an increasingly consolidated rail industry.

#### **Rate Challenges**

All railroads providing transportation or service subject to the jurisdiction of the STB have a common carrier obligation to provide reasonable service upon reasonable request. A railroad can fulfill this obligation through contract carriage; however, the Board does not have jurisdiction over rail transportation that moves under contract.

The STB can review the reasonableness of a common carrier rail rate only upon complaint if the railroad has market dominance. A railroad is considered market dominant if there is an absence of effective competition from other rail carriers or other modes of transportation for the transportation to which the rate applies. To determine whether these conditions exist, the Board examines whether the rate a railroad charges produces a Revenue to Variable Cost (R/VC) ratio above 180 percent for it to provide service and whether there are no feasible transportation alternatives for the traffic involved.

If the STB determines that a railroad has market dominance over a transportation service, then the applicable rate for that transportation service must be reasonable. The rate is considered unreasonable if the STB determines the revenues from the transportation service unreasonably exceed the long-run marginal cost of handling the traffic. If the Board determines that the rate is unreasonable, then it may order reparations for past shipments as far back as two years from the time of the complaint and establish a rate prescription for the maximum allowable rate for future shipments. Until 2007, the only viable means for challenging rates was pursuant to the stand-alone cost (SAC) analysis, which requires a complainant to construct a hypothetical stand-alone railroad (SARR) to provide the challenged service. If the complainant can show that the revenue requirements of the SARR are less than the revenue requirements of the challenged railroad to serve the contested traffic group, then the STB must determine the appropriate rate relief.

Shippers indicate that they have been reluctant to file rate challenge cases because of the high costs and length of time it takes the Board to decide the cases. In fact, the Board estimates that a SAC case can cost up to \$5 million and take 3.57 years on average to complete. Shippers have also expressed concern that, in addition to litigation fees, they must continue to pay the challenged rate while the case is being adjudicated. Some smaller shippers, such as agricultural shippers, contend that the cost of challenging a rail rate using even the simplified rate methods is too high for the value of the cases they are contesting, thereby limiting the value of these methods to challenge a rail rate. The GAO reported in

2006 that the Board's processes to challenge a rail rate have proven to be largely inaccessible because the standard process is expensive, time consuming, and complex.

In 2007, the Board revised its SAC test to help reduce the cost and complexity of challenging a rail rate under that test. It also created two simplified and expedited methods for determining the reasonableness of challenged rail rates for cases where a full SAC presentation is too costly. These two methods, the Three-Benchmark test and the simplified SAC (SSAC) test, may be used to contest cases under \$1 million and under \$5 million, respectively.

#### **Interchange Commitments**

The Staggers Act eased the requirements for rail carriers to obtain the necessary approval to abandon, sell, or lease a rail line, thereby helping Class I railroads shed unprofitable lines or spin them off to smaller railroads (shortlines or Class II or Class III railroads) that could operate the lines at a lower cost. Shortlines generally serve small-volume shippers and thus have an incentive to give specialized attention to the needs of the shippers on their lines. Offering better service, some shortlines have been able to attract new traffic to the lines.

Many of the line spin-off transactions contained contractual provisions that limit the incentive or ability of the shortline railroad to interchange traffic with other connecting carriers that could compete with the selling or leasing Class I railroad for the long-haul portion of a movement. These interchange commitments, also called paper barriers, took varying forms, including credits for cars interchanged with the selling or leasing Class I railroad, a penalty for traffic interchanged with another railroad, or a total ban on interchanging traffic with any carrier other than the selling or leasing Class I railroad.

Often, these interchange commitments played an important role in the establishment of shortline railroads because they enabled the start-ups or very small companies to purchase or lease rail lines with little or no upfront capital investment. The Class I railroads were generally willing to sell or lease these lighter-density lines at reduced prices because they were assured of retaining a portion of the revenues from the traffic on those lines. Although the terms of interchange commitments are varied, the Board has the authority to review them to ensure that they are in the public interest, and is currently reviewing a challenge to one particular paper barrier.

In 2008, the Board amended its guidelines to require parties seeking authorization for the sale or lease of a railroad line to: (1) identify the presence of any interchange commitment and the interchange points that are affected by it; and (2) submit a copy of the full agreement to the Board. The new regulations also provide a procedure whereby a shipper or other affected party may obtain access to information regarding an existing interchange commitment to pursue its rights under the statute. The new regulations were adopted to facilitate the Board's monitoring and case-specific review of challenges to interchange commitments.

The U.S. Department of Agriculture (USDA), representing the interests of farmers and agricultural shippers, has argued that interchange commitments can interfere with the ability of agricultural shippers to obtain the best prices for their products, and otherwise

increase their transportation costs.<sup>6</sup> The USDA advocates clear guidelines regarding the legality of interchange commitments and modification of existing interchange commitments to permit unrestricted interchange. Clear statutory guidance for the Board could permit additional challenges to existing paper barriers.

#### **Mergers and Acquisitions**

The Board has exclusive authority to review and approve any proposed consolidation, merger, or acquisition of control between two or more railroads. Board-approved consolidations are not subject to challenge under the antitrust laws, including State and municipal law, as necessary to let that rail carrier, corporation, or person carry out the transaction, hold, maintain, and operate property, and exercise control of franchises acquired through the transaction.

There are two separate standards the Board must use to consider an application for the consolidation, merger, or acquisition of control between two or more railroads, depending on the class of railroads in the application. For transactions involving two Class I carriers, the Board is required to approve a transaction if it is in the public interest, after considering several elements, including: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that would result from the proposed transaction; (4) the interest of rail carrier employees affected by the proposed transaction; and (5) whether the proposed transaction would have an adverse effect on completion among rail carriers in the affected region or the national rail system. For transactions that do not involve at least two Class I railroads, the Board is required to approve the transaction unless it finds that (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

#### **Exemptions**

Today, there are a number of active, specified commodity and class exemptions authorized by the Board. These exemptions were initially authorized for commodities or classes of traffic that were presumed to be competitive, such as intermodal traffic. Many agricultural products are exempt, although carriers must continue to comply with STB accounting and reporting requirements and must maintain copies of rates, charges, rules, or regulations for traffic moved under an exemption. A wide range of other commodities, such as automobiles, cement, and paper, are also exempt; however, these commodities are not exempt from existing regulations regarding the use of equipment or from the antitrust laws necessary to negotiate car service regulations or equipment interchange.

Currently, the Board is required to exempt rail carrier transportation from its oversight “to the maximum extent” whenever regulation is not necessary to carry out the rail transportation policy and either when the transaction is limited in scope, or when regu-

---

<sup>6</sup>U.S. Department of Agriculture, “Study of Rural Transportation Issues,” April 2010, p. 518.

lation is not needed to protect shippers from the abuse of market power. Congress included this provision in the Staggers Act because it had identified broad areas of commerce where reduced regulation was clearly warranted, yet believed the administrative process was more appropriate to determine how to apply the regulatory provisions and practices in a manner consistent with the policies of the Act.

#### SUMMARY OF PROVISIONS

S. 2889, the Surface Transportation Board Reauthorization Act of 2009, (STB Act or S. 2889) as reported, would reauthorize the Board for a period of five years, from FYs 2010 through 2014. The authorization levels are intended to fund the Board's activities through the authorization period, including the studies required by the STB Act and technology upgrades to improve the efficiency of the Board's operations. The STB Act is designed to authorize Board activities based on three themes: improving shipper access to the Board, strengthening the Board's ability to conduct oversight of the railroad industry, and increasing competition in the railroad industry.

S. 2889 would formally establish the Board as an independent agency by removing it from its administrative affiliation with the DOT. The current arrangement has provided little to no financial or administrative benefit for the Board, and in some instances permits the DOT the ability to extract resources from the Board. This change would allow the Board to devote a greater amount of its resources to fulfilling its regulatory responsibilities. The STB Act would also make conforming changes to ensure the DOT Inspector General (IG) retains its authority to review the Board's administrative activities. This oversight authority would mirror the DOT IG's authority over the National Transportation Safety Board. It would also make conforming changes to clarify that the Board shall continue to submit its own budget.

The STB Act would also increase Board membership from three to five members to make it consistent with other independent Federal agencies and boards, such as the Federal Maritime Commission and the Federal Communications Commission, and to improve the efficiency of its operations. This change would primarily permit Board members to work with one another outside of publicly-announced meetings, which they are currently prevented from doing because of the Government in the Sunshine Act requirements. Currently, these restrictions empower Board staff to have discussions related to Board matters, while members are generally precluded from communicating directly similarly. It would also provide the opportunity for a greater range of representation of interests and expertise to inform Board decisions.

The STB Act would also limit the amount a party must pay for filing a formal complaint. The filing fee would not be higher than the fee to file a civil action in a district court in the United States, which is currently \$350. This would make permanent the limitation on the amount of filing fees for rate complaints that were included in the FYs 2008, 2009, and 2010 appropriations laws and expand that limitation to other formal complaints brought before the Board, such as unreasonable practice complaints.

To ensure that shippers and other rail industry entities continue to have access to the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), the STB Act would codify OPAGAC and clarify its authority in mediating rail disputes, monitoring rail carrier operations, acting as the Board's point of contact with public and private entities, and facilitating communication among stakeholders. The Committee intends for OPAGAC's monitoring of rail operations to help it better understand trends in the rail industry. The Committee does not intend to confer independent enforcement rights on OPAGAC.

Further, to assist rail customers in navigating the Board's processes and procedures, the STB Act would establish a Rail Customer Advocate as a resource for rail customers. The Advocate would be responsible for investigating customer complaints, among other responsibilities. While S. 2889 would establish the Customer Advocate under the OPAGAC to allow for sharing administrative resources, the Committee intends the Advocate to report directly to the Board, as opposed to the Director of OPAGAC, to ensure that the Advocate remains insulated from other OPAGAC activities and serves as an independent resource for rail shippers.

S. 2889 would also make changes to the Railroad-Shipper Transportation Advisory Council (RSTAC) to make its activities more transparent and effective by subjecting it to the Federal Advisory Committee Act and requiring it to issue annual recommendations. It would also update the composition of the Council to specify the type of experience that should be held by the ninth-voting member.

Currently, the Board may only initiate an investigation upon complaint. S. 2889 would authorize the Board to begin an investigation on its own initiative, an authority that was previously vested in the ICC. The STB Act would not authorize the STB to investigate rate cases and prosecute them on behalf of a particular shipper; it would still be the responsibility of each shipper to file rate complaints when a shipper believes that the rate that has been quoted is unreasonable. The Committee intends that this reinstated authority would permit the Board to investigate matters of industry-wide applicability and, if a violation is found, take appropriate action to remedy such violations. The Committee also recognizes that the STB currently has the authority to issue an injunctive order when necessary to prevent irreparable harm, pursuant to 49 U.S.C. 721 (b)(4). The Committee encourages parties to request, and that the Board order, such injunctive relief in appropriate circumstances.

S. 2889 would update the current rail transportation policy (RTP). Congress established the RTP to guide the ICC, and its successor, the STB, in its duties in regulating the railroad industry. The bill would update this policy to make it more consistent with the needs of the railroad industry and shippers today and in the future because the nature of the industry has changed significantly in the 30 years following enactment of the Staggers Act.

One of the bill's revisions to the RTP would direct the Board to balance each of the objectives in carrying out its statutory responsibilities. S. 2889 separates certain objectives of the current policy into individual objectives as well as includes new objectives to reflect the current needs of the industry. One of these changes splits a current objective for the Board to promote a safe and efficient rail

transportation system by allowing rail carriers to earn adequate revenues to bring equal attention for the need to promote a safe and efficient system and the need for the railroad to earn adequate revenues. This revision is not intended to expand the Board's safety jurisdiction. Further, the objective to ensure that rail carriers can earn adequate revenues to maintain and expand rail infrastructure is intended for the Board to consider the need for the rail industry to meet the nation's rail transportation needs. The Committee also expects the Board to consider the needs of all users of the rail system and to foster intercity and commuter rail passenger service consistent with national rail planning efforts. Finally, the policy recognizes the need to protect shippers in the absence of effective competition and to prohibit predatory pricing and practices.

The STB Act would also amend the Board's authority with regard to granting exemptions. Currently, any rail customer that is exempt from oversight from the Board has the ability to file a request with the Board to revoke the exempt status. However, the Committee is informed that some shippers have been reluctant to file such request with the Board because they believe the language in 49 U.S.C. 10502 requires the Board to exempt as much traffic as possible and that the Board has acted accordingly, thus leaving those shippers to conclude a request to revoke an exemption likely to not be approved. The STB Act would amend the standard for granting an exemption to remove the language "to the maximum extent consistent with this part" and expects the Board will continue to conduct thorough reviews of all exemption applications to determine if they meet the criteria in 49 U.S.C. 10502. S. 2889 would also amend the standard for revoking an exemption to make clear that the Board may revoke an exemption to protect shippers from an abuse of market power. S. 2889 would also require the Board to conduct a comprehensive review of all current commodity class exemptions to determine if any such exemptions should be revoked pursuant to 49 U.S.C. 10502 (d). The Committee expects the Board to take appropriate action with respect to such exemptions based on its analysis. The Committee also expects the STB to establish a process for periodic review of such class exemptions.

S. 2889 would direct the Board to undertake a number of studies to address concerns raised by industry stakeholders, including needed updates to the uniform rail costing system (URCS), the use of replacement costs in Board proceedings, the use of certain rail practices, the effect of rail car interchange rules and their effect on the national rail system, and guidance on how to apply the revenue adequacy constraint. The Committee expects the Board to conduct these studies in a neutral, fact-based manner so as to not predetermine their outcomes. Further, the Committee expects the Board to provide an opportunity for public comment for each of the studies. The Committee also encourages the Board to initiate further proceedings or rulemakings to respond to or implement recommendations resulting from these studies.

The Committee also expects that as part of the URCS study, the Board consider a broad range of information submitted by industry stakeholders to ensure that any updates to URCS are fair, reasonable, and flexible to meet future changes to the rail industry. Until the Board updates URCS, S. 2889 would permit parties to make reasonable movement-specific adjustments to the variable costs cal-

culated by URCS in full SAC cases. It would also permit the Board to develop a one-time adjustment factor to adjust variable costs in rate prescriptions determined under any procedures changed as a result of this study's findings to equal those that would have been obtained under prior procedures. The Committee also expects the Board to use these studies as an opportunity to address more thoroughly longstanding concerns, such as those related to coal dust issues.

S. 2889 would codify the STB's current standards for the review of interchange agreements/paper barriers. There is concern that some of these agreements have impeded competition by prohibiting shortline or regional railroads from interchanging traffic with other railroads, thereby prejudicing shippers. Some shippers have argued that all paper barriers should be deemed to be in violation of Federal law and be terminated. However, because each paper barrier is unique and the Committee has not undertaken a comprehensive examination of all existing paper barriers, the Committee has several concerns about making such a sweeping determination. The Committee also has concerns about the effect such determination would have on the existence of smaller railroads and the shippers that they serve, which are generally the primary beneficiaries of such paper barrier arrangements. Therefore, to provide for an orderly review, the STB Act would require the Board to maintain a process by which paper barriers can be reviewed and clarify that the Board has the authority to take appropriate actions to remedy conflicts between a paper barrier and the provisions of 49 U.S.C. Subtitle IV Part A. Further, S. 2889 would provide a mechanism for a shortline to purchase the terms of a paper barrier and provide a means of financial assistance from the DOT should it be necessary for the shortline to execute the purchase.

S. 2889 would overturn the mid-1980s Midtec Paper decisions discussed above, which govern mandated reciprocal switching and terminal access (which refer to activities where one railroad operates on the facilities of another railroad). Many rail shippers have been reluctant to file cases to resolve reciprocal switching and terminal access concerns due to Midtec's requirement of having to prove that a railroad is engaged in anti-competitive conduct. S. 2889 would restructure the statutory language governing reciprocal switching and terminal access by creating a new statutory provision and revising an existing provision, which is discussed more below. S. 2889 would also combine the requirements for mandated reciprocal switching in terminal areas with those for quoting bottleneck rates.

The STB Act would require a Class I rail carrier, or other rail carrier the Board determines appropriate, to quote a bottleneck rate to a shipper over which they have market dominance. This provision is intended to cover situations related to traditional bottleneck rate cases and those that are considered reciprocal switching cases currently addressed by 49 U.S.C. 11102. The Committee notes that although the STB would be given the authority to apply the bottleneck rate provision to Class II and Class III railroads because of the possibility that it may be warranted in certain circumstances, it also encourages the STB to use such authority cautiously to prevent abuse or an ultimate lessening of competition for all shippers. If there is a question about whether a rail carrier has

market dominance over certain transportation, it is incumbent on the rail carrier to request an expedited market dominance determination from the Board. Although the bill does not specify how the Board should make such an expedited determination, the Committee expects the Board to establish a method to resolve such concerns in no more than 60 days. Rail carriers have also expressed concern that being required to quote a rate to a shipper before the question of market dominance is resolved would create significant logistical difficulties. The Committee expects that this expedited process will also resolve concerns over whether rail carriers can abuse the provision by refusing to quote a rate to a rail customer by failing to seek an expedited determination.

This provision would also require the Board to establish and maintain standards for determining whether a bottleneck rate is reasonable. The Committee evaluated several different mechanisms for establishing reasonable bottleneck rates; legislative language is provided to guide the Board in establishing its standards. The Committee recognizes also that to maintain the national rail system, in most instances, rail carriers need to receive a reasonable contribution to their network infrastructure costs as part of a bottleneck rate. In determining what a reasonable network contribution would be to maintain the national rail network, the Committee encourages the Board to examine a broad range of economic principles, studies related to bottleneck rates, network access charges in other closed network systems, and existing Board rate reasonableness information. While the Committee expects the Board to find some level of network infrastructure contribution to be reasonable in most circumstances, the Committee can also envision scenarios where such network infrastructure contributions could be phased out over time as traffic on a particular line varies or increases, as well as scenarios where no infrastructure contribution is necessary at all. Because the Board's standards are anticipated to be relatively prescriptive, the Committee expects the rate challenge process to be a relatively low-cost, expedited process as well.

Finally, the Committee encourages good faith actions on behalf of both rail carriers and shippers in complying with and using this provision. For example, the Committee believes that it would be unreasonable for a shipper to request that a rail carrier quote an exorbitant number of bottleneck rates over multiple interchanges that meet the statutory definition because such a request could create significant logistical difficulties for the rail carrier to comply. By encouraging such good faith behavior, the Committee intends to prevent any attempts to manipulate the statutory language to reach unreasonable or unfair results that would inordinately benefit one party over another, which goes beyond the intent of the provision to create opportunities for shippers who have no competition to have access to a competing rail carrier.

On a related issue, the definition of market dominance in 49 U.S.C. 10707 says that a rail carrier is considered to be market dominant if there is "an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies." However, several shippers have complained that Class I rail carriers fail to compete with one another. For example, where two rail carriers have access to serve a particular shipper, they fail to compete with one another by the non-incum-

bent carrier offering a rate so exorbitantly high that the shipper has no reasonable, cost-effective choice but to continue to use the incumbent carrier. Rail carriers, on the other hand, argue that they vigorously compete with one another in such circumstances. Although the STB Act makes no changes to 49 U.S.C. 10707 to address specifically the concerns raised, the Committee encourages the Board to use sufficient scrutiny to ensure that rail carriers are effectively competing with one another.

Terminal access is an approach where a railroad would grant access of its tracks and terminal facilities to another railroad. As mentioned above, S. 2889 would provide clarity to when the Board should require terminal access and establish the pricing mechanism for that access. It would direct the Board to establish a pricing mechanism similar to what the Board would be required to establish for the quoting of bottleneck rates.

The Committee recognizes the long-standing concerns of shippers, such as agricultural producers, about the economic and other challenges of bringing complaints before the Board. The STB has established provisions intended to govern the binding, voluntary arbitration of certain disputes subject to the Board's jurisdiction. However, the STB's current process has never been used, possibly because both parties in a dispute must agree to use it. As part of the Committee's efforts to address ongoing small shipper concerns, S. 2889 would allow the Board to direct certain rail rate, practice, and common carrier service expectation disputes to be resolved by an arbitrator. S. 2889 would make this process more accessible by allowing a shipper to request that the Board direct a dispute to binding arbitration, either upon complaint or following informal mediation. The Committee expects the Board to make the arbitration process available when the potential damages from the complaint do not warrant the Board's more expensive resolution methods, such as the Three Benchmark rate challenge method. The arbitration process is not intended to be used to resolve policy questions of industry-wide application or to supplant the Board's responsibility to implement a national uniform rail policy.

To further improve the STB's rate challenge process, S. 2889 would amend the STB's simplified rate case processes to increase the value of what may be awarded under the Three Benchmark and SSAC methods to \$1.5 million and \$10 million, respectively. This would make 84 percent of all regulated traffic eligible for rate dispute resolution under these two methods, and decrease the time, costs, and complexity of challenging a rate for a larger amount of regulated traffic. The Committee believes the STB's SAC test is an expensive, lengthy, and complicated method to challenge the reasonableness of rail rates, and expects the Board to ensure the method is as accessible and cost effective as possible. The STB Act would also permit the Board to consider the reasonableness of a rate quoted up to one year before the date that the rate is to take effect. It would also establish a timeline for adjudication of SAC rate challenges to limit the process and decision-making time to 18 months, which is significantly faster than the current average of over three and one-half years.

S. 2889 would make several improvements to the Board's ability to monitor and resolve service concerns. For example, it would require that railroads provide service expectation ranges to shippers

for any common carrier rate that they provide to shippers. The Committee does not believe that this would affect a shipper's ability to challenge unreasonable service at the Board, but the inclusion of these service expectation ranges would provide shippers with a better understanding of the service they can expect to receive and would also help the Board better monitor service issues. The STB Act would also require railroads to report to the STB certain performance metrics and data so that the Board can better oversee service issues that may arise in the industry. It would also require the Board to maintain a database and to publish on its website a compilation of informal and formal service complaints, without identifying the complainant, to provide more transparency to the users of the rail system and the public about rail service issues.

S. 2889 would require mergers and acquisitions between a Class I and Class II (a regional or short line) rail carrier to receive the same level of scrutiny that transactions between two Class I carriers currently receive. Because there are only seven Class I railroads, transactions between Class I and Class II carriers have an increased importance and deserve additional scrutiny. The bill would also clarify the STB's authority to consider the potential effects of a particular merger or acquisition on public health, safety, and the environment, and intercity rail passenger transportation and commuter rail passenger transportation. It would also eliminate the Board's oversight of certain rate agreements that have been exempt from Federal antitrust laws, which would take effect two years after the date of enactment of the STB Act.

The STB Act would also make several statutory clarifications and improvements to the Board's authority, such as making clear that the Board has the authority to act on adverse abandonment complaints and may apply conditions to the sale or lease of abandoned properties being used for public purposes. The bill would also place a five-year time limit on right of first refusal in the resale of properties that were purchased pursuant to 49 U.S.C. 10907, and clarify that the Board has the authority to extend emergency service orders until the emergency has ended.

S. 2889 would require the GAO to review the progress of the STB in implementing the bill and assess the impact of the regulatory changes made by the STB Act on the rail transportation system. The Committee anticipates that this review and assessment will help inform the Committee prior to the expiration of the authorization of the STB Act.

The STB Act makes several purely technical corrections to the Rail Safety Improvement Act of 2008 and the Passenger Rail Investment and Improvement Act of 2008.

The STB Act would also amend the Board's authority to investigate pipeline matters on its own authority as opposed to only on complaints, similar to the change made for its rail investigative authority. To establish regulatory certainty over which Federal agency has the authority to regulate carbon dioxide pipelines, the bill would subject carbon dioxide pipelines to the authority of the Board. Finally, it would require the GAO to complete a study to examine the regulatory framework for carbon dioxide pipeline development, permitting, access, siting, and rate regulation.

## LEGISLATIVE HISTORY

S. 2889 was introduced on December 16, 2009, by Senator Rockefeller, Senator Hutchison, Senator Lautenberg, Senator Thune, and Senator Dorgan and was referred to the Committee on Commerce, Science, and Transportation. On December 17, 2009, the Committee met, and by voice vote, ordered S. 2889 reported with two amendments: one in the nature of a substitute and one making technical changes.

## ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

*S. 2889—Surface Transportation Board Reauthorization Act of 2009*

Summary: S. 2889 would authorize appropriations over the 2010–2015 period for operating the Surface Transportation Board (STB) and for the Railroad Rehabilitation and Improvement Financing (RRIF) program to help small railroads buy back certain lease agreements from larger railroads. The STB is responsible for overseeing economic competition in the railroad industry. Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost \$292 million over the 2010–2015 period. Enacting S. 2889 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

S. 2889 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Several of those mandates would impose requirements on both public and private rail carriers. CBO estimates that the aggregate cost of intergovernmental mandates in the bill would fall below the annual threshold established in UMRA (\$70 million in 2010, adjusted annually for inflation). The cost of private-sector mandates in the bill is uncertain because many of them would depend, in part, on future regulations. Consequently, CBO cannot determine whether the aggregate cost of private-sector mandates would exceed the annual threshold established in UMRA (\$141 million in 2010, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2889 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year in millions of dollars—						
	2010	2011	2012	2013	2014	015	2010–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Surface Transportation Board:							
Authorization Level .....	12	48	41	44	48	0	193
Estimated Outlays .....	6	48	42	44	47	5	192
Railroad Rehabilitation and Improvement Financing:							
Estimated Authorization Level .....	*	*	*	20	60	20	100
Estimated Outlays .....	*	*	*	20	60	20	100
Total Changes..							

	By fiscal year in millions of dollars—						
	2010	2011	2012	2013	2014	015	2010–2015
Estimated Authorization Level .....	12	48	41	64	108	0	293
Estimated Outlays .....	6	48	42	64	107	25	292

Note: \* = less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that S. 2889 will be enacted in 2010 and that the authorized and estimated amounts will be appropriated each year, including supplemental appropriations for 2010.

#### *Surface transportation board programs*

S. 2889 would authorize the appropriation of \$193 million for the operations of the STB over the 2010–2014 period. The board has already received an appropriation of \$28 million for 2010. The STB is responsible for overseeing economic competition in the railroad industry. S. 2889 would increase the STB’s responsibilities for overseeing and regulating the rail industry, including allowing it to conduct investigations on its own initiative and requiring the board to establish new regulations regarding the rates charged by rail carriers. The bill also would require the board to appoint both a Customer Advocate and an Ombudsman and to complete several studies about the rail industry. Based on information from the STB and historical spending patterns for similar programs, CBO estimates that implementing those provisions would cost \$192 million over the 2010–2015 period.

#### *Railroad rehabilitation and improvement financing*

Under the RRIF program, the Federal Railroad Administration (FRA) provides direct loans and loan guarantees to develop railroad infrastructure. Among other features of the RRIF program, borrowers pay a premium to cover the estimated subsidy cost of their loans. This payment is known as a credit-risk premium. Currently, the RRIF program charges loan recipients the same interest rate that would be paid on 30-year Treasury bonds. The RRIF loan term is 35 years.

The RRIF program is governed by the Federal Credit Reform Act of 1990, which requires an appropriation to cover the subsidy and administrative costs associated with direct loan guarantees and loan operations. The subsidy cost is the estimated long-term cost to the government of a loan or loan guarantee, calculated on a net-present-value basis, excluding administrative costs. Administrative costs, recorded on a cash basis, include activities related to making, servicing, and liquidating loans as well as overseeing the performance of lenders. In recent history, FRA has typically charged railroads between 2 percent and 8 percent of the loan level as a credit-risk premium because those loans are backed by significant collateral in the form of property and equipment.

**Paper Barriers.** S. 2889 would expand the activities eligible for RRIF loans to allow small railroads to buy back certain lease agreements from larger railroads. There are seven such larger “Class I” railroads in the United States. Smaller railroads—Class II and Class III—are often referred to as “shortlines” because they tend to cover a relatively small distance of track. A lease agreement with one large railroad is called a “paper barrier” and gen-

erally requires a shortline railroad to distribute its rail traffic exclusively to a single Class I railroad. By buying back a lease, a shortline would be able to distribute its traffic to more than one Class I railroad, potentially leading to lower shipping prices. The precise number of such paper barriers is unknown, but industry experts estimate that there are currently about 100 such contracts. The values of those paper barriers vary widely; each value depends on the unique circumstances of the agreement between a shortline and a Class I railroad.

Under the provisions of S. 2889, a shortline railroad or a customer of such a railroad could petition the STB to invalidate or alter a paper barrier. If the STB invalidated such an agreement by finding it not to be in the public interest, the shortline railroad, alone or in conjunction with customers, could then seek a RRIF loan to purchase the agreement from the larger carrier. The bill would authorize the appropriation of \$37.5 million over the 2010–2015 period to pay for a portion of the subsidy cost of loans—the credit-risk premium—to shortline railroads that plan to buy back a paper barrier agreement.

**Cost of Expanding the RRIF program.** Because the loans authorized by S. 2889 would probably not be backed with the same level of collateral as existing loans, CBO estimates that the credit subsidy would be greater than the subsidy cost for loans the agency has historically made. In addition to the \$37.5 million authorized for the credit risk, the bill would add to the subsidy cost for loans made under S. 2889 because it would cap the amount of interest charged on RRIF loans used to purchase paper barriers at 1 percent, subject to the appropriation of the necessary additional subsidy amounts. CBO estimates that the total subsidy rate for RRIF loans used to purchase paper barrier agreements would be about 50 percent. That rate is largely due to the difference between the government’s borrowing rate and the 1 percent interest rate that would be charged to borrowers.

Based on information from industry sources, CBO estimates that only a handful of shortline railroads or their customers would ask to have their paper barriers invalidated. Under the bill, CBO estimates that shortline railroads would apply for around \$200 million in loans to purchase such agreements over the next few years. Assuming appropriation of the necessary amounts consistent with the projected subsidy rate of 50 percent, CBO estimates that implementing those changes to the RRIF program would cost about \$100 million over the 2010–2015 period.

Pay-as-you-go considerations: None.

Intergovernmental and private sector impact: S. 2889 contains intergovernmental and private-sector mandates, as defined in UMRA. Several of those mandates would impose requirements on both public and private rail carriers. CBO estimates that the aggregate cost of intergovernmental mandates in the bill would fall below the annual threshold established in UMRA (\$70 million in 2010, adjusted annually for inflation). The cost of private-sector mandates in the bill is uncertain because many of them would depend, in part, on future regulations. Consequently, CBO cannot determine whether the aggregate cost of private-sector mandates would exceed the annual threshold established in UMRA (\$141 million in 2010, adjusted annually for inflation).

*Mandates that apply to both public and private entities*

**Rate Regulation and Access to Facilities.** The bill would require Class I rail carriers to offer reasonable rates for shipments on non-competitive segments of track. According to industry sources, about 40 percent of the shipments using Class I carriers involve such segments. The cost of the mandate to rail carriers would be the cost of setting up a new pricing system and any loss in net income as a result of the new standards. Depending on the number of shipping routes affected and the standards established by the STB for reasonable rates, the compliance cost to private entities could be substantial.

S. 2889 also would authorize the STB to require Class I rail carriers to make their terminal facilities available to competing carriers. The cost of the mandate would be any income loss resulting from the required transaction. Because the number of rail carriers and the sections of rail that would be subject to the mandate would be based on future regulations, CBO cannot estimate the cost of this mandate on private-sector entities.

The bill also would allow the STB to extend those requirements to shortline railroads, some of which are publicly owned. Depending on future rules and regulations, some public rail carriers could be required to comply with these mandates. Nevertheless, because of the relatively small number of public entities potentially affected by such requirements, CBO estimates the costs to state and local governments would be small.

**Regulatory Exemptions.** S. 2889 would require the STB to modify or discontinue existing regulatory exemptions for shortline railroads based upon the results of a study of the impact of those exemptions. Under current law, such rail carriers with exempt traffic do not have to comply with regulations that apply to Class I carriers. Because of the relatively limited number of public entities subject to such modifications, the costs to state and local governments would be small. Because CBO cannot determine what modifications to exempt traffic, if any, would be imposed by the legislation, CBO has no basis for estimating the cost of the mandate to private-sector carriers.

**Paper barriers.** By allowing challenges to paper barrier agreements, the bill would impose a mandate as defined in UMRA. If the STB were to invalidate an agreement by finding that it goes against the public interest, the parties to the agreement would have to rewrite the agreement or terminate it. Based on information from industry sources, CBO estimates that around 100 such agreements exist. Because of the relatively small number of public entities with such contracts, CBO estimates the costs to state and local governments would be small. Because the number and value of such agreements that would be invalidated is uncertain, CBO cannot estimate the cost to the private sector of complying with this mandate.

**Reporting Requirements.** The bill would require Class I rail carriers to regularly submit information to the STB regarding service metrics such as transit times and other data the STB may require. In addition, rail carriers would have to publish figures that reflect expected ranges for reasonable service. Because of the relatively small number of public entities subject to the reporting requirements, the costs to state and local governments would be

minimal. Based on information from industry sources and the STB, CBO estimates that the cost of the reporting requirements on private-sector entities could amount to tens of millions of dollars primarily to develop reporting systems.

**Rate Quotes.** By allowing the STB to challenge a rate, the bill could restrict the ability of rail carriers to set rates. Because of the relatively small number of public entities affected, CBO estimates that the cost of this provision to those entities would be small. Because CBO cannot determine when or how often the STB would use this authority, CBO cannot determine the cost of the mandate to private entities.

**Other Mandates.** The bill contains additional mandates that would affect both public and private entities. The bill would place a mandate on previous owners of rail lines by limiting their right of first refusal if the new owner proposes to sell or abandon the line. The bill also could expand existing mandates related to rail accidents. Those mandates include prohibitions on states and private entities relating to National Transportation Safety Board investigations and counseling services. CBO estimates that none of the costs of those mandates would be significant during the first five years the mandates would be in effect.

*Mandates that apply to private entities only*

The bill would require the STB to update its uniform costing system, which it uses to determine reasonable shipping rates. If the updated system would decrease the reasonable rate a rail carrier could charge, the new restriction would constitute a mandate on rail carriers. The cost would be any income loss from the reduction in reasonable rates charged. Since CBO does not know how the STB would modify the costing system, we cannot determine the potential cost of the mandate.

Estimate prepared by: Federal Costs: Sarah Puro; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Samuel Wice.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The STB currently has the authority to oversee several aspects of the rail industry, including the approval of construction and abandonment of rail lines, resolution of rail rate and service disputes, and review of mergers and acquisitions. The bill is intended to provide the STB with additional authority to oversee the railroad industry. The number of railroads and entities that are subject to the Board's oversight is not expected to change as a direct result of the bill. The bill would clarify the Board's jurisdiction over carbon dioxide pipelines, which could potentially increase the purview of the pipeline entities subject to the Board's jurisdiction. Because the carbon dioxide pipeline industry is still in a develop-

mental stage, the number of potentially additional regulated entities remains low.

#### ECONOMIC IMPACT

S. 2889 is not expected to have an adverse impact on the nation's economy. It would encourage more competition and improve service within the rail industry, making transportation by rail a more desirable transportation option. While some may have concerns that the bill could have a negative impact on revenues within the rail industry, the bill would also make sure the Board has sufficient authority to ensure that the needs of railroads and all users of the nations' rail network, are appropriately balanced to guarantee that rail transportation remains a viable, efficient, and safe mode of transportation.

#### PRIVACY

S. 2889 would not have an adverse impact on the personal privacy of individuals.

#### PAPERWORK

S. 2889 would require certain railroads to provide additional information to the STB they currently collect, but are not required to report. Any additional paperwork burdens would be minimal.

#### CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title.*

The short title of this bill is the "Surface Transportation Board Reauthorization Act of 2009."

##### *Section 2. Table of contents.*

This section includes the table of contents for the bill.

##### *Section 3. Amendment of title 49, United States Code.*

This section would make clear that amendments in the bill are to sections or provisions in title 49, United States Code, unless otherwise noted.

#### TITLE I—ADMINISTRATIVE PROVISIONS

##### *Section 101. Authorization of appropriations.*

This section would authorize appropriations to fund the STB so that it can fully implement the provisions of the bill as well as carry out its existing responsibilities. These authorization levels would also provide funding for the required studies, necessary technology, software, and database upgrades at the Board to improve its efficiency and effectiveness, and the administrative costs of the additional Board members.

*Section 102. Board members.*

This section would expand the Board membership from three to five members. It would also update the member qualification requirements to provide that at least 3 Board members have professional standing and demonstrated knowledge in the fields of transportation, transportation regulation, or economic regulation, and at least 2 members have professional or business experience (including agriculture and other rail customers) in the private sector. The section would repeal the “holdover” limitation that limits a Board member from serving longer than one year after his or her term expires. This section would also repeal an obsolete provision dealing with ICC members who transitioned to members of the STB.

*Section 103. Establishment of Board as independent agency.*

The STB is currently administratively affiliated with the DOT, though it is decisionally-independent. This section would establish the STB as an independent agency of the United States Government.

*Section 104. Filing fees for certain cases.*

This section would limit the filing fee the Board may require a party to pay to bring a formal complaint to no more than the fee charged for bringing a civil action in a Federal District Court of the United States, which is currently \$350.

*Section 105. Repeal of expired and obsolete provisions.*

This section would repeal obsolete and expired provisions under the Board’s jurisdiction.

*Section 106. Department of Transportation Inspector General authority.*

This section would provide authority to the DOT IG to review the financial management, property management, and business operations of the STB, including internal accounting and administrative control systems, to determine compliance with applicable Federal laws, rules, and regulations. This authority is modeled after the DOT IG’s role with respect to the National Transportation Safety Board.

*Section 107. Railroad-Shipper Transportation Advisory Council.*

This section would make a number of changes to the composition and responsibilities of the RSTAC, a 19-member council of small shippers and railroads with the duty to advise Congress and the STB on rail transportation issues, with particular attention to issues of importance to small shippers and small railroads, including car supply, rates, competition, and effective procedures for addressing legitimate shipper and other claims. This section would establish a member at large that may be a representative of rail labor, a State or local transportation agency, an academic institution, or other relevant entity selected by the STB Chairman. This section would also subject the Council to the Federal Advisory Committee Act and require the Council to prepare an annual report concerning its activities and the results of Council efforts to resolve industry issues. The annual report would be required to include at least one recommendation to the Board stemming from the

Council's activities and any proposal regarding regulation or legislation it considers appropriate.

TITLE II—AUTHORITY IMPROVEMENTS

*Section 201. Rail transportation policy update.*

The rail transportation policy is intended to guide the STB in its duties in regulating the railroad industry. This section would update the rail transportation policy and direct the Board to balance the following objectives: (1) to promote a safe and efficient rail transportation system; (2) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail; (3) to protect rail shippers and to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues that exceed the amount necessary to maintain and expand the rail system and to attract capital; (4) to foster the continuation and expansion of a sound rail transportation system while also preserving effective competition among rail carriers and with other modes to meet the needs of the public and National defense; (5) to ensure that rail carriers can earn adequate revenues to provide and sustain consistent, efficient, and reliable transportation services and maintain and expand rail infrastructure, equipment, and technology; (6) to prohibit predatory pricing and practices, avoid undue concentrations of market power, and to prohibit unlawful discrimination; (7) to provide fair and expeditious regulatory decisions and ensure that the regulatory process is accessible and cost effective for all affected parties; (8) to advance the environmental and energy efficiency advantages of rail transportation and encourage energy conservation and environmentally-responsible practices among rail carriers; (9) to foster intercity and commuter rail passenger service; and (10) to encourage fair wages and safe and suitable working conditions in the railroad industry.

*Section 202. Office of Public Assistance, Governmental Affairs, and Compliance.*

This section would codify the Board's OPAGAC. This section would give the office authority over public assistance and outreach, governmental affairs, and compliance. This section would also expand and clarify the Office's responsibilities, including to (1) mediate disputes between affected parties; (2) monitor rail carrier operations subject to the Board's jurisdiction to ensure that such operations are in compliance with each carrier's statutory and regulatory responsibilities; (3) act as the Board's point of contact with government, public and private parties; (4) facilitate communication among stakeholders subject to the Board's jurisdiction; and (5) carry out other duties and powers prescribed by the Board.

This section would direct the Board to appoint a Rail Customer Advocate. The Advocate would be required to: (1) review or investigate rail customer inquiries and complaints; (2) serve as a technical advisor to a rail customer in any appropriate proceeding of the Board; (3) advise the Board in certain matters, as appropriate; (4) review information regarding the cost and efficiency of rail transportation; (5) carry out other duties and powers prescribed by

the Board; and (6) participate as a party in a Board proceeding, as appropriate.

This section would also authorize the Board to designate an officer or employee of the Board to serve as an ombudsman in regional or local matters of Board interest, including matters related to railroad service, mergers and acquisitions, or any other matter designated by the Board.

*Section 203. Investigative authority.*

This section would authorize the Board to conduct investigations, except for matters involving rate disputes, on its own initiative or upon complaint. Currently, the Board may initiate an investigation only upon complaint.

*Section 204. Compilation of complaints.*

This section would direct the Board to establish and maintain a database of complaints and post on its website a quarterly report of formal and informal service complaints by region, type of complaint, and resolution of the complaint.

*Section 205. Exempt traffic.*

This section would amend the criteria by which the STB may grant or revoke an exemption to a person, class of persons, or a transaction or service from the protection of the Board. This section would also direct the Board to conclude a study of current class exemptions within two years after the date of enactment of this Act to determine whether any exemptions should be revoked and to establish a process to review class exemptions periodically.

*Section 206. Railroad service metrics and performance data.*

This section would direct the Board to require, within two years after the date of enactment of this Act, Class I railroads and other railroad carriers, as appropriate, to report railroad service metrics and performance data to the Board. The data may include transportation cycle times and transit cycle times and variations in such cycle times, average train speed, and terminal dwell time by type of traffic and by geographic area and other metrics, as determined by the Board. The Board shall ensure that metrics and data submitted pursuant to this section and deemed confidential by the Board are appropriately protected.

*Section 207. Uniform railroad costing system.*

This section would direct the Board to complete, within three years of enactment of this Act, a proceeding to update, revise, or replace its URCS and any related reporting of financial and operating information by rail carriers. Within 18 months after the date of enactment of this Act, the Board shall submit an interim report on its progress to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. Until the Board updates, revises, or replaces the system pursuant to this section, or thereafter at the discretion of the Board, parties may make reasonable movement-specific adjustments to the variable costs calculated by the System in full SAC rate challenges. Finally, if URCS is materially changed pursuant to the proceeding required under this section,

the Board shall develop a one-time adjustment factor to be used to adjust the variable costs in rate prescriptions determined under the changed procedures to equal those that would have been obtained under the prior procedures, and will apply this adjustment factor, upon request, in rate prescriptions that are in effect as of the date of enactment of the STB Act.

*Section 208. Replacement cost study.*

This section would direct the Board to initiate, within 180 days after the date of enactment of this Act, a study to review the use of a replacement cost approach to value the assets of rail facilities. The review shall include matters deemed appropriate by the Board, but shall include, at a minimum, consideration of the feasibility, effectiveness, and appropriateness of using a replacement cost approach in proceedings where replacement costs may be relevant. The Board shall conduct one or more public hearings as part of this study. The Board shall provide a report of its findings to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure within 180 days after completing the study.

*Section 209. Rail practices study.*

This section would direct the Board to initiate, within 180 days after the date of enactment of this Act, a study on rail practices, including switching, surcharges, penalties, demurrage, and accessorial charges. The Board shall conduct one or more public hearings as part of this study. The Board shall provide a report of its findings to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure within 180 days after completing the study.

*Section 210. Rail car interchange rules study.*

This section would direct the Board to initiate, within 180 days after the date of enactment of this Act, a study of rail interchange rules, including car service, interchange, and other operating rules adopted and administered by the Association of American Railroads and the effect of those rules on the national rail system. In conducting the study, the Board shall provide public notice and comment and conduct one or more public hearings. The Board shall provide a report of its findings to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure within 180 days after completing the study.

*Section 211. Offers of financial assistance.*

This section would clarify that the Board may authorize the abandonment of a rail line unless a financially responsible person offers financial assistance and establishes a reasonable likelihood of public transportation, intercity rail passenger transportation, or freight rail service over that part of the railroad line to be abandoned.

*Section 212. Adverse abandonments.*

The section would clarify that parties other than a rail carrier may file to abandon or discontinue service on a particular line. This is a clarification to the STB's authority.

*Section 213. Emergency service orders.*

The section would authorize the Board to extend an emergency service order beyond the initial 30 days in 90-day increments until such emergency has ended.

*Section 214. Rate Agreements.*

This section would amend section 10706 to subject existing rate agreements to the antitrust laws. The section would retain language to ensure that in any proceeding where a rail carrier is alleged to be a party in an agreement, conspiracy, or combination that is in violation of an antitrust law, such a violation may not be inferred from evidence that two or more rail carriers acted together with respect to an interline rate or related matter.

In any such proceeding, evidence of a discussion or agreement between or among such rail carrier and one or more other rail carriers, or of any rate or other action resulting from such discussion or agreement, would not be admissible if the discussion or agreement concerned an interline movement of the rail carrier, and the discussion or agreement would not, considered by itself, violate a Federal or State antitrust law.

In any such proceeding before a jury, the court would be required to determine whether the requirements of this section are satisfied before allowing the introduction of any such evidence.

*Section 215. Miscellaneous provisions.*

This section would direct the Board to maintain its simplified and expedited methods ("Three Benchmark" and "SSAC") for determining the reasonableness of challenged rates in those cases in which a full SAC rate challenge is too costly, given the value of the case.

## TITLE III—REGULATORY REFORM

*Section 301. Paper barriers.*

This section would define an interchange commitment as a contractual agreement between two or more rail carriers subject to the jurisdiction of the Board reached as part of a sale or lease of a rail line for which the approval of the Board is required, which limits the incentive or the ability of the purchaser or tenant rail carrier to interchange traffic with a rail carrier other than the seller or lessor rail carrier.

This section would permit the Board to approve transactions that include interchange commitments only if they are reasonable and in the public interest. Any lease transaction that includes an interchange commitment would be subject to Board review when it is up for renewal.

This section would require the Board to maintain a process to allow affected persons to challenge existing interchange commitments. The Secretary of Transportation and the Attorney General would also be allowed to participate in such proceedings.

This section would allow, after a finding that an interchange commitment is found to be in violation of the law (on “the reasonableness and public interest standard”) and the rail carriers in question cannot bring the interchange commitment into compliance with this part within a reasonable period of time, the Board to require, upon application by the purchaser or tenant rail carrier, the elimination of an interchange commitment at a price not less than fair market value.

This section would make financial assistance under the Railroad Rehabilitation and Improvement Financing (RRIF) program available to the purchaser or tenant rail carrier for the purposes of buying out an interchange commitment that is eliminated by the Board. The Secretary of Transportation would also be authorized to reduce the interest payments on a direct loan. Finally, this section would authorize \$7.5 million annually for FY 2010 through FY 2014 for the Secretary of Transportation, in consultation with the Board, to make grants to a Class III railroad to assist with the credit risk premium of a direct loan or loan guarantee made under the RRIF program.

*Section 302. Bottleneck and terminal switching rates.*

This section would require a Class I rail carrier or other rail carrier, as deemed appropriate by the Board, to quote a bottleneck rate to a rail customer over which it has market dominance, including in a terminal area, provided such request is reasonable. It would permit a rail customer to challenge the reasonableness of that rate at the STB.

This section would also direct the Board, not later than one year after the date of enactment of this Act, to establish and maintain standards for determining whether a bottleneck rate established by a rail carrier is reasonable and to establish a simplified and expedited method for determining the reasonableness of challenged bottleneck rates.

This section would direct the Board, in developing the standards for a reasonable bottleneck rate, to consider rail carriers’ need to earn adequate revenues to provide and sustain consistent, efficient, and reliable transportation services and to maintain the national rail system. It would also direct the Board to include as part of a reasonable rate: (1) operating costs, including any additional labor costs, of providing the requested transportation service over the bottleneck segment; (2) maintenance costs associated with providing the requested transportation service; (3) additional capital and investment costs required to perform the requested transportation service over the bottleneck segment; (4) a reasonable return on embedded capital used for the requested transportation service over the bottleneck segment sufficient to meet the rail carrier’s cost of capital or, if such cost is not available, the rail industry cost of capital; (5) a reasonable contribution, to the extent appropriate, to that carrier’s network infrastructure costs of the non-bottleneck segment of the route offered by the incumbent rail carrier that is sufficient, along with other traffic on the segment, to maintain the non-bottleneck segment; and (6) any other contributing factors appropriate to meet the considerations above.

This section would also establish that in any proceeding in which a rail customer challenges a bottleneck rate established under this

section as unreasonable, the burden of proof that the rate is reasonable shall be on the rail carrier.

*Section 303. Terminal access.*

This section would permit the Board to require a rail carrier to make its terminal facilities available for use by another rail carrier when that carrier is found to have market dominance over the requested transportation and establish the standards for when terminal access should be required. This section would require the Board to establish the standard for reasonableness of the rate that could be charged for access.

This section would stipulate that the Board may only require such an action if the Board finds that it (1) would be practicable and would not significantly adversely affect the operations of the terminal or facility owned by such rail carrier or rail carriers otherwise entitled to use the terminal or facilities; (2) would not significantly adversely affect the network efficiency of such rail carrier or rail carriers otherwise entitled to use the terminal or facilities; (3) would not significantly impair service to other customers of such rail carrier or other rail carriers entitled to use the terminal or facilities; (4) is necessary to promote the efficient operation of the national railroad system and competitive rail service; and (5) is in the public interest.

This section would require that the rail carriers required to make facilities available or provide service under this section are responsible for establishing reasonable conditions and compensation for the use of the facilities. The compensation would be required to be paid or adequately secured before a rail carrier may begin to use the facilities of another rail carrier.

This section would direct the Board, not later than one year after the date of enactment of this Act, to establish and maintain standards for determining whether compensation is reasonable for purposes of this section and to establish a simplified and expedited method for determining the reasonableness of challenged compensation rates.

This section would require the Board to develop rate reasonableness standards according to the same specific directions required under section 302.

A rail carrier whose terminal facilities would be required to be used by another rail carrier under this section would be entitled to recover compensation from the other rail carrier for damages sustained as the result of compliance with the requirement in a civil action.

This section would also establish that in any proceeding in which a rail customer challenges compensation under this section as unreasonable, the burden of proof that the rate is reasonable shall be on the rail carrier.

*Section 304. Service.*

This section would require the Board, through regulation, to require rail carriers to publish reasonable common carrier service expectation ranges, which may include ranges for normal car cycle times, switching frequency, and other service components determined by the Board.

*Section 305. Arbitration of certain rail rate, practice, and common carrier service expectation disputes.*

This section would direct the STB to establish a binding arbitration process to resolve rail rate, practice, and common carrier service expectation complaints subject to the jurisdiction of the Board. Arbitration may be initiated by the Board only after the filing of a formal complaint or upon petition by a party at the conclusion of any informal dispute resolution that would be eligible for resolution by arbitration. A decision by the arbitrator must (1) be consistent with subtitle IV of title 49, United States Code; (2) be in writing and shall contain findings of fact and conclusions; (3) have no precedential effect in any other or subsequent arbitration dispute; and (4) be binding upon the parties. If a party appeals an arbitrator's decision to the Board, the Board may review the decision to determine if the decision exceeds the statutory authority of the Board. A decision under this section may award the payment of damages or rate prescriptive relief, but the value of the award may not exceed \$250,000 per year and the award may not cover a total time period of more than 2 years. The Board shall periodically review this limit and adjust it as necessary to reflect inflation.

*Section 306. Maximum relief in certain rate cases.*

This section would direct the Board to revise the maximum amount of rate relief available to railroad shippers in cases brought pursuant to the simplified rate dispute methods from \$1 million to \$1.5 million for the "Three-Benchmark" procedure and from \$5 million to \$10 million for the SSAC procedure. This section would also direct the Board to periodically review the amounts established under this section and revise them as appropriate.

*Section 307. Advance rate challenge.*

This section would allow the Board to consider the reasonableness of a rate quoted by a rail carrier up to 1 year before the date on which the rate is to take effect.

*Section 308. Rate review timelines.*

This section would direct the Board to comply with the following timelines for a SAC rate challenge, unless it extends them after a request from any party or in the interest of due process: (1) for discovery, 150 days after the date on which the challenge is initiated; (2) for development of the evidentiary record, 155 days after that date; (3) for submission of parties' closing briefs, 60 days after that date; (4) for a final Board decision, 180 days after the date on which the parties submit closing briefs.

*Section 309. Revenue adequacy study.*

This section would direct the Board, within 180 days after the date of enactment of the STB Act, to initiate a study to provide further guidance on how it will apply its revenue adequacy constraint. In conducting the study, the Board shall provide public notice and opportunity for comment and conduct one or more public hearings.

*Section 310. Public usage of abandoned rail properties.*

This section would clarify the STB's authority to impose conditions on the sale and lease of abandoned properties.

*Section 311. Transactions.*

This section would allow the Board to extend the limits of review of a proposed railroad consolidation, merger, and acquisition of control in order to complete the environmental review process. This section would also amend the Board's procedure for considering a proposed railroad consolidation, merger, and acquisition of control for an application that involves a transaction other than the merger or control of at least two Class I railroads to apply to one Class I railroad and at least one Class II railroad, or if it involves a transaction which the Board has determined to be of regional or national transportation significance.

*Section 312. Considerations in consolidations, mergers, and acquisitions.*

This section would revise the Board's considerations for approval of a proposed transaction of at least two Class I railroads. This section would also clarify that the Board is permitted to take into account the potential effects of the transaction on (1) public health, safety, and the environment; and (2) intercity rail passenger transportation and commuter rail passenger transportation.

*Section 313. Railroad development.*

This section would limit the "right of first refusal" for a railroad required to sell a rail line under section 10907 for five years after the date of sale.

*Section 314. Regulatory reform review.*

This section would direct the Comptroller General of the United States (GAO) to undertake a review of the regulatory changes made by this Act. The review will include: (1) a review of the Board's progress in implementing this Act; (2) an assessment of the impact on the rail transportation system of the regulatory changes made by this Act; and (3) an analysis of the impact on railroad operations, rates, competition, service, revenues, maintenance, and investment resulting from the implementation of sections 302 and 303 of this Act. This section would also direct the GAO to solicit input from the railroads, railroad shippers, railroad non-profit employee labor organizations, the Federal Railroad Administration, and other entities, as appropriate. This section would direct the GAO to complete the report by December 31, 2013.

## TITLE IV—TECHNICAL CORRECTIONS

*Section 401. Technical corrections to Public Law 110-432.*

This section would make technical corrections to the Rail Safety Improvement Act of 2008 and the Passenger Rail Investment and Improvement Act of 2008.

## TITLE V—MISCELLANEOUS

*Section 501. Pipeline investigative authority.*

This section would give the Board authority to investigate pipeline complaints on its own initiative or upon complaint.

*Section 502. Carbon dioxide pipelines.*

This section would clarify the Board’s jurisdiction over the common carrier obligation for carbon dioxide pipelines.

This section would direct the GAO to report within 18 months after enactment of this Act to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure on the Federal and State regulatory framework to support the development of pipelines for the purposes of capture, transportation, and sequestration of carbon dioxide. The study shall examine the Federal permitting process for new carbon dioxide pipelines, the regulatory process for access, siting, eminent domain, and rate regulation.

*Section 503. Effective dates.*

This section would state that all sections of this bill, except section 214, shall take effect on the date of enactment. Section 214 would take effect two years after the date of enactment of this Act.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

## TITLE 49, UNITED STATES CODE

## SUBTITLE I—DEPARTMENT OF TRANSPORTATION

## CHAPTER 7—SURFACE TRANSPORTATION BOARD

## SUBCHAPTER I—ESTABLISHMENT

**§ 701. Establishment of Board**

[(a) ESTABLISHMENT.—There is hereby established within the Department of Transportation the Surface Transportation Board.]

(a) *ESTABLISHMENT OF BOARD.*—*The Surface Transportation Board is an independent establishment of the United States Government.*

(b) MEMBERSHIP.—(1) The Board shall consist of [3 members,] 5 members, to be appointed by the President, by and with the advice and consent of the Senate. Not more than [2 members] 3 members may be appointed from the same political party.

[(2) At any given time, at least 2 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation or transportation regulation, and at least one member shall be an individual with professional or business experience (including agriculture) in the private sector.]

(2) *At any given time, at least 3 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation, transportation regulation, or economic regulation, and at least 2 members shall be individuals with professional or business experience (including agriculture or other rail customers) in the private sector.*

(3) The term of each member of the Board shall be 5 years and shall begin when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and ~~qualified, but for a period not to exceed one year.~~ *qualified*. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

~~[(4) On January 1, 1996, the members of the Interstate Commerce Commission serving unexpired terms on December 29, 1995, shall become members of the Board, to serve for a period of time equal to the remainder of the term for which they were originally appointed to the Interstate Commerce Commission. Any member of the Interstate Commerce Commission whose term expires on December 31, 1995, shall become a member of the Board, subject to paragraph (3).]~~

~~[(5) (4) No individual may serve as a member of the Board for more than 2 terms. [In the case of an individual who becomes a member of the Board pursuant to paragraph (4), or an individual] An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, such individual may not be appointed for more than one additional term.~~

~~[(6) (5) A member of the Board may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.~~

~~[(7) (6) A vacancy in the membership of the Board does not impair the right of the remaining members to exercise all of the powers of the Board. The Board may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.~~

(c) CHAIRMAN.—(1) There shall be at the head of the Board a Chairman, who shall be designated by the President from among the members of the Board. The Chairman shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5.

(2) Subject to the general policies, decisions, findings, and determinations of the Board, the Chairman shall be responsible for administering the Board. The Chairman may delegate the powers granted under this paragraph to an officer, employee, or office of the Board. The Chairman shall—

(A) appoint and supervise, other than regular and full-time employees in the immediate offices of another member, the officers and employees of the Board, including attorneys to provide legal aid and service to the Board and its members, and to represent the Board in any case in court;

(B) appoint the heads of offices with the approval of the Board;

(C) distribute Board business among officers and employees and offices of the Board;

(D) prepare requests for appropriations for the Board and submit those requests to the President and Congress with the prior approval of the Board; and

(E) supervise the expenditure of funds allocated by the Board for major programs and purposes.

**§ 703. Administrative provisions**

[(a) EXECUTIVE REORGANIZATION.—Chapter 9 of title 5, United States Code, shall apply to the Board in the same manner as it does to an independent regulatory agency, and the Board shall be an establishment of the United States Government.]

[(b)] (a) OPEN MEETINGS.—For purposes of section 552b of title 5, United States Code, the Board shall be deemed to be an agency.

[(c) INDEPENDENCE.—In the performance of their functions, the members, employees, and other personnel of the Board shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department of Transportation.]

[(d)] (b) REPRESENTATION BY ATTORNEYS.—Attorneys designated by the Chairman of the Board may appear for, and represent the Board in, any civil action brought in connection with any function carried out by the Board pursuant to this chapter or subtitle IV or as otherwise authorized by law.

[(e)] (c) ADMISSION TO PRACTICE.—Subject to section 500 of title 5, the Board may regulate the admission of individuals to practice before it and may impose a reasonable admission fee.

[(f) BUDGET REQUESTS.—In each annual request for appropriations by the President, the Secretary of Transportation shall identify the portion thereof intended for the support of the Board and include a statement by the Board—

[(1) showing the amount requested by the Board in its budgetary presentation to the Secretary and the Office of Management and Budget; and

[(2) an assessment of the budgetary needs of the Board.

[(g) DIRECT TRANSMITTAL TO CONGRESS.—The Board shall transmit to Congress copies of budget estimates, requests, and information (including personnel needs), legislative recommendations, prepared testimony for congressional hearings, and comments on legislation at the same time they are sent to the Secretary of Transportation. An officer of an agency may not impose conditions on or impair communications by the Board with Congress, or a committee or Member of Congress, about the information.]

(d) SUBMISSIONS AND TRANSMITTALS.—*Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. No officer or agency of the United States shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.*

**【§ 704. Annual report】****§704. Reports**

(a) ANNUAL REPORT.—The Board shall annually transmit to the Congress a report on its activities.

(b) COMPLAINTS.—

(1) *The Board shall establish and maintain a database of complaints received by the Board.*

(2) *The Board shall post a quarterly report of formal and informal service complaints received by the Board during the previous quarter that shall include—*

(A) *a list of the type of each complaint;*

(B) *the geographic region of the complaint; and*

(C) *the resolution of the complaint, if appropriate.*

(3) *The quarterly report may identify a complainant that submitted an informal complaint only upon the written consent of the complainant.*

(4) *The report shall be posted on the Board’s public website.*

**§ 705. Authorization of appropriations**

There are authorized to be appropriated for the activities of the Board—

【(1) \$8,421,000 for fiscal year 1996;

【(2) \$12,000,000 for fiscal year 1997; and

【(3) \$12,000,000 for fiscal year 1998.】

(1) *\$40,370,000 for fiscal year 2010;*

(2) *\$47,518,000 for fiscal year 2011;*

(3) *\$40,834,000 for fiscal year 2012;*

(4) *\$44,315,000 for fiscal year 2013; and*

(5) *\$47,971,000 for fiscal year 2014.*

\* \* \* \* \*

## SUBCHAPTER II—ADMINISTRATIVE

**§ 723. Service of notice in Board proceedings**

(a) DESIGNATION OF AGENT.—A carrier providing transportation subject to the jurisdiction of the Board under subtitle IV shall designate an agent **【in the District of Columbia,】** on whom service of notices in a proceeding before, and of actions of, the Board may be made.

(b) FILING AND CHANGING DESIGNATIONS.—A designation under subsection (a) shall be in writing and filed with the Board. The designation may be changed at any time in the same manner as originally made.

(c) SERVICE OF NOTICE.—Except as otherwise provided, notices of the Board shall be served on its designated agent at the office or usual place of residence **【in the District of Columbia】** of that agent. A notice of action of the Board shall be served immediately on the agent or in another manner provided by law. If that carrier does not have a designated agent, service may be made by posting the notice in the office of the Board.

(d) SPECIAL RULE FOR RAIL CARRIERS.—In a proceeding involving the lawfulness of classifications, rates, or practices of a rail carrier that has not designated an agent under this section, service of no-

tice of the Board on an attorney in fact for the carrier constitutes service of notice on the carrier.

**§ 724. Service of process in court proceedings**

(a) DESIGNATION OF AGENT.—A carrier providing transportation subject to the jurisdiction of the Board under subtitle IV shall designate an agent **[in the District of Columbia]** on whom service of process in an action before a district court may be made. Except as otherwise provided, process in an action before a district court shall be served on the designated agent of that carrier at the office or usual place of residence **[in the District of Columbia]** of that agent. If the carrier does not have a designated agent, service may be made by posting the notice in the office of the Board.

(b) CHANGING DESIGNATION.—A designation under this section may be changed at any time in the same manner as originally made.

**§ 725. Administrative support**

**[The Secretary of Transportation shall provide administrative support for the Board.]**

**§ 725. Filing fees**

*The Board may not require a party to pay a filing fee to bring a formal complaint before the Board that is greater than the fee provided by section 1914 of title 28 for bringing a civil action in a district court of the United States.*

**§ 726. Railroad-Shipper Transportation Advisory Council**

(a) ESTABLISHMENT; MEMBERSHIP.—There is established the Railroad-Shipper Transportation Advisory Council (in this section referred to as the “Council”) to be composed of 19 members, of which 15 members shall be appointed by the Chairman of the Board, after recommendation from rail carriers and shippers, within 60 days after December 29, 1995. The members of the Council shall be appointed as follows:

(1) The members of the Council shall be appointed from among citizens of the United States who are not regular full-time employees of the United States and shall be selected for appointment so as to provide as nearly as practicable a broad representation of the various segments of the railroad and rail shipper industries.

(2) Nine of the members shall be appointed from senior executive officers of organizations engaged in the railroad and rail shipping industries, which 9 members shall be the voting members of the Council. Council action and Council positions shall be determined by a majority vote of the members present. A majority of such voting members shall constitute a quorum. Of such 9 voting members—

(A) at least 4 shall be representative of small shippers (as determined by the Chairman); **[and]**

(B) at least 4 shall be representative of Class II or III **[railroads.]** *railroads; and*

(C) *the ninth voting member shall be a member-at-large, and may be a representative of rail labor, a State or local*

*transportation agency, an academic institution, or other relevant entity selected by the Chairman.*

(3) The remaining 6 members of the Council shall serve in a nonvoting advisory capacity only, but shall be entitled to participate in Council deliberations. Of the remaining members—

(A) 3 shall be representative of Class I railroads; and

(B) 3 shall be representative of large shipper organizations (as determined by the Chairman).

(4) The Secretary of Transportation and the members of the Board shall serve as ex officio, nonvoting members of the Council. [The Council shall not be subject to the Federal Advisory Committee Act.] A list of the members appointed to the Council shall be forwarded to the Chairmen and ranking members of the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(5) Each ex officio member of the Council may designate an alternate, who shall serve as a member of the Council whenever the ex officio member is unable to attend a meeting of the Council. Any such designated alternate shall be selected from individuals who exercise significant decision-making authority in the Federal agency involved.

(b) TERM OF OFFICE.—The members of the Council shall be appointed for a term of office of 3 years, except that of the members first appointed—

(1) 5 members shall be appointed for terms of 1 year; and

(2) 5 members shall be appointed for terms of 2 years,

as designated by the Chairman at the time of appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office. Vacancies on the Council shall be filled in the same manner in which the original appointments were made. No member of the Council shall be eligible to serve in excess of two consecutive terms.

(c) ELECTION AND DUTIES OF OFFICERS.—The Council Chairman and Vice Chairman and other appropriate officers of the Council shall be elected by and from the voting members of the Council. The Council Chairman shall serve as the Council's executive officer and shall direct the administration of the Council, assign officer and committee duties, and shall be responsible for issuing and communicating the reports, policy positions and statements of the Council. In the event that the Council Chairman is unable to serve, the Vice Chairman shall act as Council Chairman.

(d) EXPENSES.—(1) The members of the Council shall receive no compensation for their services as such, but upon request by the Council Chairman, based on a showing of significant economic burden, the Secretary of Transportation or the Chairman of the Board, to the extent provided in advance in appropriation Acts, may provide reasonable and necessary travel expenses for such individual Council members from Department or Board funding sources in order to foster balanced representation on the Council.

(2) Upon request by the Council Chairman, the Secretary or Chairman of the Board, to the extent provided in advance in appro-

priations Acts, may pay the reasonable and necessary expenses incurred by the Council in connection with the coordination of Council activities, announcement and reporting of meetings, and preparation of such Council documents as are required or permitted by this section.

(3) The Council may solicit and use private funding for its activities, subject to this subsection.

(4) Prior to making any Federal funding requests, the Council Chairman shall undertake best efforts to fund such activities privately unless the Council Chairman determines that such private funding would create a conflict of interest, or the appearance thereof, or is otherwise impractical. The Council Chairman shall not request funding from any Federal agency without providing written justification as to why private funding would create any such conflict or appearance, or is otherwise impractical.

(5) To enable the Council to carry out its functions—

(A) the Council Chairman may request directly from any Federal agency such personnel, information, services, or facilities, on a compensated or uncompensated basis, as the Council Chairman determines necessary to carry out the functions of the Council;

(B) each Federal agency may, in its discretion, furnish the Council with such information, services, and facilities as the Council Chairman may request to the extent permitted by law and within the limits of available funds; and

(C) each Federal agency may, in its discretion, detail to temporary duty with the Council, such personnel as the Council Chairman may request for carrying out the functions of the Council, each such detail to be without loss of seniority, pay, or other employee status.

(e) MEETINGS.—The Council shall meet at least semi-annually and shall hold other meetings at the call of the Council Chairman. Appropriate Federal facilities, where available, may be used for such meetings. Whenever the Council, or a committee of the Council, considers matters that affect the jurisdictional interests of Federal agencies that are not represented on the Council, the Council Chairman may invite the heads of such agencies, or their designees, to participate in the deliberations of the Council.

(f) FUNCTIONS AND DUTIES; ANNUAL REPORT.—(1) The Council shall advise the Secretary, the Chairman, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives with respect to rail transportation policy issues it considers significant, with particular attention to issues of importance to small shippers and small railroads, including car supply, rates, competition, and effective procedures for addressing legitimate shipper and other claims.

(2) To the extent the Council addresses specific grain car issues, it shall coordinate such activities with the National Grain Car Council. The Secretary and Chairman shall cooperate with the Council to provide research, technical and other reasonable support in developing any reports and policy statements required or authorized by this subsection.

(3) The Council shall endeavor to develop within the private sector mechanisms to prevent, or identify and effectively address, ob-

stacles to the most effective and efficient transportation system practicable.

(4) **【**The Council shall prepare an annual report concerning its activities and the results of Council efforts to resolve industry issues, and propose whatever regulatory or legislative relief it considers appropriate.**】** *The Council shall prepare an annual report concerning its activities and the results of Council efforts to resolve railroad and shipper issues and shall include in the report at least one recommendation to the Board stemming from the Council's activities and any proposal regarding regulations or legislation it considers appropriate.* The Council shall include in the annual report such recommendations as it considers appropriate with respect to the performance of the Secretary and Chairman under this chapter, and with respect to the operation and effectiveness of meetings and industry developments relating to the Council's efforts, and such other information as it considers appropriate. Such annual reports shall be reviewed by the Secretary and Chairman, and shall include the Secretary's and Chairman's views or comments relating to—

- (A) the accuracy of information therein;
- (B) Council efforts and reasonableness of Council positions and actions; and
- (C) any other aspects of the Council's work as they may consider appropriate.

The Council may prepare other reports or develop policy statements as the Council considers appropriate. An annual report shall be submitted for each fiscal year and shall be submitted to the Secretary and Chairman within 90 days after the end of the fiscal year. Other such reports and statements may be submitted as the Council considers appropriate.

#### **§ 727. Authority of the Inspector General**

(a) *IN GENERAL.—The Inspector General of the Department of Transportation, in accordance with the mission of the Inspector General to prevent and detect fraud and abuse, shall have authority to review only the financial management, property management, and business operations of the Surface Transportation Board, including internal accounting and administrative control systems, to determine compliance with applicable Federal laws, rules, and regulations.*

(b) *DUTIES.—In carrying out this section, the Inspector General shall—*

- (1) *keep the Chairman of the Board and the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure fully and currently informed about problems relating to administration of the internal accounting and administrative control systems of the Board;*
- (2) *issue findings and recommendations for actions to address such problems; and*
- (3) *report periodically to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on any progress made in implementing actions to address such problems.*

(c) *ACCESS TO INFORMATION.*—*In carrying out this section, the Inspector General may exercise authorities granted to the Inspector General under subsections (a) and (b) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).*

(d) *AUTHORIZATIONS OF APPROPRIATIONS.*—

(1) *FUNDING.*—*There are authorized to be appropriated to the Secretary of Transportation for use by the Inspector General of the Department of Transportation such sums as may be necessary to cover expenses associated with activities pursuant to the authority exercised under this section.*

(2) *REIMBURSABLE AGREEMENT.*—*In the absence of an appropriation under this subsection for an expense referred to in paragraph (1), the Inspector General and the Board shall have a reimbursable agreement to cover such expense.*

**§ 728. Office of Public Assistance, Governmental Affairs, and Compliance**

(a) *IN GENERAL.*—*The Board shall maintain an Office of Public Assistance, Governmental Affairs, and Compliance with authority over public assistance and outreach, governmental affairs, and compliance. The Office shall—*

(1) *mediate disputes between affected parties;*

(2) *monitor rail carrier operations subject to the Board's jurisdiction to ensure that such operations are in compliance with each rail carrier's statutory and regulatory responsibilities;*

(3) *act as the Board's point of contact with government, public and private parties;*

(4) *facilitate communication among stakeholders subject to the Board's jurisdiction; and*

(5) *carry out other duties and powers prescribed by the Board.*

(b) *CUSTOMER ADVOCATE.*—*The Board shall appoint a rail customer advocate who shall report directly to the Board. The rail customer advocate—*

(1) *shall review or investigate rail customer inquiries and complaints;*

(2) *shall serve as a technical advisor to a rail customer in any appropriate proceeding of the Board;*

(3) *shall advise the Board in certain matters, as appropriate;*

(4) *shall review information regarding the cost and efficiency of rail transportation;*

(5) *shall carry out other duties and powers prescribed by the Board; and*

(6) *may participate as a party in a proceeding of the Board, as appropriate.*

(c) *OMBUDSMAN.*—*The Board may designate an employee of the Board to serve as an ombudsman of the Board in regional or local matters of Board interest, including matters related to railroad service, mergers and acquisitions, or any other matter designated by the Board.*

**[§ 727. Definitions]**

**§ 729. Definitions**

All terms used in this chapter that are defined in subtitle IV shall have the meaning given those terms in that subtitle.

\* \* \* \* \*

CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD

SUBCHAPTER III—AUTHORITY

\* \* \* \* \*

**§ 1139. Assistance to families of passengers involved in rail passenger accidents**

(a) **IN GENERAL.**—As soon as practicable after being notified of a rail passenger accident within the United States involving a rail passenger carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall—

(1) designate and publicize the name and **[phone number]** *telephone number* of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the rail passenger carrier and the families; and

(2) designate an independent nonprofit organization, with experience in disasters and **[post trauma]** *post-trauma* communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) **RESPONSIBILITIES OF THE BOARD.**—The Board shall have primary Federal responsibility for—

(1) facilitating the recovery and identification of fatally injured passengers involved in an accident described in subsection (a); and

(2) communicating with the families of passengers involved in the accident as to the roles, with respect to the accident and the post-accident activities, of—

(A) the organization designated for an accident under subsection (a)(2);

(B) Government agencies; and

(C) the rail passenger carrier involved.

(c) **RESPONSIBILITIES OF DESIGNATED ORGANIZATION.**—The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

(1) To provide mental health and counseling services, in coordination with the disaster response team of the rail passenger carrier involved.

(2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the

accident under subsection (a)(1), determines that further assistance is no longer needed.

(4) To arrange a suitable memorial service, in consultation with the families.

(d) PASSENGER LISTS.—

(1) REQUESTS FOR PASSENGER LISTS.—

(A) REQUESTS BY DIRECTOR OF FAMILY SUPPORT SERVICES.—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the rail passenger carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the rail passenger carrier's train involved in the accident. A rail passenger carrier shall use reasonable efforts, with respect to its unreserved trains, and passengers not holding reservations on its other trains, to ascertain the names of passengers aboard a train involved in an accident.

(B) REQUESTS BY DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) may request from the rail passenger carrier involved in the accident a list described in subparagraph (A).

(2) USE OF INFORMATION.—Except as provided in subsection (k), the director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

(e) CONTINUING RESPONSIBILITIES OF THE BOARD.—In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident—

(1) are briefed, prior to any public briefing, about the accident and any other findings from the investigation; and

(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

(f) USE OF RAIL PASSENGER CARRIER RESOURCES.—To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the rail passenger carrier involved in the accident to facilitate the reasonable use of the resources of the carrier.

(g) PROHIBITED ACTIONS.—

(1) ACTIONS TO IMPEDE THE BOARD.—No person (including a State or political subdivision thereof) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

(2) UNSOLICITED COMMUNICATIONS.—No unsolicited communication concerning a potential action or settlement offer for personal injury or wrongful death may be made by an attorney

(including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation, including the railroad carrier or rail passenger carrier, to an individual (other than an employee of the rail passenger carrier) injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.

(3) PROHIBITION ON ACTIONS TO PREVENT MENTAL HEALTH AND COUNSELING SERVICES.—No State or political subdivision thereof may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

(h) DEFINITIONS.—In this section:

(1) RAIL PASSENGER ACCIDENT.—The term “rail passenger accident” means any rail passenger disaster resulting in a major loss of life occurring in the provision of—

- (A) **interstate** intercity rail passenger transportation (as such term is defined in section 24102); or
  - (B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation,
- regardless of its cause or suspected cause.

(2) RAIL PASSENGER CARRIER.—The term “rail passenger carrier” means a rail carrier providing—

- (A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or
- (B) **interstate or intrastate** high-speed rail (as such term is defined in section **[26105]** *26106(b)(4)*) transportation,

except that such term does not include a tourist, historic, scenic, or excursion rail carrier.

(3) PASSENGER.—The term “passenger” includes—

- (A) an employee of a rail passenger carrier aboard a train;
- (B) any other person aboard the train without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the rail transportation; and
- (C) any other person injured or killed in a rail passenger accident, as determined appropriate by the Board.

(i) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.

(j) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—

(1) GENERAL RULE.—This section **[(other than subsection (g))]** *(other than subsections (g) and (k))* shall not apply to a **[railroad passenger accident]** *rail passenger accident* if the Board has relinquished investigative priority under section

1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

(2) BOARD ASSISTANCE.—If this section does not apply to a **railroad passenger accident** *rail passenger accident* because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.

(k) SAVINGS CLAUSE.—Nothing in this section shall be construed to abridge the authority of the Board or the Secretary of Transportation to investigate the causes or circumstances of any rail accident, including development of information regarding the nature of injuries sustained and the manner in which they were sustained for the purposes of determining compliance with existing laws and regulations or for identifying means of preventing similar injuries in the future, or both.

#### SUBTITLE IV—INTERSTATE TRANSPORTATION

##### PART A—RAIL

### **§ 10101. Rail transportation policy**

In regulating the railroad industry, it is the policy of the United States Government—

[(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;

[(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

[(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;

[(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

[(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;

[(6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;

[(7) to reduce regulatory barriers to entry into and exit from the industry;

[(8) to operate transportation facilities and equipment without detriment to the public health and safety;

[(9) to encourage honest and efficient management of railroads;

[(10) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability;

【(11) to encourage fair wages and safe and suitable working conditions in the railroad industry;

【(12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;

【(13) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information;

【(14) to encourage and promote energy conservation; and

【(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.】

#### § 10101. *Rail transportation policy*

*In regulating the railroad industry, it is the policy of the United States Government to balance the following objectives:*

(1) *To promote a safe and efficient rail transportation system.*

(2) *To allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail.*

(3) *To protect rail shippers and to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues that exceed the amount necessary to maintain and expand the rail system and to attract capital.*

(4) *To foster the continuation and expansion of a sound rail transportation system while also preserving effective competition among rail carriers and with other modes to meet the needs of the public and National defense.*

(5) *To ensure that rail carriers can earn adequate revenues to provide and sustain consistent, efficient, and reliable transportation services and to maintain and expand rail infrastructure, equipment, and technology.*

(6) *To prohibit predatory pricing and practices, avoid undue concentrations of market power, and to prohibit unlawful discrimination.*

(7) *To provide fair and expeditious regulatory decisions and ensure that the regulatory process is accessible and cost-effective for all affected parties.*

(8) *To advance the environmental and energy efficiency advantages of rail transportation and encourage energy conservation and environmentally-responsible practices among rail carriers.*

(9) *To foster intercity and commuter rail passenger service.*

(10) *To encourage fair wages and safe and suitable working conditions in the railroad industry.*

#### § 10102. **Definitions**

In this part—

(1) “Board” means the Surface Transportation Board;

(2) “car service” includes (A) the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, other vehicles, and special types of equipment used in the transportation of property by a rail carrier, and (B) the supply of trains by a rail carrier;

(3) “control”, when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means;

(4) “interchange commitment” means a contractual agreement between two or more rail carriers subject to the jurisdiction of the Board reached as part of a sale or lease of a rail line for which the approval of the Board is required under chapter 109 or 113 of this part, which limits the incentive or the ability of the purchaser or tenant rail carrier to interchange traffic with a rail carrier other than the seller or lessor rail carrier;

[(4)] (5) “person”, in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person;

[(5)] (6) “rail carrier” means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation;

[(6)] (7) “railroad” includes—

(A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad;

(B) the road used by a rail carrier and owned by it or operated under an agreement; and

(C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation;

[(7)] (8) “rate” means a rate or charge for transportation;

[(8)] (9) “State” means a State of the United States and the District of Columbia;

[(9)] (10) “transportation” includes—

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property; and

[(10)] (11) “United States” means the States of the United States and the District of Columbia.

#### CHAPTER 105—JURISDICTION

### § 10502. Authority to exempt rail carrier transportation

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Board under this part, [the Board, to the maximum extent consistent with this part, shall] *the Board shall* exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part—

(1) is not necessary to carry out the transportation policy of section 10101 of this title; and

(2) either—

(A) the transaction or service is of limited scope; or  
 (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

(b) The Board may, where appropriate, begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party. The Board shall, within 90 days after receipt of any such application, determine whether to begin an appropriate proceeding. If the Board decides not to begin a class exemption proceeding, the reasons for the decision shall be published in the Federal Register. Any proceeding begun as a result of an application under this subsection shall be completed within 9 months after it is begun.

(c) The Board may specify the period of time during which an exemption granted under this section is effective.

(d) The Board may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 of this [title.] *title or to protect shippers from the abuse of market power.* The Board shall, within 90 days after receipt of a request for revocation under this subsection, determine whether to begin an appropriate proceeding. If the Board decides not to begin a proceeding to revoke a class exemption, the reasons for the decision shall be published in the Federal Register. Any proceeding begun as a result of a request under this subsection shall be completed within 9 months after it is begun.

(e) No exemption order issued pursuant to this section shall operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with the provisions of section 11706 of this title. Nothing in this subsection or section 11706 of this title shall prevent rail carriers from offering alternative terms nor give the Board the authority to require any specific level of rates or services based upon the provisions of section 11706 of this title.

(f) The Board may exercise its authority under this section to exempt transportation that is provided by a rail carrier as part of a continuous intermodal movement.

(g) The Board may not exercise its authority under this section to relieve a rail carrier of its obligation to protect the interests of employees as required by this part.

#### CHAPTER 107—RATES

##### SUBCHAPTER I—GENERAL AUTHORITY

#### **§ 10701. Standards for rates, classifications, through routes, rules, and practices**

(a) A through route established by a rail carrier must be reasonable. Divisions of joint rates by rail carriers must be made without unreasonable discrimination against a participating carrier and must be reasonable.

(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may not discriminate in its rates against a connecting line of another rail carrier providing transportation subject to the jurisdiction of the Board under this part or un-

reasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.

(c) Except as provided in subsection (d) of this section and unless a rate is prohibited by a provision of this part, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may establish any rate for transportation or other service provided by the rail carrier.

(d)(1) If the Board determines, under section 10707 of this title, that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable.

(2) In determining whether a rate established by a rail carrier is reasonable for purposes of this section, the Board shall give due consideration to—

(A) the amount of traffic which is transported at revenues which do not contribute to going concern value and the efforts made to minimize such traffic;

(B) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

(C) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues,

recognizing the policy of this part that rail carriers shall earn adequate revenues, as established by the Board under section 10704(a)(2) of this title.

[(3) The Board shall, within one year after January 1, 1996, complete the pending Interstate Commerce Commission non-coal rate guidelines proceeding to establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.]

*(3) The Board shall maintain a simplified and expedited method for determining the reasonableness of challenged rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.*

\* \* \* \* \*

**§ 10704. Authority and criteria: rates, classifications, rules, and practices prescribed by Board**

(a)(1) When the Board, after a full hearing, decides that a rate charged or collected by a rail carrier for transportation subject to the jurisdiction of the Board under this part, or that a classification, rule, or practice of that carrier, does or will violate this part, the Board may prescribe the maximum rate, classification, rule, or practice to be followed. The Board may order the carrier to stop the violation. When a rate, classification, rule, or practice is prescribed under this subsection, the affected carrier may not publish, charge, or collect a different rate and shall adopt the classification and observe the rule or practice prescribed by the Board.

(2) The Board shall maintain and revise as necessary standards and procedures for establishing revenue levels for rail carriers providing transportation subject to its jurisdiction under this part that are adequate, under honest, economical, and efficient management,

to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business. The Board shall make an adequate and continuing effort to assist those carriers in attaining revenue levels prescribed under this paragraph. Revenue levels established under this paragraph should—

(A) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation; and

(B) attract and retain capital in amounts adequate to provide a sound transportation system in the United States.

(3) On the basis of the standards and procedures described in paragraph (2), the Board shall annually determine which rail carriers are earning adequate revenues.

(b) **[The Board may begin a proceeding under this section only on complaint.]** *The Board may begin a proceeding under subsection (a)(1) on its own initiative or upon complaint, except that a proceeding to determine the reasonableness of the level of a rate charged by a carrier may only be initiated upon complaint.* A complaint under subsection (a) of this section must be made under section 11701 of this title, but the proceeding may also be in extension of a complaint pending before the Board.

(c) In a proceeding to challenge the reasonableness of a rate, the Board shall make its determination as to the reasonableness of the challenged rate—

(1) within 9 months after the close of the administrative record if the determination is based upon a stand-alone cost presentation; or

(2) within 6 months after the close of the administrative record if the determination is based upon the methodology adopted by the Board pursuant to section 10701(d)(3).

(d) Within 9 months after January 1, 1996, the Board shall establish procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates. The procedures shall include appropriate measures for avoiding delay in the discovery and evidentiary phases of such proceedings and exemption or revocation proceedings, including appropriate sanctions for such delay, and for ensuring prompt disposition of motions and interlocutory administrative appeals.

**§ 10705. Authority: through routes, joint classifications, rates, and divisions prescribed by Board**

(a)(1) The Board may, and shall when it considers it desirable in the public interest, prescribe through routes, joint classifications, joint rates, the division of joint rates, and the conditions under which those routes must be operated, for a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

(2) The Board may require a rail carrier to include in a through route substantially less than the entire length of its railroad and any intermediate railroad operated with it under common management or control if that intermediate railroad lies between the terminals of the through route only when—

(A) required under section 10710, 10741, 10742, or 11102 of this title;

(B) inclusion of those lines would make the through route unreasonably long when compared with a practicable alternative through route that could be established; or

(C) the Board decides that the proposed through route is needed to provide adequate, and more efficient or economic, transportation.

The Board shall give reasonable preference, subject to this subsection, to the rail carrier originating the traffic when prescribing through routes.

(b) The Board shall prescribe the division of joint rates to be received by a rail carrier providing transportation subject to its jurisdiction under this part when it decides that a division of joint rates established by the participating carriers under section 10703 of this title, or under a decision of the Board under subsection (a) of this section, does or will violate section 10701 of this title.

(c) If a division of a joint rate prescribed under a decision of the Board is later found to violate section 10701 of this title, the Board may decide what division would have been reasonable and order adjustment to be made retroactive to the date the complaint was filed, the date the order for an investigation was made, or a later date that the Board decides is justified. The Board may make a decision under this subsection effective as part of its original decision.

**§ 10706. Rate agreements: exemption from antitrust laws**

[(a)(1) In this subsection—

[(A) the term “affiliate” means a person controlling, controlled by, or under common control or ownership with another person and “ownership” refers to equity holdings in a business entity of at least 5 percent;

[(B) the term “single-line rate” refers to a rate or allowance proposed by a single rail carrier that is applicable only over its line and for which the transportation (exclusive of terminal services by switching, drayage or other terminal carriers or agencies) can be provided by that carrier; and

[(C) the term “practicably participates in the movement” shall have such meaning as the Board shall by regulation prescribe.

[(2)(A) A rail carrier providing transportation subject to the jurisdiction of the Board under this part that is a party to an agreement of at least 2 rail carriers that relates to rates (including charges between rail carriers and compensation paid or received for the use of facilities and equipment), classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, publication, or establishment of them, shall apply to the Board for approval of that agreement under this subsection. The Board shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy of section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of its approval. If the Board approves the agreement, it may be made and carried out under its terms and under the conditions required by the Board, and the Sherman Act (15 U.S.C. 1, et seq.), the Clayton Act (15 U.S.C. 12, et seq.), the

Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a) do not apply to parties and other persons with respect to making or carrying out the agreement. However, the Board may not approve or continue approval of an agreement when the conditions required by it are not met or if it does not receive a verified statement under subparagraph (B) of this paragraph.

[(B) The Board may approve an agreement under subparagraph (A) of this paragraph only when the rail carriers applying for approval file a verified statement with the Board. Each statement must specify for each rail carrier that is a party to the agreement—

[(i) the name of the carrier;

[(ii) the mailing address and telephone number of its headquarter's office; and

[(iii) the names of each of its affiliates and the names, addresses, and affiliates of each of its officers and directors and of each person, together with an affiliate, owning or controlling any debt, equity, or security interest in it having a value of at least \$1,000,000.

[(3)(A) An organization established or continued under an agreement approved under this subsection shall make a final disposition of a rule or rate docketed with it by the 120th day after the proposal is docketed. Such an organization may not—

[(i) permit a rail carrier to discuss, to participate in agreements related to, or to vote on single-line rates proposed by another rail carrier, except that for purposes of general rate increases and broad changes in rates, classifications, rules, and practices only, if the Board finds at any time that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part;

[(ii) permit a rail carrier to discuss, to participate in agreements related to, or to vote on rates related to a particular interline movement unless that rail carrier practicably participates in the movement; or

[(iii) if there are interline movements over two or more routes between the same end points, permit a carrier to discuss, to participate in agreements related to, or to vote on rates except with a carrier which forms part of a particular single route. If the Board finds at any time that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.

[(B)(i) In any proceeding in which a party alleges that a rail carrier voted or agreed on a rate or allowance in violation of this subsection, that party has the burden of showing that the vote or agreement occurred. A showing of parallel behavior does not satisfy that burden by itself.

[(ii) In any proceeding in which it is alleged that a carrier was a party to an agreement, conspiracy, or combination in violation of a Federal law cited in subsection (a)(2)(A) of this section or of any similar State law, proof of an agreement, conspiracy, or combination may not be inferred from evidence that two or more rail carriers acted together with respect to an interline rate or related matter and that a party to such action took similar action with respect to a rate or related matter on another route or traffic. In any

proceeding in which such a violation is alleged, evidence of a discussion or agreement between or among such rail carrier and one or more other rail carriers, or of any rate or other action resulting from such discussion or agreement, shall not be admissible if the discussion or agreement—

[(I) was in accordance with an agreement approved under paragraph (2) of this subsection; or

[(II) concerned an interline movement of the rail carrier, and the discussion or agreement would not, considered by itself, violate the laws referred to in the first sentence of this clause.

In any proceeding before a jury, the court shall determine whether the requirements of subclause (I) or (II) are satisfied before allowing the introduction of any such evidence.

[(C) An organization described in subparagraph (A) of this paragraph shall provide that transcripts or sound recordings be made of all meetings, that records of votes be made, and that such transcripts or recordings and voting records be submitted to the Board and made available to other Federal agencies in connection with their statutory responsibilities over rate bureaus, except that such material shall be kept confidential and shall not be subject to disclosure under section 552 of title 5, United States Code.

[(4) Notwithstanding any other provision of this subsection, one or more rail carriers may enter into an agreement, without obtaining prior Board approval, that provides solely for compilation, publication, and other distribution of rates in effect or to become effective. The Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a) shall not apply to parties and other persons with respect to making or carrying out such agreement. However, the Board may, upon application or on its own initiative, investigate whether the parties to such an agreement have exceeded its scope, and upon a finding that they have, the Board may issue such orders as are necessary, including an order dissolving the agreement, to ensure that actions taken pursuant to the agreement are limited as provided in this paragraph.

[(5)(A) Whenever two or more shippers enter into an agreement to discuss among themselves that relates to the amount of compensation such shippers propose to be paid by rail carriers providing transportation subject to the jurisdiction of the Board under this part, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Board for approval of that agreement under this paragraph. The Board shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy set forth in section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Board approves the agreement, it may be made and carried out under its terms and under the terms required by the Board, and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement. The Board shall approve or disapprove an agreement under

this paragraph within one year after the date application for approval of such agreement is made.

[(B) If the Board approves an agreement described in subparagraph (A) of this paragraph and the shippers entering into such agreement and the rail carriers proposing to use rolling stock owned or leased by such shippers, under payment by such carriers or under a published allowance, are unable to agree upon the amount of compensation to be paid for the use of such rolling stock, any party directly involved in the negotiations may require that the matter be settled by submitting the issues in dispute to the Board. The Board shall render a binding decision, based upon a standard of reasonableness and after taking into consideration any past precedents on the subject matter of the negotiations, no later than 90 days after the date of the submission of the dispute to the Board.

[(C) Nothing in this paragraph shall be construed to change the law in effect prior to October 1, 1980, with respect to the obligation of rail carriers to utilize rolling stock owned or leased by shippers.

[(b) The Board may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Board may inspect a record maintained under this section.

[(c) The Board may review an agreement approved under subsection (a) of this section and shall change the conditions of approval or terminate it when necessary to comply with the public interest and subsection (a). The Board shall postpone the effective date of a change of an agreement under this subsection for whatever period it determines to be reasonably necessary to avoid unreasonable hardship.

[(d) The Board may begin a proceeding under this section on its own initiative or on application. Action of the Board under this section—

- [(1) approving an agreement;
- [(2) denying, ending, or changing approval;
- [(3) prescribing the conditions on which approval is granted;

or

- [(4) changing those conditions,

has effect only as related to application of the antitrust laws referred to in subsection (a) of this section.

[(e)(1) The Federal Trade Commission, in consultation with the Antitrust Division of the Department of Justice, shall prepare periodically an assessment of, and shall report to the Board on—

[(A) possible anticompetitive features of—

[(i) agreements approved or submitted for approval under subsection (a) of this section; and

[(ii) an organization operating under those agreements; and

[(B) possible ways to alleviate or end an anticompetitive feature, effect, or aspect in a manner that will further the goals of this part and of the transportation policy of section 10101 of this title.

[(2) Reports received by the Board under this subsection shall be published and made available to the public under section 552(a) of title 5.]

**§ 10706. Rate agreements**

(a) *IN GENERAL.*—In any proceeding in which it is alleged that a carrier was a party to an agreement, conspiracy, or combination in violation of the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), or the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a) or of any similar State law, proof of an agreement, conspiracy, or combination may not be inferred from evidence that two or more rail carriers acted together with respect to an interline rate or related matter and that a party to such action took similar action with respect to a rate or related matter on another route or traffic.

(b) *INADMISSIBLE EVIDENCE.*—In any proceeding in which such a violation is alleged, evidence of a discussion or agreement between or among such rail carrier and one or more other rail carriers, or of any rate or other action resulting from such discussion or agreement, shall not be admissible if the discussion or agreement concerned an interline movement of the rail carrier, and the discussion or agreement would not, considered by itself, violate the laws referred to in subsection (a).

(c) *DETERMINATION BY COURT.*—In any such proceeding before a jury, the court shall determine whether the requirements of subsection (b) are satisfied before allowing the introduction of any such evidence.

\* \* \* \* \*

**§ 10709. Contracts**

(a) One or more rail carriers providing transportation subject to the jurisdiction of the Board under this part may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions.

(b) A party to a contract entered into under this section shall have no duty in connection with services provided under such contract other than those duties specified by the terms of the contract.

(c)(1) A contract that is authorized by this section, and transportation under such contract, shall not be subject to this part, and may not be subsequently challenged before the Board or in any court on the grounds that such contract violates a provision of this part.

(2) The exclusive remedy for any alleged breach of a contract entered into under this section shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree. This section does not confer original jurisdiction on the district courts of the United States based on section 1331 or 1337 of title 28, United States Code.

(d)(1) A summary of each contract for the transportation of agricultural products (including grain, as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and products thereof) entered into under this section shall be filed with the Board, containing such nonconfidential information as the Board prescribes. The Board shall publish special rules for such contracts in order to ensure that the essential terms of the contract are available to the general public.

(2) Documents, papers, and records (and any copies thereof) relating to a contract described in subsection (a) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.

(e) Any lawful contract between a rail carrier and one or more purchasers of rail service that was in effect on October 1, 1980, shall be considered a contract authorized by this section.

(f) A rail carrier that enters into a contract as authorized by this section remains subject to the common carrier obligation set forth in section 11101, with respect to rail transportation not provided under such a contract.

(g)(1) No later than 30 days after the date of filing of a summary of a contract under this section, the Board may, on complaint, begin a proceeding to review such contract on the grounds described in this subsection.

(2)(A) A complaint may be filed under this subsection—

(i) by a shipper on the grounds that such shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting rail carrier or carriers to meet their common carrier obligations to the complainant under section 11101 of this title; or

(ii) by a port only on the grounds that such port individually will be harmed because the proposed contract will result in unreasonable discrimination against such port.

(B) In addition to the grounds for a complaint described in subparagraph (A) of this paragraph, a complaint may be filed by a shipper of agricultural commodities on the grounds that such shipper individually will be harmed because—

(i) the rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

(ii) the proposed contract constitutes a destructive competitive practice under this part.

In making a determination under clause (ii) of this subparagraph, the Board shall consider the difference between contract rates and published single car rates.

(C) For purposes of this paragraph, the term “unreasonable discrimination” has the same meaning as such term has under section 10741 of this title.

(3)(A) Within 30 days after the date a proceeding is commenced under paragraph (1) of this subsection, or within such shorter time period after such date as the Board may establish, the Board shall determine whether the contract that is the subject of such proceeding is in violation of this section.

(B) If the Board determines, on the basis of a complaint filed under paragraph (2)(B)(i) of this subsection, that the grounds for a complaint described in such paragraph have been established with respect to a rail carrier, the Board shall, subject to the provisions of this section, order such rail carrier to provide rates and service substantially similar to the contract at issue with such differentials in terms and conditions as are justified by the evidence.

[(h)(1) Any rail carrier may, in accordance with the terms of this section, enter into contracts for the transportation of agricultural commodities (including forest products, but not including wood pulp, wood chips, pulpwood or paper) involving the utilization of carrier owned or leased equipment not in excess of 40 percent of the capacity of such carrier's owned or leased equipment by major car type (plain boxcars, covered hopper cars, gondolas and open top hoppers, coal cars, bulkhead flatcars, pulpwood rackcars, and flat-bed equipment, including TOFC/COFC).

[(2) The Board may, on request of a rail carrier or other party or on its own initiative, grant such relief from the limitations of paragraph (1) of this subsection as the Board considers appropriate, if it appears that additional equipment may be made available without impairing the rail carrier's ability to meet its common carrier obligations under section 11101 of this title.

[(3)(A) This subsection shall cease to be effective after September 30, 1998.

[(B) Before October 1, 1997, the National Grain Car Council and the Railroad-Shipper Transportation Advisory Council shall make recommendations to Congress on whether to extend the effectiveness of or otherwise modify this subsection.]

**§ 10710. Bottleneck and terminal switching rates**

*(a) A Class I rail carrier, or other rail carrier as deemed appropriate by the Board, that provides a rate for transportation between an origin and destination either as a single line movement or as part of an interline movement and over which the carrier has market dominance pursuant to section 10707 shall, upon the reasonable request of a rail customer, establish a bottleneck rate for the purpose of providing transportation over a bottleneck segment located between such an origin and destination pursuant to this section. If the rail carrier contends that the transportation is not subject to market dominance under that section, the rail carrier shall seek an expedited determination of that issue from the Board.*

*(b) Such a carrier shall establish such a rate and provide service upon such request without regard to whether the shipper has made arrangements for transportation for any other part of that movement.*

*(c)(1) If the Board determines, under section 10707 of this title, that such a rail carrier has market dominance between the origin and destination, the bottleneck rate established for transportation pursuant to this section must be reasonable.*

*(2)(A) Not later than one year after the date of enactment of the Surface Transportation Board Reauthorization Act of 2009, the Board shall establish and maintain standards for determining whether a bottleneck rate established by a rail carrier is reasonable for purposes of this section and establish a simplified and expedited method for determining the reasonableness of challenged bottleneck rates. In developing those standards the Board shall consider rail carriers' need to earn adequate revenues to provide and sustain consistent, efficient, and reliable transportation services and to maintain the national rail system.*

*(B) In developing the standards, the Board shall include, as part of a reasonable rate—*

(i) operating costs, including any additional labor costs, of providing the requested transportation service over the bottleneck segment;

(ii) maintenance costs associated with providing the requested transportation service;

(iii) additional capital and investment costs required to perform the requested transportation service over the bottleneck segment;

(iv) a reasonable return on embedded capital used for the requested transportation service over the bottleneck segment sufficient to meet the rail carrier's cost of capital or, if such cost is not available, the rail industry cost of capital;

(v) a reasonable contribution, to the extent appropriate, to that carrier's network infrastructure costs of the non-bottleneck segment of the route offered by the incumbent rail carrier that is sufficient, along with other traffic on the segment, to maintain the non-bottleneck segment; and

(vi) any other contributing factors appropriate to meet the consideration in subparagraph (A).

(d) In any proceeding in which a rail customer challenges a bottleneck rate established under this section as unreasonable, the burden of proof that the rate is reasonable shall be on the rail carrier.

(e) In this section:

(1) The term "bottleneck rate" means a rate for transportation over a bottleneck segment.

(2) The term "bottleneck segment" means the rail facilities, including rail facilities located entirely in terminal areas, between an origin on the carrier's system and an interchange or between a destination on the carrier's system and an interchange.

(3) The term "interchange" means an interchange on such a rail carrier's system that exists on the date of the shipper's request for a rate covered by this section that—

(A) is practicable and would not significantly adversely affect such rail carrier's network efficiency; and

(B) would not significantly impair service to other customers of such rail carrier.

#### CHAPTER 109—LICENSING

### § 10901. Authorizing construction and operation of railroad lines

(a) A person may—

(1) construct an extension to any of its railroad lines;

(2) construct an additional railroad line;

(3) provide transportation over, or by means of, an extended or additional railroad line; or

(4) in the case of a person other than a rail carrier, acquire a railroad line or acquire or operate an extended or additional railroad line,

only if the Board issues a certificate authorizing such activity under subsection (c).

(b) A proceeding to grant authority under subsection (a) of this section begins when an application is filed. On receiving the application, the Board shall give reasonable public notice, including no-

tice to the Governor of any affected State, of the beginning of such proceeding.

(c) The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with the public convenience and necessity. Such certificate may approve the application as filed, or with modifications, and may require compliance with conditions (other than labor protection conditions) the Board finds necessary in the public interest. *The Board may not issue a certificate authorizing an acquisition or operation transaction under subsection (a)(4) that includes interchange commitments or other mechanisms restricting the purchaser's or tenant's ability to interchange with any other carrier unless such commitments or mechanisms are reasonable and in the public interest.*

(d)(1) When a certificate has been issued by the Board under this section authorizing the construction or extension of a railroad line, no other rail carrier may block any construction or extension authorized by such certificate by refusing to permit the carrier to cross its property if—

(A) the construction does not unreasonably interfere with the operation of the crossed line;

(B) the operation does not materially interfere with the operation of the crossed line; and

(C) the owner of the crossing line compensates the owner of the crossed line.

(2) If the parties are unable to agree on the terms of operation or the amount of payment for purposes of paragraph (1) of this subsection, either party may submit the matters in dispute to the Board for determination. The Board shall make a determination under this paragraph within 120 days after the dispute is submitted for determination.

**§ 10902. Short line purchases by Class II and Class III rail carriers**

(a) A Class II or Class III rail carrier providing transportation subject to the jurisdiction of the Board under this part may acquire or operate an extended or additional rail line under this section only if the Board issues a certificate authorizing such activity under subsection (c).

(b) A proceeding to grant authority under subsection (a) of this section begins when an application is filed. On receiving the application, the Board shall give reasonable public notice of the beginning of such proceeding.

(c) The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with the public convenience and necessity. Such certificate may approve the application as filed, or with modifications, and may require compliance with conditions (other than labor protection conditions) the Board finds necessary in the public interest. *The Board may not issue a certificate authorizing an acquisition or operation transaction under subsection (a)(4) that includes interchange commitments or other mechanisms restricting the purchaser's or tenant's ability to interchange with any other carrier un-*

*less such commitments or mechanisms are reasonable and in the public interest.*

(d) The Board shall require any Class II rail carrier which receives a certificate under subsection (c) of this section to provide a fair and equitable arrangement for the protection of the interests of employees who may be affected thereby. The arrangement shall consist exclusively of one year of severance pay, which shall not exceed the amount of earnings from railroad employment of the employee during the 12-month period immediately preceding the date on which the application for such certificate is filed with the Board. The amount of such severance pay shall be reduced by the amount of earnings from railroad employment of the employee with the acquiring carrier during the 12-month period immediately following the effective date of the transaction to which the certificate applies. The parties may agree to terms other than as provided in this subsection. The Board shall not require such an arrangement from a Class III rail carrier which receives a certificate under subsection (c) of this section.

**§ 10903. Filing and procedure for application to abandon or discontinue**

[(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Board under this part who intends to—

(A) abandon any part of its railroad lines; or

(B) discontinue the operation of all rail transportation over any part of its railroad lines,

must file an application relating thereto with the Board. An abandonment or discontinuance may be carried out only as authorized under this chapter.]

*(a)(1) An application relating to the abandonment of or discontinuance of operation of all rail transportation over any part of a railroad line shall be filed with the Board. An abandonment or discontinuance may be carried out only as authorized under this chapter.*

(2) [When a rail carrier providing transportation subject to the jurisdiction of the Board under this part files an application, the application] *An application filed under this section shall include—*

(A) an accurate and understandable summary of the [rail carrier's] reasons for the proposed abandonment or discontinuance;

(B) a statement indicating that each interested person is entitled to make recommendations to the Board on the future of the rail line; and

[(C)(i)] *(C) if filed by a rail carrier, (i) a statement that the line is available for subsidy or sale in accordance with section 10904 of this title, (ii) a statement that the rail carrier will promptly provide to each interested party an estimate of the annual subsidy and minimum purchase price, calculated in accordance with section 10904 of this title, and (iii) the name and business address of the person who is authorized to discuss the subsidy or sale terms for the rail carrier.*

(3) [The rail carrier shall—] *The applicant shall—*

(A) send by certified mail notice of the application to the chief executive officer of each State that would be directly affected by the proposed abandonment or discontinuance;

(B) post a copy of the notice in each terminal and station on each portion of a railroad line proposed to be abandoned or over which all transportation is to be discontinued;

(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each such portion is located;

(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Board) of the railroad line during the 12 months preceding the filing of the application; and

(E) attach to the application filed with the Board an affidavit certifying the manner in which subparagraphs (A) through (D) of this paragraph have been satisfied, and certifying that subparagraphs (A) through (D) have been satisfied within the most recent 30 days prior to the date the application is filed.

(b)(1) Except as provided in subsection (d), abandonment and discontinuance may occur as provided in section 10904.

(2) The Board shall require as a condition of any abandonment or discontinuance under this section provisions to protect the interests of employees. The provisions shall be at least as beneficial to those interests as the provisions established under sections 11326(a) and 24706(c) of this title.

(c)(1) In this subsection, the term “potentially subject to abandonment” has the meaning given the term in regulations of the Board. The regulations may include standards that vary by region of the United States and by railroad or group of railroads.

(2) Each rail carrier shall maintain a complete diagram of the transportation system operated, directly or indirectly, by the rail carrier. The rail carrier shall submit to the Board and publish amendments to its diagram that are necessary to maintain the accuracy of the diagram. The diagram shall—

(A) include a detailed description of each of its railroad lines potentially subject to abandonment; and

(B) identify each railroad line for which the rail carrier plans to file an application to abandon or discontinue under subsection (a) of this section.

(d) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may—

(1) abandon any part of its railroad lines; or

(2) discontinue the operation of all rail transportation over any part of its railroad lines;

only if the Board finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. In making the finding, the Board shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.

(e) Subject to this section and sections 10904 and 10905 of this title, if the Board—

(1) finds public convenience and necessity, it shall—

(A) approve the application as filed; or

(B) approve the application with modifications and require compliance with conditions that the Board finds are required by public convenience and necessity; or

(2) fails to find public convenience and necessity, it shall deny the application.

**§ 10904. Offers of financial assistance to avoid abandonment and discontinuance**

(a) In this section—

(1) the term “avoidable cost” means all expenses that would be incurred by a rail carrier in providing transportation that would not be incurred if the railroad line over which the transportation was provided were abandoned or if the transportation were discontinued. Expenses include cash inflows foregone and cash outflows incurred by the rail carrier as a result of not abandoning or discontinuing the transportation. Cash inflows foregone and cash outflows incurred include—

(A) working capital and required capital expenditure;

(B) expenditures to eliminate deferred maintenance;

(C) the current cost of freight cars, locomotives, and other equipment; and

(D) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes; and

(2) the term “reasonable return” means—

(A) if a rail carrier is not in reorganization, the cost of capital to the rail carrier, as determined by the Board; and

(B) if a rail carrier is in reorganization, the mean cost of capital of rail carriers not in reorganization, as determined by the Board.

(b) Any rail carrier which has filed an application for abandonment or discontinuance shall provide promptly to a party considering an offer of financial assistance and shall provide concurrently to the Board—

(1) an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

(2) its most recent reports on the physical condition of that part of the railroad line involved in the proposed abandonment or discontinuance;

(3) traffic, revenue, and other data necessary to determine the amount of annual financial assistance which would be required to continue rail transportation over that part of the railroad line; and

(4) any other information that the Board considers necessary to allow a potential offeror to calculate an adequate subsidy or purchase offer.

(c) Within 4 months after an application is filed under section 10903, any person may offer to subsidize or purchase the railroad line that is the subject of such application. Such offer shall be filed concurrently with the Board. If the offer to subsidize or purchase is less than the carrier’s estimate stated pursuant to subsection (b)(1), the offer shall explain the basis of the disparity, and the manner in which the offer is calculated.

[(d)(1) Unless the Board, within 15 days after the expiration of the 4-month period described in subsection (c), finds that one or more financially responsible persons (including a governmental authority) have offered financial assistance regarding that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued, abandonment or discontinuance may be carried out in accordance with section 10903.]

*(d)(1) Unless the Board, within 15 days after the expiration of the 4-month period described in subsection (c), finds that one or more financially responsible persons (including a governmental authority) have offered financial assistance and established a reasonable likelihood of freight rail service, public transportation, or intercity rail passenger transportation over that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued, abandonment or discontinuance may be carried out in accordance with section 10903.*

(2) If the Board finds that such an offer or offers of financial assistance has been made within such period, abandonment or discontinuance shall be postponed until—

(A) the carrier and a financially responsible person have reached agreement on a transaction for subsidy or sale of the line; or

(B) the conditions and amount of compensation are established under subsection (f).

(e) Except as provided in subsection (f)(3), if the rail carrier and a financially responsible person (including a governmental authority) fail to agree on the amount or terms of the subsidy or purchase, either party may, within 30 days after the offer is made, request that the Board establish the conditions and amount of compensation.

(f)(1) Whenever the Board is requested to establish the conditions and amount of compensation under this section—

(A) the Board shall render its decision within **[30 days;]** 60 days;

(B) for proposed sales, the Board shall determine the price and other terms of sale, except that in no case shall the Board set a price which is below the fair market value of the line (including, unless otherwise mutually agreed, all facilities on the line or portion necessary to provide effective transportation services); and

(C) for proposed subsidies, the Board shall establish the compensation as the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line.

(2) The decision of the Board shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw his offer within 10 days of the Board's decision. In such a case, the abandonment or discontinuance may be carried out immediately, unless other offers are being considered pursuant to paragraph (3) of this subsection.

(3) If a rail carrier receives more than one offer to subsidize or purchase, it shall select the offeror with whom it wishes to transact business, and complete the subsidy or sale agreement, or request that the Board establish the conditions and amount of compensation before the 40th day after the expiration of the 4-month period described in subsection (c). If no agreement on subsidy or sale is reached within such 40-day period and the Board has not been requested to establish the conditions and amount of compensation, any other offeror whose offer was made within the 4-month period described in subsection (c) may request that the Board establish the conditions and amount of compensation. If the Board has estab-

lished the conditions and amount of compensation, and the original offer has been withdrawn, any other offeror whose offer was made within the 4-month period described in subsection (c) may accept the Board's decision within 20 days after such decision, and the Board shall require the carrier to enter into a subsidy or sale agreement with such offeror, if such subsidy or sale agreement incorporates the Board's decision.

(4)(A) No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.

(B) No subsidy arrangement approved under this section shall remain in effect for more than one year, unless otherwise mutually agreed by the parties.

(g) Upon abandonment of a railroad line under this chapter, the obligation of the rail carrier abandoning the line to provide transportation on that line, as required by section 11101(a), is extinguished.

**§ 10905. Offering abandoned rail properties for sale for public purposes**

When the Board approves an application to abandon or discontinue under section 10903, the Board shall find whether the rail properties that are involved in the proposed abandonment or discontinuance are appropriate for use for public purposes, including highways, [other forms of mass transportation,] *public transportation*, conservation, energy production or transmission, or recreation. If the Board finds that the rail properties proposed to be abandoned are appropriate for public purposes and not required for continued rail operations, [the properties may be sold,] *the Board may require that the properties be sold*, leased, exchanged, or otherwise disposed of [only under conditions] *pursuant to conditions, including the amount of compensation*, provided in the order of the Board. [The conditions may include a prohibition on any such disposal] *At a minimum, the Board shall prohibit any disposal of such properties* for a period of not more than 180 days after the effective date of the order, unless the properties have first been offered, on reasonable terms, for sale for public purposes.

\* \* \* \* \*

**§ 10907. Railroad development**

(a) In this section, the term "financially responsible person" means a person who—

(1) is capable of paying the constitutional minimum value of the railroad line proposed to be acquired; and

(2) is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years.

Such term includes a governmental authority but does not include a Class I or Class II rail carrier.

(b)(1) When the Board finds that—

(A)(i) the public convenience and necessity require or permit the sale of a particular railroad line under this section; or

(ii) a railroad line is on a system diagram map as required under section 10903 of this title, but the rail carrier owning such line has not filed an application to abandon such line under section 10903 of this title before an application to purchase such line, or any required preliminary filing with respect to such application, is filed under this section; and

(B) an application to purchase such line has been filed by a financially responsible person,  
the Board shall require the rail carrier owning the railroad line to sell such line to such financially responsible person at a price not less than the constitutional minimum value.

(2) For purposes of this subsection, the constitutional minimum value of a particular railroad line shall be presumed to be not less than the net liquidation value of such line or the going concern value of such line, whichever is greater.

(c)(1) For purposes of this section, the Board may determine that the public convenience and necessity require or permit the sale of a railroad line if the Board determines, after a hearing on the record, that—

(A) the rail carrier operating such line refuses within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over such line;

(B) the transportation over such line is inadequate for the majority of shippers who transport traffic over such line;

(C) the sale of such line will not have a significantly adverse financial effect on the rail carrier operating such line;

(D) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier operating such line; and

(E) the sale of such line will be likely to result in improved railroad transportation for shippers that transport traffic over such line.

(2) In a proceeding under this subsection, the burden of proving that the public convenience and necessity require or permit the sale of a particular railroad line is on the person filing the application to acquire such line. If the Board finds under this subsection that the public convenience and necessity require or permit the sale of a particular railroad line, the Board shall concurrently notify the parties of such finding and publish such finding in the Federal Register.

(d) In the case of any railroad line subject to sale under subsection (a) of this section, the Board shall, upon the request of the acquiring carrier, require the selling carrier to provide to the acquiring carrier trackage rights to allow a reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the acquiring carrier. The Board shall require the acquiring carrier to provide the selling carrier reasonable compensation for any such trackage rights.

(e) The Board shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to a sale under this section.

(f) In the case of a railroad line which carried less than 3,000,000 gross ton miles of traffic per mile in the preceding calendar year,

whenever a purchasing carrier under this section petitions the Board for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practicably participate, the Board shall, within 30 days after the date such petition is filed and pursuant to section 10705(a) of this title, require the establishment of reasonable joint rates and divisions over such route.

(g)(1) Any person operating a railroad line acquired under this section may elect to be exempt from any of the provisions of this part, except that such a person may not be exempt from the provisions of chapter 107 of this title with respect to transportation under a joint rate.

(2) The provisions of paragraph (1) of this subsection shall apply to any line of railroad which was abandoned during the 18-month period immediately prior to October 1, 1980, and was subsequently purchased by a financially responsible person.

[(h) If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased railroad line, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.]

*(h) If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased railroad line within 5 years after the date of sale under this section, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. The offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.*

(i) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.

\* \* \* \* \*

#### **§ 10909. Solid waste rail transfer facility land-use exemption**

(a) **AUTHORITY.**—The Board may issue a land-use exemption for a solid waste rail transfer facility that is or is proposed to be operated by or on behalf of a rail carrier if—

(1) the Board finds that a State, local, or municipal law, regulation, order, or other requirement affecting the siting of such facility unreasonably burdens the interstate transportation of solid waste by railroad, discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility petitions the Board for such an exemption; or

(2) the Governor of a State in which a facility that is operating as of the date of enactment of the Clean Railroads Act of 2008 is located, or his or her designee, petitions the Board to initiate a permit proceeding for that particular facility.

(b) LAND-USE EXEMPTION PROCEDURES.—Not later than 90 days after the date of enactment of the Clean **[Railroad]** *Railroads* Act of 2008, the Board shall publish procedures governing the submission and review of applications for solid waste rail transfer facility land-use exemptions. At a minimum, the procedures shall address—

(1) the information that each application should contain to explain how the solid waste rail transfer facility will not pose an unreasonable risk to public health, safety, or the environment;

(2) the opportunity for public notice and comment including notification of the municipality, the State, and any relevant Federal or State regional planning entity in the jurisdiction of which the solid waste rail transfer facility is proposed to be located;

(3) the timeline for Board review, including a requirement that the Board approve or deny an exemption within 90 days after the full record for the application is developed;

(4) the expedited review timelines for petitions for modifications, amendments, or revocations of granted exemptions;

(5) the process for a State to petition the Board to require a solid waste transfer facility or a rail carrier that owns or operates such a facility to apply for a siting permit; and

(6) the process for a solid waste transfer facility or a rail carrier that owns or operates such a facility to petition the Board for a land-use exemption.

(c) STANDARD FOR REVIEW.—

(1) The Board may only issue a land-use exemption if it determines that the facility at the existing or proposed location does not pose an unreasonable risk to public health, safety, or the environment. In deciding whether a solid waste rail transfer facility that is or proposed to be constructed or operated by or on behalf of a rail carrier poses an unreasonable risk to public health, safety, or the environment, the Board shall weigh the particular facility's potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.

(2) The Board may not grant a land-use exemption for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, a National Monument, or lands referenced in Public Law 108-421 for which a State has implemented a conservation management plan, if operation of the facility would be inconsistent with restrictions placed on such land.

(d) CONSIDERATIONS.—When evaluating an application under this section, the Board shall consider and give due weight to the following, as applicable:

(1) the land-use, zoning, and siting regulations or solid waste planning requirements of the State or State subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;

(2) the land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;

(3) regional transportation planning requirements developed pursuant to Federal and State law;

(4) regional solid waste disposal plans developed pursuant to State or Federal law;

(5) any Federal and State environmental protection laws or regulations applicable to the site;

(6) any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility; and

(7) any other relevant factors, as determined by the Board.

(e) EXISTING FACILITIES.—Upon the granting of petition from the State in which a solid waste rail transfer facility is operating as of the date of enactment of the Clean Railroads Act of 2008 by the Board, the facility shall submit a complete application for a siting permit to the Board pursuant to the procedures issued pursuant to subsection (b). No State may enforce a law, regulation, order, or other requirement affecting the siting of a facility that is operating as of the date of enactment of the Clean Railroads Act of 2008 until the Board has approved or denied a permit pursuant to subsection (c).

(f) EFFECT OF LAND-USE EXEMPTION.—If the Board grants a land-use exemption to a solid waste rail transfer facility, all State laws, regulations, orders, or other requirements affecting the siting of a facility are preempted with regard to that facility. An exemption may require compliance with such State laws, regulations, orders, or other requirements.

(g) INJUNCTIVE RELIEF.—Nothing in this section precludes a person from seeking an injunction to enjoin a solid waste rail transfer facility from being constructed or operated by or on behalf of a rail carrier if that facility has materially violated, or will materially violate, its land-use exemption or if it failed to receive a valid land-use exemption under this section.

(h) FEES.—The Board may charge permit applicants reasonable fees to implement this section, including the costs of third-party consultants.

(i) DEFINITIONS.—In this section the terms “solid waste”, “solid waste rail transfer facility”, and “State requirements” have the meaning given such terms in section 10908(e).

\* \* \* \* \*

## CHAPTER 111—OPERATIONS

### SUBCHAPTER I—GENERAL REQUIREMENTS

#### § 11101. Common carrier transportation, service, and rates

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request. A rail carrier shall not be found to have violated this section because it fulfills its reasonable commitments under contracts authorized under section

10709 of this title before responding to reasonable requests for service. Commitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.

(b) A rail carrier shall also provide to any person, on request, the carrier's rates and other service terms. The response by a rail carrier to a request for the carrier's rates and other service terms shall be—

(1) in writing and forwarded to the requesting person promptly after receipt of the request; or

(2) promptly made available in electronic form.

(c) A rail carrier may not increase any common carrier rates or change any common carrier service terms unless 20 days have expired after written or electronic notice is provided to any person who, within the previous 12 months—

(1) has requested such rates or terms under subsection (b);

or

(2) has made arrangements with the carrier for a shipment that would be subject to such increased rates or changed terms.

(d) With respect to transportation of agricultural products, in addition to the requirements of subsections (a), (b), and (c), a rail carrier shall publish, make available, and retain for public inspection its common carrier rates, schedules of rates, and other service terms, and any proposed and actual changes to such rates and service terms. For purposes of this subsection, agricultural products shall include grain as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and all products thereof, and fertilizer.

(e) A rail carrier shall provide transportation or service in accordance with the rates and service terms, and any changes thereto, as published or otherwise made available under subsection (b), (c), or (d).

(f) *The Board shall, by regulation, require rail carriers to publish reasonable common carrier service expectation ranges. These may include ranges for normal car cycle times, transit times, switching frequency, and other service components as determined by the Board to be appropriate.*

[(f)] (g) The Board shall, by regulation, establish rules to implement this section. The regulations shall provide for immediate disclosure and dissemination of rates and service terms, including classifications, rules, and practices, and their effective dates. Final regulations shall be adopted by the Board not later than 180 days after January 1, 1996.

#### **【§ 11102. Use of terminal facilities**

[(a)] (a) The Board may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Board under this part, to be used by another rail carrier if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business. The rail carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the

rail carriers cannot agree, the Board may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings. The compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another rail carrier under this section.

[(b) A rail carrier whose terminal facilities are required to be used by another rail carrier under this section is entitled to recover damages from the other rail carrier for injuries sustained as the result of compliance with the requirement or for compensation for the use, or both as appropriate, in a civil action, if it is not satisfied with the conditions for use of the facilities or if the amount of the compensation is not paid promptly.]

[(c)(1) The Board may require rail carriers to enter into reciprocal switching agreements, where it finds such agreements to be practicable and in the public interest, or where such agreements are necessary to provide competitive rail service. The rail carriers entering into such an agreement shall establish the conditions and compensation applicable to such agreement, but, if the rail carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Board may establish such conditions and compensation.]

[(2) The Board may require reciprocal switching agreements entered into by rail carriers pursuant to this subsection to contain provisions for the protection of the interests of employees affected thereby.]

[(d) The Board shall complete any proceeding under subsection (a) or (b) within 180 days after the filing of the request for relief.]

**§ 11102. Use of terminal facilities**

(a) *For a Class I rail carrier, or other rail carrier as deemed appropriate by the Board, providing transportation over which the rail carrier has market dominance pursuant to section 10707 in a terminal area, the Board may require the rail carrier to make its terminal facilities, including mainline tracks for a reasonable distance outside of that terminal, available for use by another rail carrier for such transportation.*

(b) *The Board may only require that a rail carrier take such action under subsection (a) if the Board finds that such action—*

*(1) would be practicable and would not significantly adversely affect the operations of the terminal or facility owned by such rail carrier or rail carriers otherwise entitled to use the terminal or facilities;*

*(2) would not significantly adversely affect the network efficiency of such rail carrier or rail carriers otherwise entitled to use the terminal or facilities;*

*(3) would not significantly impair service to other customers of such rail carrier or other rail carriers entitled to use the terminal or facilities;*

*(4) is necessary to promote the efficient operation of the railroad system and improve rail service; and*

*(5) is in the public interest.*

(c) *The rail carriers required to make facilities available or provide service pursuant to subsection (a) are responsible for establishing reasonable conditions and compensation for the use of the facilities. The compensation shall be paid or adequately secured be-*

fore a rail carrier may begin to use the facilities of another rail carrier.

(d)(1) Not later than one year after the date of enactment of the Surface Transportation Board Reauthorization Act of 2009, the Board shall establish and maintain standards for determining whether compensation is reasonable for purposes of this section and establish a simplified and expedited method for determining the reasonableness of challenged compensation rates.

(2) In developing such standards, the Board shall consider rail carriers' need to earn adequate revenues to provide and sustain consistent, efficient, and reliable transportation services and to maintain the national rail system.

(e) In developing the standards required by subsection (d), the Board shall include, as part of a reasonable compensation—

(1) operating costs, including any additional labor costs, of providing the requested usage;

(2) maintenance costs associated with providing the requested usage;

(3) additional capital and investment costs required to perform the requested usage;

(4) a reasonable return on embedded capital employed for the requested usage of terminal facilities sufficient to meet the rail carrier's cost of capital or, if such cost is not available, the rail industry cost of capital;

(5) a reasonable contribution, to the extent appropriate, to that carrier's network infrastructure costs of the route beyond the terminal facilities and main line tracks made available for the requested usage, that is sufficient, along with other traffic on the route and mainline track, to maintain the route beyond the terminal facilities and mainline tracks made available for the requested usage; and

(6) any other contributing factors appropriate to meet the considerations in subsection (d)(2).

(g) A rail carrier whose terminal facilities are required to be used by another rail carrier under this section is entitled to recover compensation from the other rail carrier for damages sustained as the result of compliance with the requirement in a civil action.

(h) In any proceeding in which a rail carrier challenges a compensation rate established under this section as unreasonable, the burden of proof that the rate is reasonable shall be on the rail carrier whose terminal facilities are required to be used by the other rail carrier.

(i) If the Board requires that a rail carrier take such an action under subsection (a), the Board shall provide for the protection of the interests of employees affected thereby, consistent with the level of protection under section 10902 of this title.

(j) The Board shall complete any proceeding under this section within 180 days after the closing of the evidentiary record. The Board may extend the deadline in incremental 30-day periods if it issues a decision demonstrating why such an extension is necessary.

\* \* \* \* \*

## SUBCHAPTER II—CAR SERVICE

**§ 11123. Situations requiring immediate action to serve the public**

(a) When the Board determines that shortage of equipment, congestion of traffic, unauthorized cessation of operations, failure of existing commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, or other failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States, or that a rail carrier providing transportation subject to the jurisdiction of the Board under this part cannot transport the traffic offered to it in a manner that properly serves the public, the Board may, to promote commerce and service to the public, for a period not to exceed 30 days—

(1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines;

(2) require joint or common use of railroad facilities;

(3) prescribe temporary through routes;

(4) give directions for—

(A) preference or priority in transportation;

(B) embargoes; or

(C) movement of traffic under permits; or

(5) in the case of a failure of existing freight or commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, direct the continuation of the operations and dispatching, maintenance, and other necessary infrastructure functions related to the operations.

(b)(1) Except with respect to proceedings under paragraph (2) of this subsection, the Board may act under this section on its own initiative or on application without regard to subchapter II of chapter 5 of title 5.

(2) Rail carriers may establish between themselves the terms of compensation for operations, and use of facilities and equipment, required under this section. When rail carriers do not agree on the terms of compensation under this section, the Board may establish the terms for them. The Board may act under subsection (a) before conducting a proceeding under this paragraph.

(3)(A) Except as provided in subparagraph (B), when a rail carrier is directed under this section to operate the lines of another rail carrier due to that carrier's cessation of operations, compensation for the directed operations shall derive only from revenues generated by the directed operations.

(B) In the case of a failure of existing freight or commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, the Board shall provide funding to fully reimburse the directed service provider for its costs associated with the activities directed under subsection (a), including the payment of increased insurance premiums. The Board shall order complete indemnification against any and all claims associated with the provision of service to which the directed rail carrier may be exposed.

(c)(1) The Board may extend any action taken under subsection (a) of this section beyond 30 days if the Board finds that a transportation emergency described in subsection (a) continues to exist. **【Action by the Board under subsection (a) of this section may not remain in effect for more than 240 days beyond the initial 30-day period.】** *Action by the Board under subsection (a) of this section may be extended in 90-day increments until the Board finds that the emergency has ended.*

(2) The Board may not take action under this section that would—

(A) cause a rail carrier to operate in violation of this part;

or

(B) impair substantially the ability of a rail carrier to serve its own customers adequately, or to fulfill its common carrier obligations.

(3) A rail carrier directed by the Board to take action under this section is not responsible, as a result of that action, for debts of any other rail carrier.

(4) In the case of a failure of existing freight or commuter rail passenger transportation operations caused by cessation of service by the National Railroad Passenger Corporation, the Board may not direct a rail carrier to undertake activities under subsection (a) to continue such operations unless—

(A) the Board first affirmatively finds that the rail carrier is operationally capable of conducting the directed service in a safe and efficient manner; and

(B) the funding for such directed service required by subparagraph (B) of subsection (b)(3) is provided in advance in appropriations Acts.

(d) In carrying out this section, the Board shall require, to the maximum extent practicable, the use of employees who would normally have performed work in connection with the traffic subject to the action of the Board.

(e) For purposes of this section, the National Railroad Passenger Corporation and any entity providing commuter rail passenger transportation shall be considered rail carriers subject to the Board's jurisdiction.

(f) For purposes of this section, the term “commuter rail passenger transportation” has the meaning given that term in section 24102(4).

\* \* \* \* \*

CHAPTER 113—FINANCE

SUBCHAPTER II—COMBINATIONS

**§ 11323. Consolidation, merger, and acquisition of control**

(a) The following transactions involving rail carriers providing transportation subject to the jurisdiction of the Board under this part may be carried out only with the approval and authorization of the Board:

(1) Consolidation or merger of the properties or franchises of at least 2 rail carriers into one corporation for the ownership, management, and operation of the previously separately owned properties.

(2) A purchase, lease, or contract to operate property of another rail carrier by any number of rail carriers.

(3) Acquisition of control of a rail carrier by any number of rail carriers.

(4) Acquisition of control of at least 2 rail carriers by a person that is not a rail carrier.

(5) Acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers.

(6) Acquisition by a rail carrier of trackage rights over, or joint ownership in or joint use of, a railroad line (and terminals incidental to it) owned or operated by another rail carrier.

(b) A person may carry out a transaction referred to in subsection (a) of this section or participate in achieving the control or management, including the power to exercise control or management, in a common interest of more than one of those rail carriers, regardless of how that result is reached, only with the approval and authorization of the Board under this subchapter. In addition to other transactions, each of the following transactions are considered achievements of control or management:

(1) A transaction by a rail carrier that has the effect of putting that rail carrier and person affiliated with it, taken together, in control of another rail carrier.

(2) A transaction by a person affiliated with a rail carrier that has the effect of putting that rail carrier and persons affiliated with it, taken together, in control of another rail carrier.

(3) A transaction by at least 2 persons acting together (one of whom is a rail carrier or is affiliated with a rail carrier) that has the effect of putting those persons and rail carriers and persons affiliated with any of them, or with any of those affiliated rail carriers, taken together, in control of another rail carrier.

(c) A person is affiliated with a rail carrier under this subchapter if, because of the relationship between that person and a rail carrier, it is reasonable to believe that the affairs of another rail carrier, control of which may be acquired by that person, will be managed in the interest of the other rail carrier.

(d) *The Board may not authorize an acquisition or operation transaction under this section that includes interchange commitments or other mechanisms restricting the purchaser's or tenant's ability to interchange with any other carrier unless such commitments or mechanisms are reasonable and in the public interest.*

**§ 11324. Consolidation, merger, and acquisition of control: conditions of approval**

(a) The Board may begin a proceeding to approve and authorize a transaction referred to in section 11323 of this title on application of the person seeking that authority. When an application is filed with the Board, the Board shall notify the chief executive officer of each State in which property of the rail carriers involved in the proposed transaction is located and shall notify those rail carriers. The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.

(b) In a proceeding under this section which involves the merger or control of at least two Class I railroads, as defined by the Board, the Board shall consider at least—

(1) the effect of the proposed transaction on the adequacy of transportation to the public;

(2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;

(3) the total fixed charges that result from the proposed transaction;

(4) the interest of rail carrier employees affected by the proposed transaction; and

【(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.】

*(5) the effect of the proposed transaction on competition among rail carriers in the affected region or in the national rail system.*

(c) The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. Any trackage rights and related conditions imposed to alleviate anti-competitive effects of the transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated. When the transaction contemplates a guaranty or assumption of payment of dividends or of fixed charges or will result in an increase of total fixed charges, the Board may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest. The Board may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Board finds their inclusion to be consistent with the public interest.

(d) In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the **【Board,】** *Board, subject to subsection (e) the Board shall approve such an application unless it finds that—*

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In making such findings, the Board shall, with respect to any application that is part of a plan or proposal developed under section 333(a)–(d) of this title, accord substantial weight to any recommendations of the Attorney General.

*(e) In considering whether to approve, deny, or approve with conditions a transaction covered under subsections (b) or (d) of this section, the Board may take into account any potentially significant effects of the transaction on—*

*(1) public health, safety, and the environment; and*

(2) *intercity rail passenger transportation and commuter rail passenger transportation, as defined by section 24102 of this title.*

[(e)] (f) No transaction described in section 11326(b) may have the effect of avoiding a collective bargaining agreement or shifting work from a rail carrier with a collective bargaining agreement to a rail carrier without a collective bargaining agreement.

[(f)(1)] (g)(1) To the extent provided in this subsection, a proceeding under this subchapter relating to a transaction involving at least one Class I rail carrier shall not be considered an adjudication required by statute to be determined on the record after opportunity for an agency hearing, for the purposes of subchapter II of chapter 5 of title 5, United States Code.

(2) Ex parte communications, as defined in section 551(14) of title 5, United States Code, shall be permitted in proceedings described in paragraph (1) of this subsection, subject to the requirements of paragraph (3) of this subsection.

(3)(A) Any member or employee of the Board who makes or receives a written ex parte communication concerning the merits of a proceeding described in paragraph (1) shall promptly place the communication in the public docket of the proceeding.

(B) Any member or employee of the Board who makes or receives an oral ex parte communication concerning the merits of a proceeding described in paragraph (1) shall promptly place a written summary of the oral communication in the public docket of the proceeding.

(4) Nothing in this subsection shall be construed to require the Board or any of its members or employees to engage in any ex parte communication with any person. Nothing in this subsection or any other law shall be construed to limit the authority of the members or employees of the Board, in their discretion, to note in the docket or otherwise publicly the occurrence and substance of an ex parte communication.

**§ 11325. Consolidation, merger, and acquisition of control: procedure**

(a)(1) The Board shall publish notice of the application under section 11324 in the Federal Register by the end of the 30th day after the application is filed with the Board. However, if the application is incomplete, the Board shall reject it by the end of that period. The order of rejection is a final action of the Board. The published notice shall indicate whether the application involves—

[(1)] (A) the merger or control of at least two Class I railroads, as defined by the Board, to be decided within the time limits specified in subsection (b) of this section;

[(2)] (B) transactions of regional or national transportation significance, to be decided within the time limits specified in subsection (c) of this section; or

[(3)] (C) any other transaction covered by this section, to be decided within the time limits specified in subsection (d) of this section.

(2) *The Board may extend the time limits specified in subsections (b), (c), and (d) of this section when more time is necessary to complete the environmental review process.*

(b) If the application involves the merger or control of two or more Class I railroads, as defined by the Board, the following conditions apply:

(1) Written comments about an application may be filed with the Board within 45 days after notice of the application is published under subsection (a) of this section. Copies of such comments shall be served on the Attorney General and the Secretary of Transportation, who may decide to intervene as a party to the proceeding. That decision must be made by the 15th day after the date of receipt of the written comments, and if the decision is to intervene, preliminary comments about the application must be sent to the Board by the end of the 15th day after the date of receipt of the written comments.

(2) The Board shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it by the 90th day after publication of notice under that subsection.

(3) The Board must conclude evidentiary proceedings by the end of 1 year after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 90th day after the date on which it concludes the evidentiary proceedings.

(c) If the application involves **[a transaction other than the merger or control of at least two Class I railroads, as defined by the Board, which the Board has determined to be of regional or national transportation significance,]** *the merger or control of one Class I railroad and at least one Class II railroad, as defined by the Board, or if it involves a merger or control transaction, other than a transaction subject to subsection (b), which the Board has determined to be of regional or national transportation significance,* the following conditions apply:

(1) Written comments about an application, including comments of the Attorney General and the Secretary of Transportation, may be filed with the Board within 30 days after notice of the application is published under subsection (a) of this section.

(2) The Board shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it by the 60th day after publication of notice under that subsection.

(3) The Board must conclude any evidentiary proceedings by the 180th day after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 90th day after the date on which it concludes the evidentiary proceedings.

(d) For all applications under this section other than those specified in subsections (b) and (c) of this section, the following conditions apply:

(1) Written comments about an application, including comments of the Attorney General and the Secretary of Transportation, may be filed with the Board within 30 days after notice of the application is published under subsection (a) of this section.

(2) The Board must conclude any evidentiary proceedings by the 105th day after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 45th day after the date on which it concludes the evidentiary proceedings.

\* \* \* \* \*

CHAPTER 117—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND  
REMEDIES

**§ 11701. General authority**

(a) Except as otherwise provided in this part, the Board may begin an investigation under this part [only on complaint.] *on the Board's own initiative or on complaint.* If the Board finds that a rail carrier is violating this part, the Board shall take appropriate action to compel compliance with this part.

(b) A person, including a governmental authority, may file with the Board a complaint about a violation of this part by a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part. The complaint must state the facts that are the subject of the violation. The Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Board may not dismiss a complaint made against a rail carrier providing transportation subject to the jurisdiction of the Board under this part because of the absence of direct damage to the complainant.

(c) A formal investigative proceeding begun by the Board under subsection (a) of this section is dismissed automatically unless it is concluded by the Board with administrative finality by the end of the third year after the date on which it was begun.

\* \* \* \* \*

**§ 11708. Interchange commitments: rights and remedies**

(a) *IN GENERAL.*—*The Board shall maintain a process to allow affected persons to challenge existing interchange commitments as contrary to other provisions of this part. The Attorney General and the Secretary of Transportation may participate in such proceedings.*

(b) *ACCESS TO INTERCHANGE COMMITMENTS.*—*After the filing of a complaint or petition, the Board shall provide affected persons access, upon request, to existing and proposed interchange commitments, subject to conditions protecting the confidentiality of those agreements.*

(c) *REDRESS AUTHORITY.*—*The Board shall take appropriate action to address any conflict between an interchange commitment and the provisions of this part.*

(d) *PURCHASE AUTHORITY.*—

(1) *IN GENERAL.*—*Except as provided in paragraph (5), if the Board finds that—*

(A) *an interchange commitment is found to be in violation of this part, and*

(B) *the purchaser or tenant rail carrier and the seller or lessor rail carrier cannot bring the interchange commit-*

ment into compliance with this part within a reasonable period of time, the Board may require, upon application by the purchaser or tenant rail carrier, the elimination of the interchange commitment at a price paid by the purchaser or tenant rail carrier not less than the terms established under paragraph (2).

(2) *TERMS.*—In the case of an interchange commitment subject to elimination under paragraph (1), the Board shall determine the fair market value of an interchange commitment by considering—

(A) any credits, payments, expenses, or other income paid and due from the interchange commitment to the seller or lessor rail carrier;

(B) reasonable financial hardships of the purchaser or tenant rail carrier due to unreasonable terms, if any, of the interchange agreement; and

(C) other relevant factors as determined by the Board.

(3) *EMPLOYEE PROTECTION.*—The Board shall require protections consistent with the requirements of section 11326(a) for rail labor employees who are affected by an action under this subsection.

(4) *PURCHASER PRECONDITIONS.*—Any purchaser or tenant rail carrier that buys out an interchange commitment under this subsection may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such rail carrier must notify the shippers on the line of its intention to impose such preconditions.

(5) *EXCEPTION.*—If the Board requires the elimination of an interchange commitment under paragraph (1), and the purchaser or tenant rail carrier or the seller or lessor rail carrier demonstrates that the sale or lease agreement containing the interchange commitment contains a provision governing the manner in which the agreement may be terminated, the Board shall permit the agreement to be terminated in accordance with that provision.

(6) *DEFINITIONS.*—In this subsection:

(A) *PURCHASER OR TENANT RAIL CARRIER.*—The term “purchaser or tenant rail carrier” means a Class II or Class III rail carrier that purchases or leases a rail line that is subject to terms of an interchange commitment.

(B) *SELLER OR LESSOR RAIL CARRIER.*—The term “seller or lessor rail carrier” means a Class I rail carrier that leased or sold a rail line subject to terms of an interchange commitment.

(e) *DEADLINE FOR COMPLETION OF PROCEEDING.*—The Board shall complete any proceeding under this section within 180 days after the close of the administrative record.

**§ 11709. Arbitration of certain rail rate, practice, and common carrier service disputes**

(a) *IN GENERAL.*—Not later than one year after enactment of the Surface Transportation Board Reauthorization Act of 2009, the Board shall promulgate regulations to establish a binding arbitra-

tion process to resolve rail rate, practice, and common carrier service expectation complaints subject to the jurisdiction of the Board.

(b) **COVERED DISPUTES.**—The binding arbitration process—

(1) shall apply to disputes involving rates, practices, and common carrier service expectations subject to the jurisdiction of the Board;

(2) shall not apply to disputes to obtain the grant, denial, stay or revocation of any license, authorization or exemption, to prescribe for the future any conduct, rules, or results of general, industry-wide applicability, or to enforce labor protective conditions; and

(3) shall not apply to disputes solely between 2 or more rail carriers.

(c) **ARBITRATION PROCEDURES.**—

(1) **The Board**—

(A) may make the binding arbitration process available only to the relevant parties—

(i) after the filing of a formal complaint; or

(ii) upon petition by a party at the conclusion of any informal dispute resolution process provided by the Board for a complaint subject to this section;

(B) with respect to rate disputes, may make the binding arbitration process available only to the relevant parties if the rail carrier has market dominance, as determined under section 10707 of this title; and

(C) shall determine whether to pursue the binding arbitration process no later than 30 days after the filing of a petition or formal complaint.

(2) Initiation of the binding arbitration process shall preclude the Board from separately reviewing a complaint or dispute related to the same rate, practice, or common carrier service expectation in a covered dispute involving the same parties.

(3) In resolving disputes involving the reasonableness of a rail carrier's rates, the arbitrator shall consider the Board's methodologies for setting maximum lawful rates, giving due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues within the meaning of section 10704(a)(2) of this title.

(4) In resolving disputes involving common carrier service expectations, the arbitrator shall consider service expectations as published pursuant to section 11101(f).

(d) **ARBITRATION DECISIONS.**—Any decision reached in an arbitration process under this section shall—

(1) be consistent with subtitle IV of this title;

(2) be in writing and shall contain findings of fact and conclusions;

(3) have no precedential effect in any other or subsequent arbitration dispute; and

(4) be binding upon the parties.

(e) **TIMELINES.**—

(1) The arbitrator shall be selected within 14 days after the Board's decision to initiate arbitration.

(2) The evidentiary process of the arbitration process shall be completed within 90 days after the date of initiation of the arbi-

*tration process, unless a party requests an extension and the arbitrator grants it.*

*(3) The arbitrator shall issue a decision within 30 days after the close of the evidentiary record.*

*(4) The Board may extend any of the timelines in this subsection upon the agreement of all parties in the dispute.*

*(f) ARBITRATORS.—Arbitration under this section shall be conducted by an arbitrator selected from a roster, maintained by the Board, of persons with transportation, economic regulation, professional or business experience, including agriculture, in the private sector. If the parties cannot mutually agree on an arbitrator, the parties shall select an arbitrator from the roster by alternately striking names from the roster until only 1 name remains. The parties shall share the costs of the arbitration equally.*

*(g) RELIEF.—*

*(1) LIMITATION.—A decision under this section may award the payment of damages or rate prescriptive relief, but the value of the award may not exceed \$250,000 per year and the award may not cover a total time period of more than 2 years.*

*(2) REVIEW.—The board shall periodically review the amount in paragraph (1) and adjust it as necessary to reflect inflation.*

*(h) BOARD REVIEW.—If a party appeals an arbitrator's decision to the Board, the Board may review the decision under this section to determine if—*

*(1) the decision is consistent with subtitle IV of this title as applied by the Board; or*

*(2) if the award limitation in subsection (g).*

#### PART C—PIPELINE CARRIERS

#### CHAPTER 153—JURISDICTION

### § 15301. General pipeline jurisdiction

*(a) IN GENERAL.—The Board has jurisdiction over transportation by pipeline, or by pipeline and railroad or water, when transporting a commodity other than water, [gas, or oil.] oil, or natural or artificial gases that are used primarily as a fuel or for other energy purposes. Jurisdiction under this subsection applies only to transportation in the United States between a place in—*

*(1) a State and a place in another State;*

*(2) the District of Columbia and another place in the District of Columbia;*

*(3) a State and a place in a territory or possession of the United States;*

*(4) a territory or possession of the United States and a place in another such territory or possession;*

*(5) a territory or possession of the United States and another place in the same territory or possession;*

*(6) the United States and another place in the United States through a foreign country; or*

*(7) the United States and a place in a foreign country.*

*(b) NO JURISDICTION OVER INTRASTATE TRANSPORTATION.—The Board does not have jurisdiction under subsection (a) over the transportation of property, or the receipt, delivery, storage, or handling of property, entirely in a State (other than the District of Columbia) and not transported between a place in the United States*

and a place in a foreign country except as otherwise provided in this part.

(c) PROTECTION OF STATES POWERS.—This part does not affect the power of a State, in exercising its police power, to require reasonable intrastate transportation by carriers providing transportation subject to the jurisdiction of the Board under this chapter unless the State requirement is inconsistent with an order of the Board issued under this part or is prohibited under this part.

\* \* \* \* \*

CHAPTER 159—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND  
REMEDIES

**§ 15901. General authority**

(a) INVESTIGATION; COMPLIANCE ORDER.—Except as otherwise provided in this part, the Board may begin an investigation under this part [only on complaint.] *on the Board's own initiative or on complaint*. If the Board finds that a pipeline carrier is violating this part, the Board shall take appropriate action to compel compliance with this part. The Board shall provide the carrier notice of the investigation and an opportunity for a proceeding.

(b) COMPLAINT.—A person, including a governmental authority, may file with the Board a complaint about a violation of this part by a pipeline carrier providing transportation or service subject to this part. The complaint must state the facts that are the subject of the violation. The Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Board may not dismiss a complaint made against a pipeline carrier providing transportation subject to this part because of the absence of direct damage to the complainant.

(c) AUTOMATIC DISMISSAL.—A formal investigative proceeding begun by the Board under subsection (a) is dismissed automatically unless it is concluded by the Board with administrative finality by the end of the 3d year after the date on which it was begun.

\* \* \* \* \*

SUBTITLE V—RAIL PROGRAMS

PART A—SAFETY

CHAPTER 201—GENERAL

SUBCHAPTER I—GENERAL

**§ 20109. Employee protections**

(a) IN GENERAL.—A railroad carrier engaged in interstate or foreign commerce, a contractor or a subcontractor of such a railroad carrier, or an officer or employee of such a railroad carrier, may not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done—

(1) to provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation

relating to railroad safety or security, or gross fraud, waste, or abuse of Federal grants or other public funds intended to be used for railroad safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by—

(A) a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95–452);

(B) any Member of Congress, any committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

(2) to refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to railroad safety or security;

(3) to file a complaint, or directly cause to be brought a proceeding related to the enforcement of this part or, as applicable to railroad safety or security, chapter 51 or 57 of this title, or to testify in that proceeding;

(4) to notify, or attempt to notify, the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee;

(5) to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board;

(6) to furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with railroad transportation; or

(7) to accurately report hours on duty pursuant to chapter 211.

(b) HAZARDOUS SAFETY OR SECURITY CONDITIONS.—(1) A railroad carrier engaged in interstate or foreign commerce, or an officer or employee of such a railroad carrier, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee for—

(A) reporting, in good faith, a hazardous safety or security condition;

(B) refusing to work when confronted by a hazardous safety or security condition related to the performance of the employee's duties, if the conditions described in paragraph (2) exist; or

(C) refusing to authorize the use of any safety-related equipment, track, or structures, if the employee is responsible for the inspection or repair of the equipment, track, or structures, when the employee believes that the equipment, track, or structures are in a hazardous safety or security condition, if the conditions described in paragraph (2) exist.

(2) A refusal is protected under paragraph (1)(B) and (C) if—

(A) the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

(B) a reasonable individual in the circumstances then confronting the employee would conclude that—

(i) the hazardous condition presents an imminent danger of death or serious injury; and

(ii) the urgency of the situation does not allow sufficient time to eliminate the danger without such refusal; and

(C) the employee, where possible, has notified the railroad carrier of the existence of the hazardous condition and the intention not to perform further work, or not to authorize the use of the hazardous equipment, track, or structures, unless the condition is corrected immediately or the equipment, track, or structures are repaired properly or replaced.

(3) In this subsection, only paragraph (1)(A) shall apply to security personnel employed by a railroad carrier to protect individuals and property transported by railroad.

(c) PROMPT MEDICAL ATTENTION.—

(1) PROHIBITION.—A railroad carrier or person covered under this section may not deny, delay, or interfere with the medical or first aid treatment of an employee who is injured during the course of employment. If transportation to a hospital is requested by an employee who is injured during the course of employment, [the railroad shall promptly arrange] *the railroad carrier shall promptly arrange* to have the injured employee transported to the nearest hospital where the employee can receive safe and appropriate medical care.

(2) DISCIPLINE.—A railroad carrier or person covered under this section may not discipline, or threaten discipline to, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician, except that a railroad carrier's refusal to permit an employee to return to work following medical treatment shall not be considered a violation of this section if the refusal is pursuant to Federal Railroad Administration medical standards for fitness of duty or, if there are no pertinent Federal Railroad Administration standards, a carrier's medical standards for fitness for duty. For purposes of this paragraph, the term "discipline" means to bring charges against a person in a disciplinary proceeding, suspend, terminate, place on probation, or make note of reprimand on an employee's record.

(d) ENFORCEMENT ACTION.—

(1) IN GENERAL.—An employee who alleges discharge, discipline, or other discrimination in violation of subsection (a), (b), or (c) of this section, may seek relief in accordance with the provisions of this section, with any petition or other request for relief under this section to be initiated by filing a complaint with the Secretary of Labor.

(2) PROCEDURE.—

(A) IN GENERAL.—Any action under paragraph (1) shall be governed under the rules and procedures set forth in section 42121(b), including:

(i) BURDENS OF PROOF.—Any action brought under subsection (d)(1) shall be governed by the legal burdens of proof set forth in section 42121(b).

(ii) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 180 days after the date on which the alleged violation of subsection (a), (b), or (c) of this section occurs.

(iii) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an order issued by the Secretary of Labor pursuant to the procedures in section 42121(b), the Secretary of Labor may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred, as set forth in *section 42121*.

(B) EXCEPTION.—Notification made under section 42121(b)(1) shall be made to the person named in the complaint and the person's employer.

(3) DE NOVO REVIEW.—With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(4) APPEALS.—Any person adversely affected or aggrieved by an order issued pursuant to the procedures in section 42121(b),<sup>5</sup> may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. The review shall conform to chapter 7 of title 5. The commencement of proceedings under this paragraph shall not, unless ordered by the court, operate as a stay of the order.

(e) REMEDIES.—

(1) IN GENERAL.—An employee prevailing in any action under subsection (d) shall be entitled to all relief necessary to make the employee whole.

(2) DAMAGES.—Relief in an action under subsection (d) (including an action described in subsection (d)(3)) shall include—

(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

(B) any backpay, with interest; and

(C) compensatory damages, including compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(3) POSSIBLE RELIEF.—Relief in any action under subsection (d) may include punitive damages in an amount not to exceed \$250,000.

<sup>5</sup> So in original. The comma probably should not appear.

(f) ELECTION OF REMEDIES.—An employee may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the railroad carrier.

(g) NO PREEMPTION.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

(h) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

(i) DISCLOSURE OF IDENTITY.—

(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or the Secretary of Homeland Security may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this part or, as applicable to railroad safety or security, chapter 51 or 57 of this title, or a regulation prescribed or order issued under any of those provisions.

(2) The Secretary of Transportation or the Secretary of Homeland Security shall disclose to the Attorney General the name of an employee described in paragraph (1) if the matter is referred to the Attorney General for enforcement. The Secretary making such disclosures shall provide reasonable advance notice to the affected employee if disclosure of that person's identity or identifying information is to occur.

(j) PROCESS FOR REPORTING SECURITY PROBLEMS TO THE DEPARTMENT OF HOMELAND SECURITY.—

(1) ESTABLISHMENT OF PROCESS.—The Secretary of Homeland Security shall establish through regulations, after an opportunity for notice and comment, a process by which any person may report to the Secretary of Homeland Security regarding railroad security problems, deficiencies, or vulnerabilities.

(2) ACKNOWLEDGMENT OF RECEIPT.—If a report submitted under paragraph (1) identifies the person making the report, the Secretary of Homeland Security shall respond promptly to such person and acknowledge receipt of the report.

(3) STEPS TO ADDRESS PROBLEM.—The Secretary of Homeland Security shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps to address any problems or deficiencies identified.

\* \* \* \* \*

## § 20120. Enforcement report

(a) IN GENERAL.—Beginning not later than December 31, 2009, the Secretary of Transportation shall make available to the public and publish on its public website an annual report that—

(1) provides a summary of railroad safety and hazardous materials compliance inspections and audits that Federal or State inspectors conducted in the prior fiscal year organized by type

of alleged violation, including track, motive power and equipment, signal, grade crossing, operating practices, accident and incidence reporting, and hazardous materials;

(2) provides a summary of all enforcement actions taken by the Secretary or the Federal Railroad Administration during the prior fiscal year, including—

- (A) the number of civil penalties assessed;
- (B) the initial amount of civil penalties assessed;
- (C) the number of civil penalty cases settled;
- (D) the final amount of civil penalties assessed;
- (E) the difference between the initial and final amounts of civil penalties assessed;
- (F) the number of administrative hearings requested and completed related to hazardous materials transportation law violations or enforcement actions against individuals;
- (G) the number of cases referred to the Attorney General for civil or criminal prosecution; *and*
- (H) the number and subject matter of all compliance orders, emergency orders, or precursor agreements;

(3) analyzes the effect of the number of inspections conducted and enforcement actions taken on the number and rate of reported accidents and incidents and railroad safety;

(4) provide the information required by paragraphs (2) and (3)—

- (A) for each Class I railroad individually; and
- (B) in the aggregate for—
  - (i) Class II railroads;
  - (ii) Class III railroads;
  - (iii) hazardous materials shippers; and
  - (iv) individuals;

(5) identifies the number of locomotive engineer certification denial or revocation cases appealed to and the average length of time it took to be decided by—

- (A) the Locomotive Engineer Review Board;
- (B) an [Administrative Hearing Officer or Administrative Law Judge;] *administrative hearing officer or administrative law judge*; or
- (C) the Administrator of the Federal Railroad Administration;

(6) provides an explanation regarding any changes in the Secretary's or the Federal Railroad Administration's enforcement programs or policies that may substantially affect the information reported; and

(7) includes any additional information that the Secretary determines is useful to improve the transparency of its enforcement program.

#### SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

\* \* \* \* \*

### **§ 20151. Railroad trespassing, vandalism, and highway-rail grade crossing warning sign violation prevention strategy**

(a) EVALUATION OF EXISTING LAWS.—In consultation with affected parties, the Secretary of Transportation shall evaluate and

review current local, State, and Federal laws regarding trespassing on railroad property, vandalism affecting railroad safety, and violations of highway-rail grade crossing signs, signals, markings, or other warning devices and develop model prevention strategies and enforcement laws to be used for the consideration of State and local legislatures and governmental entities. The first such evaluation and review shall be completed within 1 year after the date of enactment of the Rail Safety Improvement Act of 2008. The Secretary shall revise the model prevention strategies and enforcement codes periodically.

(b) **OUTREACH PROGRAM FOR TRESPASSING AND VANDALISM PREVENTION.**—The Secretary shall develop and maintain a comprehensive outreach program to improve communications among Federal railroad safety inspectors, State inspectors certified by the Federal Railroad Administration, railroad police, and State and local law enforcement officers, for the purpose of addressing trespassing and vandalism problems on railroad property, and strengthening relevant enforcement strategies. This program shall be designed to increase public and police awareness of the illegality of, dangers inherent in, and the extent of, trespassing on railroad rights-of-way, to develop strategies to improve the prevention of trespassing and vandalism, and to improve the enforcement of laws relating to railroad trespass, vandalism, and safety.

(c) **MODEL LEGISLATION.**—(1) Within 18 months after November 2, 1994, the Secretary, after consultation with State and local governments and railroad carriers, shall develop and make available to State and local governments model State legislation providing for—

(A) civil or criminal penalties, or both, for vandalism of railroad equipment or property which could affect the safety of the public or of railroad employees; and

(B) civil or criminal penalties, or both, for trespassing on a railroad owned or leased right-of-way.

(2) Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary, after consultation with State and local governments and railroad carriers, shall develop and make available to State and local governments model State legislation providing for civil or criminal penalties, or both, for violations of highway-rail grade crossing signs, signals, markings, or other warning devices.

(d) **DEFINITION.**—In this section, the term “violation of highway-rail grade crossing signs, signals, markings, or other warning devices” includes any action by a motorist, unless directed by an authorized safety officer—

(1) **[to drive around a grade crossing gate]** *to drive through, around, or under a grade crossing gate* in a position intended to block passage over railroad tracks;

(2) to drive through a flashing grade crossing signal;

(3) to drive through a grade crossing with passive warning signs without ensuring that the grade crossing could be safely crossed before any train arrived; and

(4) in the vicinity of a grade crossing, who creates a hazard of an accident involving injury or property damage at the grade crossing.

**§ 20152. Notification of grade crossing problems**

(a) IN GENERAL.—Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation shall require each railroad carrier to—

(1) establish and maintain a toll-free telephone service for rights-of-way over which it dispatches trains, to directly receive calls reporting—

(A) malfunctions of signals, crossing gates, and other devices to promote safety at the grade crossing of railroad tracks on those rights-of-way and public or private roads;

(B) disabled vehicles blocking railroad tracks at such grade crossings;

(C) obstructions to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach; or

(D) other safety information involving such grade crossings;

(2) upon receiving a report pursuant to paragraph (1)(A) or (B), immediately contact trains operating near the grade crossing to warn them of the malfunction or disabled vehicle;

(3) upon receiving a report pursuant to paragraph (1)(A) or (B), and after contacting trains pursuant to paragraph (2), contact, as necessary, appropriate public safety officials having jurisdiction over the grade crossing to provide them with the information necessary for them to direct traffic, assist in the removal of the disabled vehicle, or carry out other activities as appropriate;

(4) upon receiving a report pursuant to paragraph (1)(C) or (D), timely investigate the report, remove the obstruction if possible, or correct the unsafe circumstance; and

(5) ensure the placement at each grade crossing on rights-of-way that it owns of appropriately located signs, on which shall appear, at a minimum—

(A) a toll-free telephone number to be used for placing calls described in paragraph (1) to the railroad carrier dispatching trains on that right-of-way;

(B) an explanation of the purpose of that toll-free telephone number; and

(C) the grade crossing number assigned for that crossing by the National Highway-Rail Crossing Inventory established by the Department of Transportation.

(b) WAIVER.—The Secretary may waive the requirement that the telephone service be toll-free for Class II and Class III [rail carriers] *railroad carriers* if the Secretary determines that toll-free service would be cost prohibitive or unnecessary.

\* \* \* \* \*

**§ 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] *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-re-

lated 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] *nonprofit* employee labor organiza-

tion 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.

#### § 20157. Implementation of positive train control systems

(a) IN GENERAL.—

(1) PLAN REQUIRED.—Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, each Class I [railroad carrier] *railroad* and each entity providing regularly scheduled intercity or commuter rail passenger transportation shall develop and submit to the Secretary of Transportation a plan for implementing a positive train control system by December 31, 2015, governing operations on—

(A) its main line over which intercity rail passenger transportation or commuter rail passenger transportation, as defined in section 24102, is regularly provided;

(B) its main line over which poison-or toxic-by-inhalation hazardous materials, as defined in [parts] *sections* 171.8, 173.115, and 173.132 of title 49, Code of Federal Regulations, are transported; and

(C) such other tracks as the Secretary may prescribe by regulation or order.

(2) IMPLEMENTATION.—The plan shall describe how it will provide for interoperability of the system with movements of trains of other railroad carriers over its lines and shall, to the extent practical, implement the system in a manner that addresses areas of greater risk before areas of lesser risk. The railroad carrier shall implement a positive train control system in accordance with the plan.

(b) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance and guidance to railroad carriers in developing the plans required under subsection (a).

(c) REVIEW AND APPROVAL.—Not later than 90 days after the Secretary receives a plan, the Secretary shall review and approve or disapprove it. If the proposed plan is not approved, the Secretary shall notify the affected railroad carrier or other entity as to the specific areas in which the proposed plan is deficient, and the railroad carrier or other entity shall correct all deficiencies within 30 days 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.

(d) REPORT.—Not later than December 31, 2012, the Secretary shall transmit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the progress of the railroad carriers in implementing such positive train control systems.

(e) ENFORCEMENT.—The Secretary is authorized to assess civil penalties pursuant to chapter 213 for a violation of this section, including the failure to submit or comply with a plan for implementing positive train control under subsection (a).

(f) OTHER RAILROAD CARRIERS.—Nothing in this section restricts the discretion of the Secretary to require railroad carriers other than those specified in subsection (a) to implement a positive train control system pursuant to this section or section 20156, or to specify the period by which implementation shall occur that does not exceed the time limits established in this section or section 20156. In exercising such discretion, the Secretary shall, at a minimum, consider the risk to railroad employees and the public associated with the operations of the railroad carrier.

(g) REGULATIONS.—The Secretary shall prescribe regulations or issue orders necessary to implement this section, including regulations specifying in appropriate technical detail the essential functionalities of positive train control systems, and the means by which those systems will be qualified.

(h) CERTIFICATION.—The Secretary shall not permit the installation of any positive train control system or component in revenue service unless the Secretary has certified that any such system or component has been approved through the approval process set forth in part 236 of title 49, Code of Federal Regulations, and complies with the requirements of that part.

(i) DEFINITIONS.—In this section:

(1) INTEROPERABILITY.—The term “interoperability” means the ability to control locomotives of the host railroad and tenant railroad to communicate with and respond to the positive train control system, including uninterrupted movements over property boundaries.

(2) MAIN LINE.—The term “main line” means a segment or route of railroad tracks over which 5,000,000 or more gross tons of railroad traffic is transported annually, except that—

(A) the Secretary may, through regulations under subsection (g), designate additional tracks as main line as appropriate for this section; and

(B) for intercity rail passenger transportation or commuter rail passenger transportation routes or segments over which limited or no freight railroad operations occur, the Secretary shall define the term “main line” by regulation.

(3) POSITIVE TRAIN CONTROL SYSTEM.—The term “positive train control system” means a system designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position.

\* \* \* \* \*

**§ 20158. Railroad safety technology grants**

(a) GRANT PROGRAM.—The Secretary of Transportation shall establish a grant program for the deployment of train control technologies, train control component technologies, processor-based technologies, electronically controlled pneumatic brakes, rail integrity inspection systems, rail integrity warning systems, switch position indicators and monitors, remote control power switch technologies, track integrity circuit technologies, and other new or novel railroad safety technology.

(b) GRANT CRITERIA.—

(1) ELIGIBILITY.—Grants shall be made under this section to eligible passenger and freight railroad carriers, railroad suppliers, and State and local governments for projects described in subsection (a) that have a public benefit of improved safety and network efficiency.

(2) CONSIDERATIONS.—Priority shall be given to projects that—

(A) focus on making technologies interoperable between railroad systems, such as train control technologies;

(B) accelerate train control technology deployment on high-risk corridors, such as those that have high volumes of hazardous materials shipments or over which commuter or passenger trains operate; or

(C) benefit both passenger and freight safety and efficiency.

(3) IMPLEMENTATION PLANS.—Grants may not be awarded under this section to entities that fail to develop and submit to the Secretary the plans required by sections **[20156(e)(2)] 20156(e)** and 20157.

(4) MATCHING REQUIREMENTS.—Federal funds for any eligible project under this section shall not exceed 80 percent of the total cost of such project.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation \$50,000,000 for each of fiscal years 2009 through 2013 to carry out this section. Amounts appropriated pursuant to this section shall remain available until expended.

**§ 20159. Roadway user sight distance at highway-rail grade crossings**

Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation, after consultation with the Federal Railroad Administration, the Federal Highway Administration, and States, shall develop and make available to States model legislation providing for improving safety by addressing sight obstructions, including vegetation growth, topographic features, structures, and standing railroad equipment, at highway-rail grade crossings that are equipped solely with passive warnings, as recommended by the Inspector General of the Department of Transportation in Report No. MH-2007-044.

**§ 20160. National crossing inventory**

(a) INITIAL REPORTING OF INFORMATION ABOUT PREVIOUSLY UNREPORTED CROSSINGS.—Not later than 1 year after the date of en-

actment of the Rail Safety Improvement Act of 2008 or 6 months after a new crossing becomes operational, whichever occurs later, each railroad carrier shall—

(1) report to the Secretary of Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported crossing through which it operates [or] 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.

(b) UPDATING OF CROSSING INFORMATION.—

(1) On a periodic basis beginning not later than 2 years after the date of enactment of the Rail Safety Improvement Act of 2008 and on or before September 30 of every year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall—

(A) report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each crossing through which it operates [or] 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.

(2) A railroad carrier that sells a crossing or any part of a crossing on or after the date of enactment of the Rail Safety Improvement Act of 2008 shall, not later than the date that is 18 months after the date of enactment of that 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 part of the crossing.

(c) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Department of Transportation’s statement of the national highway-rail crossing inventory policy, procedures, and instruction for States and railroads that is in effect on the date of enactment of the Rail Safety Improvement Act of 2008, until such provision is superseded by a regulation issued under this section.

(d) DEFINITIONS.—In this section:

(1) CROSSING.—The term “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 explicitly authorized by a public authority or a railroad carrier that is 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.—The term “State” means a State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

\* \* \* \* \*

**§ 20162. Minimum training standards and plans**

(a) IN GENERAL.—The Secretary of Transportation shall, not later than 1 year after the date of enactment of the Rail Safety Improvement Act of 2008, establish—

(1) minimum training standards for each class and craft of safety-related railroad employee (as defined in section 20102) and equivalent railroad carrier contractor and subcontractor employees, which shall require railroad carriers, contractors, and subcontractors to qualify or otherwise document the proficiency of such employees in each such class and craft regarding their knowledge of, and ability to comply with, Federal railroad safety laws and regulations and railroad carrier rules and procedures promulgated to implement those Federal railroad safety laws and regulations;

(2) a requirement that railroad carriers, contractors, and subcontractors develop and submit training and qualification plans to the Secretary for approval, including training programs and information deemed necessary by the Secretary to ensure that all safety-related railroad employees receive appropriate training in a timely manner; and

(3) a minimum training curriculum, and ongoing training criteria, testing, and skills evaluation measures to ensure that safety-related railroad employees, and contractor and subcontractor employees, charged with the inspection of track or railroad equipment are qualified to assess railroad *carrier* compliance with Federal standards to identify defective conditions and initiate immediate remedial action to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries, and, in implementing the requirements of this paragraph, take into consideration existing training programs of railroad carriers.

(b) APPROVAL.—The Secretary shall review and approve the plans required under subsection (a)(2) utilizing an approval process required for programs to certify the qualification of locomotive engineers pursuant to part 240 of title 49, Code of Federal Regulations.

(c) EXEMPTION.—The Secretary may exempt railroad carriers and railroad carrier contractors and subcontractors from submitting training plans for which the Secretary has issued training regulations before the date of enactment of the Rail Safety Improvement Act of 2008.

\* \* \* \* \*

**§ 20164. Development and use of rail safety technology**

(a) IN GENERAL.—Not later than 1 year after enactment of the [Railroad Safety Enhancement Act of 2008,] *Rail Safety Improvement Act of 2008*, the Secretary of Transportation shall prescribe standards, guidance, regulations, or orders governing the develop-

ment, use, and implementation of rail safety technology in dark territory, in arrangements not defined in section 20501 or otherwise not covered by Federal standards, guidance, regulations, or orders that ensure the safe operation of such technology, such as—

- (1) switch position monitoring devices or indicators;
- (2) radio, remote control, or other power-assisted switches;
- (3) hot box, high water, or earthquake detectors;
- (4) remote control locomotive zone limiting devices;
- (5) slide fences;
- (6) grade crossing video monitors;
- (7) track integrity warning systems; or
- (8) other similar rail safety technologies, as determined by the Secretary.

(b) DARK TERRITORY DEFINED.—In this section, the term “dark territory” means any territory in a railroad system that does not have a signal or train control system installed or operational.

**§ 20168. Interchange commitment relief grants**

(a) *IN GENERAL.*—Upon application, the Secretary of Transportation, in consultation with the Surface Transportation Board, may make grants available to assist any Class III rail carrier providing transportation subject to the jurisdiction of the Surface Transportation Board with the credit risk premium of a direct loan or loan guarantee made for the purposes of section 502(b)(1)(D) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(b)(1)(D)).

(b) *LIMITATIONS.*—The Secretary of Transportation—

- (1) shall award grants only to applicants with financial need; and
- (2) may approve a grant under this section only as part of an application for a Railroad Rehabilitation and Improvement Financing loan or loan guarantee.

(c) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Secretary of Transportation for grants under this section \$7,500,000 for fiscal years 2010 through 2014.

\* \* \* \* \*

CHAPTER 211—HOURS OF SERVICE

\* \* \* \* \*

**§ 21102. Nonapplication, exemption, and alternate hours of service regime**

(a) *GENERAL.*—This chapter does not apply to a situation involving any of the following:

- (1) a casualty.
- (2) an unavoidable accident.
- (3) an act of God.
- (4) 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.

(b) *EXEMPTION.*—The Secretary of Transportation may exempt a railroad carrier having not more than 15 employees covered by this chapter from the limitations imposed by this chapter. The Secretary may allow the exemption after a full hearing, for good cause

shown, and on deciding that the exemption is in the public interest and will not affect safety adversely. The exemption shall be for a specific period of time and is subject to review at least annually. The exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period.

(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)]~~ (B) The term “new section 21103” means section 21103 of this chapter as amended by the Rail Safety Improvement Act of 2008.

~~[(D)]~~ (C) 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.

\* \* \* \* \*

## PART B. ASSISTANCE

### CHAPTER 221. LOCAL RAIL FREIGHT ASSISTANCE

#### § 22106. Limitations on financial assistance

(a) GRANTS AND LOANS.—A State shall use financial assistance for projects under this chapter to make a grant or lend money to the owner of rail property, or a rail carrier providing rail transportation, related to a project being assisted.

(b) STATE USE OF REPAID FUNDS AND CONTINGENT INTEREST RECOVERIES.—The State shall place the United States Government’s share of money that is repaid and any contingent interest that is recovered in an interest-bearing account. The repaid money, contingent interest, and any interest [thereof] *thereon* shall be considered to be State funds. The State shall use such funds to make other grants and loans, consistent with the purposes for which financial assistance may be used under subsection (a), as the State considers to be appropriate.

(c) ENCOURAGING PARTICIPATION.—To the maximum extent possible, the State shall encourage the participation of shippers, rail carriers, and local communities in paying the State share of assistance costs.

\* \* \* \* \*

PART C—PASSENGER TRANSPORTATION

CHAPTER 241—GENERAL

\* \* \* \* \*

**§ 24105. Congestion grants**

(a) AUTHORITY.—The Secretary of Transportation may make grants to States, or to Amtrak in cooperation with States, for financing the capital costs of facilities, infrastructure, and equipment for high priority rail corridor projects necessary to reduce congestion or facilitate ridership growth in intercity rail passenger transportation.

(b) ELIGIBLE PROJECTS.—Projects eligible for grants under this section include projects—

- (1) identified by Amtrak as necessary to reduce congestion or facilitate ridership growth in intercity rail passenger transportation along heavily traveled rail corridors;
- (2) identified by the Surface Transportation Board as necessary to improve the on time performance and reliability of intercity rail passenger transportation under section 24308(f); and
- (3) designated by the Secretary as being sufficiently advanced in development to be capable of serving the purposes described in subsection (a) on an expedited schedule.

(c) FEDERAL SHARE.—The Federal share of the cost of a project financed under this section shall not exceed 80 percent.

(d) GRANT CONDITIONS.—The Secretary of Transportation shall require each recipient of a grant under this section to comply with the grant requirements of section 24405 of this title.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from amounts made available under [section 301 of the Passenger Rail Investment and Improvement Act of 2008,] *section 24406*, to the Secretary to carry out this section—

- (1) \$50,000,000 for fiscal year 2010;
- (2) \$75,000,000 for fiscal year 2011;
- (3) \$100,000,000 for fiscal year 2012; and
- (4) \$100,000,000 for fiscal year 2013.

\* \* \* \* \*

\* \* \* \* \*

**§ 24302. Board of Directors**

## (a) COMPOSITION AND TERMS.—

(1) The Amtrak Board of Directors (referred to in this section as the “Board”) is composed of the following 9 directors, each of whom must be a citizen of the United States:

(A) The Secretary of Transportation.

(B) The President of Amtrak.

(C) 7 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, with general business and financial experience, experience or qualifications in transportation, freight and passenger rail transportation, travel, hospitality, cruise line, or passenger air transportation businesses, or representatives of employees or users of passenger rail transportation or a State government.

(2) In selecting individuals described in paragraph (1) for nominations for appointments to the Board, the President shall consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate and try to provide adequate and balanced representation of the major geographic regions of the United States served by Amtrak.

(3) An individual appointed under paragraph (1)(C) of this subsection shall be appointed for a term of 5 years. Such term may be extended until the individual’s successor is appointed and qualified. Not more than ~~5 individuals~~ *4 individuals* appointed under paragraph (1)(C) may be members of the same political party.

(4) The Board shall elect a chairman and a vice chairman, other than the President of Amtrak, from among its membership. The vice chairman shall serve as chairman in the absence of the chairman.

(5) The Secretary may be represented at Board meetings by the Secretary’s designee.

(b) PAY AND EXPENSES.—Each director not employed by the United States Government or Amtrak is entitled to reasonable pay when performing Board duties. Each director not employed by the United States Government is entitled to reimbursement from Amtrak for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending Board meetings.

(c) TRAVEL.—(1) Each director not employed by the United States Government shall be subject to the same travel and reimbursable business travel expense policies and guidelines that apply to Amtrak’s executive management when performing Board duties.

(2) Not later than 60 days after the end of each fiscal year, the Board shall submit a report describing all travel and reimbursable business travel expenses paid to each director when performing Board duties to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(3) The report submitted under paragraph (2) shall include a detailed justification for any travel or reimbursable business travel expense that deviates from Amtrak's travel and reimbursable business travel expense policies and guidelines.

(d) VACANCIES.—A vacancy on the Board is filled in the same way as the original selection, except that an individual appointed by the President of the United States under subsection (a)(1)(C) of this section to fill a vacancy occurring before the end of the term for which the predecessor of that individual was appointed is appointed for the remainder of that term. A vacancy required to be filled by appointment under subsection (a)(1)(C) must be filled not later than 120 days after the vacancy occurs.

(e) QUORUM.—A majority of the members serving shall constitute a quorum for doing business.

(f) BYLAWS.—The Board may adopt and amend bylaws governing the operation of Amtrak. The bylaws shall be consistent with this part and the articles of incorporation.

\* \* \* \* \*

**§ 24316. Plans to address needs of families of passengers involved in rail passenger accidents**

(a) SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the Rail Safety Improvement Act of 2008, a rail passenger carrier shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving a rail passenger carrier intercity train and resulting in a major loss of life.

(b) CONTENTS OF PLANS.—A plan to be submitted by a rail passenger carrier under subsection (a) shall include, at a minimum, the following:

(1) A process by which a rail passenger carrier will maintain and provide to the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for the rail passenger carrier to use reasonable efforts to ascertain the names of passengers aboard a train involved in an accident.

(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1139(a)(2) of this title or the services of other suitably trained individuals.

(3) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as the rail passenger

carrier has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

(5) An assurance that, upon request of the family of a passenger, the rail passenger carrier will inform the family of whether the passenger's name appeared on any preliminary passenger manifest for the train involved in the accident.

(6) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within the control of the rail passenger carrier and by which any possession of the passenger within the control of the rail passenger carrier (regardless of its condition)—

(A) will be retained by the rail passenger carrier for at least 18 months; and

(B) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.

(7) A process by which the treatment of the families of non-revenue passengers will be the same as the treatment of the families of revenue passengers.

(8) An assurance that the rail passenger carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

(9) An assurance that the family of each passenger or other person killed in the accident will be consulted about construction by the rail passenger carrier of any monument to the passengers, including any inscription on the monument.

(10) An assurance that the rail passenger carrier will work with any organization designated under section 1139(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.

(11) An assurance that the rail passenger carrier will provide reasonable compensation to any organization designated under section 1139(a)(2) of this title for services provided by the organization.

(c) USE OF INFORMATION.—Neither the National Transportation Safety Board, the Secretary of Transportation, the Secretary of Homeland Security, nor a rail passenger carrier may release to the public any personal information on a list obtained under subsection (b)(1), but may provide information on the list about a passenger to the passenger's family members to the extent that the Board or a rail passenger carrier considers appropriate.

(d) LIMITATION ON STATUTORY CONSTRUCTION.—

(1) RAIL PASSENGER CARRIERS.—Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.

(2) INVESTIGATIONAL AUTHORITY OF BOARD AND SECRETARY.—Nothing in this section shall be construed to abridge the authority of the Board or the Secretary of Transportation to investigate the causes or circumstances of any rail accident, in-

cluding the development of information regarding the nature of injuries sustained and the manner in which they were sustained, for the purpose of determining compliance with existing laws and regulations or identifying means of preventing similar injuries in the future.

(e) LIMITATION ON LIABILITY.—A rail passenger carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the rail passenger carrier in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by the rail passenger carrier under subsection (b), unless such liability was caused by conduct of the rail passenger carrier which was grossly negligent or which constituted intentional misconduct.

(f) DEFINITIONS.—In this section, the terms “passenger” and “rail passenger accident” have the meaning given those terms by section 1139 of this title.

[(g) FUNDING.—Out of funds appropriated pursuant to section 20117(a)(1)(A), there shall be made available to the Secretary of Transportation \$500,000 for fiscal year 2010 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.]

\* \* \* \* \*

CHAPTER 244—INTERCITY PASSENGER RAIL SERVICE CORRIDOR  
CAPITAL ASSISTANCE

\* \* \* \* \*

**§ 24402. Capital investment grants to support intercity passenger rail service**

(a) GENERAL AUTHORITY.—

(1) The Secretary of Transportation may make grants under this section to an applicant to assist in financing the capital costs of facilities, infrastructure, and equipment necessary to provide or improve intercity passenger rail transportation.

(2) Consistent with the requirements of this chapter, the Secretary shall require that a grant under this section be subject to the terms, conditions, requirements, and provisions the Secretary decides are necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in value of real property resulting from the project assisted under this section and shall prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures and a record of decision on applicant eligibility. The Secretary shall issue a final rule establishing such procedures not later than 2 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008. For the period prior to the earlier of the issuance of such a rule or 2 years after the date of enactment of such Act, the Secretary shall issue interim guidance to applicants covering such procedures, and administer the grant program authorized under this section pursuant to such guidance.

(b) PROJECT AS PART OF STATE RAIL PLAN.—

(1) The Secretary may not approve a grant for a project under this section unless the Secretary finds that the project is part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008, and that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities.

(2) An applicant shall provide sufficient information upon which the Secretary can make the findings required by this subsection.

(3) If an applicant has not selected the proposed operator of its service competitively, the applicant shall provide written justification to the Secretary showing why the proposed operator is the best, taking into account price and other factors, and that use of the proposed operator will not unnecessarily increase the cost of the project.

(c) PROJECT SELECTION CRITERIA.—The Secretary, in selecting the recipients of financial assistance to be provided under subsection (a), shall—

(1) require—

(A) that the project be part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008;

(B) that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities;

(C) that the applicant provides sufficient information upon which the Secretary can make the findings required by this subsection;

(D) that if an applicant has selected the proposed operator of its service competitively, that the applicant provide written justification to the Secretary showing why the proposed operator is the best, taking into account costs and other factors;

(E) that each proposed project meet all safety and security requirements that are applicable to the project under law; and

(F) that each project be compatible with, and operated in conformance with—

(i) plans developed pursuant to the requirements of section 135 of title 23, United States Code; and

(ii) the national rail plan (if it is available);

(2) select projects—

(A) that are anticipated to result in significant improvements to intercity rail passenger service, including, but not limited to, consideration of—

(i) the project's levels of estimated ridership, increased on-time performance, reduced trip time, additional service frequency to meet anticipated or existing

demand, or other significant service enhancements as measured against minimum standards developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008;

(ii) the project's anticipated favorable impact on air or highway traffic congestion, capacity, or safety; and

(iii) identification of the project by the Surface Transportation Board as necessary to improve the on-time performance and reliability of intercity passenger rail under section 24308(f);

(B) for which there is a high degree of confidence that the proposed project is feasible and will result in the anticipated benefits, as indicated by—

(i) the project's precommencement compliance with environmental protection requirements;

(ii) the readiness of the project to be commenced;

(iii) the timing and amount of the project's future noncommitted investments;

(iv) the commitment of any affected host rail carrier to ensure the realization of the anticipated benefits; and

(v) other relevant factors as determined by the Secretary; and

(C) for which the level of the anticipated benefits compares favorably to the amount of Federal funding requested under this chapter; and

(3) give greater consideration to projects—

(A) that are anticipated to result in benefits to other modes transportation and to the public at large, including, but not limited to, consideration of the project's—

(i) encouragement of intermodal connectivity through provision of direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

(ii) anticipated improvement of freight or commuter rail operations;

(iii) encouragement of the use of positive train control technologies;

(iv) environmental benefits, including projects that involve the purchase of environmentally sensitive, fuel-efficient, and cost-effective passenger rail equipment;

(v) anticipated positive economic and employment impacts;

(vi) encouragement of State and private contributions toward station development, energy and environmental efficiency, and economic benefits; and

(vii) falling under the description in section 5302(a)(1)(G) of this title as defined to support intercity passenger rail service; and

(B) that incorporate equitable financial participation in the project's financing, including, but not limited to, consideration of—

(i) donated property interests or services;

(ii) financial contributions by freight and commuter rail carriers commensurate with the benefit expected to their operations; and

(iii) financial commitments from host railroads, non-Federal governmental entities, nongovernmental entities, and others.

(d) STATE RAIL PLANS.—State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2008 that substantially meet the requirements of chapter 227 of this title, as determined by the Secretary pursuant to section [22506] 22706 of this title, shall be deemed by the Secretary to have met the requirements of subsection (c)(1)(A) of this section.

[(e) AMTRAK ELIGIBILITY.—To receive a grant under this section, Amtrak may enter into a cooperative agreement with 1 or more States to carry out 1 or more projects on a State rail plan's ranked list of rail capital projects developed under section 22504(a)(5) of this title. For such a grant, Amtrak may not use Federal funds authorized under section 101(a) or (c) of the Passenger Rail Investment and Improvement Act of 2008 to fulfill the non-Federal share requirements under subsection (g) of this section.]

*(e) AMTRAK ELIGIBILITY.—Amtrak may be the recipient of a grant under this section if Amtrak has entered into a cooperative agreement with 1 or more applicants to carry out 1 or more projects on a State rail plan's list of rail capital projects developed under section 22705(a)(5) of this title. For such a grant, Amtrak may not use Federal funds authorized under section 101(a) or (c) of the Passenger Rail Investment and Improvement Act of 2008 to fulfill the non-Federal share requirements under subsection (g) of this section.*

(f) LETTERS OF INTENT [AND EARLY SYSTEMS WORK AGREEMENTS].—

(1) The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a major capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project.

(2) At least 30 days before issuing a letter under paragraph (1) of this subsection, the Secretary shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the House and Senate Committees on Appropriations of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement, the criteria used in subsection (c) for selecting the project for a grant award, and a description of how the project meets such criteria.

(3) An obligation or administrative commitment may be made only when amounts are appropriated. The letter of intent shall state that the contingent commitment is not an obligation of the Federal Government, and is subject to the availability of appropriations under Federal law and to Federal laws in force or enacted after the date of the contingent commitment.

(g) FEDERAL SHARE OF NET PROJECT COST.—

(1)(A) Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost.

(B) A grant for the project shall not exceed 80 percent of the project net capital cost.

(C) The Secretary shall give priority in allocating future obligations and contingent commitments to incur obligations to grant requests seeking a lower Federal share of the project net capital cost.

(2) Up to an additional 20 percent of the required non-Federal funds may be funded from amounts appropriated to or made available to a department or agency of the Federal Government that are eligible to be expended for transportation.

(3) The following amounts, not to exceed \$15,000,000 per fiscal year, shall be available to each applicant as a credit toward an applicant's matching requirement for a grant awarded under this section—

(A) in each of fiscal years 2009, 2010, and 2011—

(i) 50 percent of the average of amounts expended in fiscal years 2002 through 2008 by an applicant for capital projects related to intercity passenger rail service; and

(ii) 50 percent of the average of amounts expended in fiscal years 2002 through 2008 by an applicant for operating costs of such service; and

(B) in each of fiscal years 2010, 2011 and 2012, 50 percent of the amount by which the amounts expended for capital projects and operating costs related to intercity passenger rail service by an applicant in the prior fiscal year exceed the average capital and operating expenditures made for such service in fiscal years 2006, 2007, and 2008.

The Secretary may require such information as necessary to verify such expenditures. Credits made available to an applicant in a fiscal year under this paragraph may only be applied towards grants awarded in that fiscal year.

(4) The Federal share of expenditures for capital improvements under this chapter may not exceed 100 percent.

(h) 2-YEAR AVAILABILITY.—Funds appropriated under this section shall remain available until expended. If any amount provided as a grant under this section is not obligated or expended for the purposes described in subsection (a) within 2 years after the date on which the State received the grant, such sums shall be returned to the Secretary for other intercity passenger rail development projects under this section at the discretion of the Secretary.

(i) COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—~~【A metropolitan planning organization, State transportation department, or other project sponsor】~~*An applicant* may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project funded with a grant under this chapter.

(2) FORMS OF PARTICIPATION.—Participation by an entity under paragraph (1) may consist of—

(A) ownership or operation of any land, facility, locomotive, rail car, vehicle, or other physical asset associated with the project;

(B) cost-sharing of any project expense;

(C) carrying out administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

(D) any other form of participation approved by the Secretary.

(3) SUBALLOCATION.—A State may allocate funds under this section to any entity described in paragraph (1).

(j) SPECIAL TRANSPORTATION CIRCUMSTANCES.—In carrying out this section, the Secretary shall allocate an appropriate portion of the amounts available under this section to provide grants to States—

(1) in which there is no intercity passenger rail service for the purpose of funding freight rail capital projects that are on a State rail plan developed under chapter 227 of this title that provide public benefits (as defined in chapter 227) as determined by the Secretary; or

(2) in which the rail transportation system is not physically connected to rail systems in the continental United States or may not otherwise qualify for a grant under this section due to the unique characteristics of the geography of that State or other relevant considerations, for the purpose of funding transportation-related capital projects.

[(k) SMALL CAPITAL PROJECTS.—The Secretary shall make not less than 5 percent annually available from the amounts authorized under section 101(c) of the Passenger Rail Investment and Improvement Act of 2008 beginning in fiscal year 2009 for grants for capital projects eligible under this section not exceeding \$2,000,000, including costs eligible under section 209(d) of that Act. For grants awarded under this subsection, the Secretary may waive requirements of this section, including state rail plan requirements, as appropriate.]

*(k) SMALL CAPITAL PROJECTS.—The Secretary shall make not less than 5 percent annually available from the amounts appropriated under section 24406 beginning in fiscal year 2009 for grants for capital projects eligible under this section not exceeding \$2,000,000, including costs eligible under section 209(d) of the Passenger Rail Investment and Improvement Act of 2008. For grants awarded under this subsection, the Secretary may waive requirements of this section, including State rail plan requirements, as appropriate.*

(l) NONMOTORIZED TRANSPORTATION ACCESS AND STORAGE.—Grants under this chapter may be used to provide access to rolling stock for nonmotorized transportation, including bicycles, and recreational equipment, and to provide storage capacity in trains for such transportation, equipment, and other luggage, to ensure passenger safety.

### **§ 24403. Project management oversight**

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive Federal financial assistance for a major capital project under this chapter, an applicant must prepare and carry out a project man-

agement plan approved by the Secretary of Transportation. The plan shall provide for—

- (1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;
- (2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;
- (3) a construction schedule for the project;
- (4) a document control procedure and recordkeeping system;
- (5) a change order procedure that includes a documented, systematic approach to handling the construction change orders;
- (6) organizational structures, management skills, and staffing levels required throughout the construction phase;
- (7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;
- (8) material testing policies and procedures;
- (9) internal plan implementation and reporting requirements;
- (10) criteria and procedures to be used for testing the operational system or its major components;
- (11) periodic updates of the plan, especially related to project budget and project schedule, financing, and ridership estimates; and
- (12) the recipient's commitment to submit periodically a project budget and project schedule to the Secretary.

(b) SECRETARIAL OVERSIGHT.—

- (1) The Secretary may use no more than 1 percent of amounts made available in a fiscal year for capital projects under this chapter to enter into contracts **to oversee the construction of such projects.** *for activities to award and oversee the implementation of such projects.*
- (2) The Secretary may use amounts available under paragraph (1) of this subsection to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under paragraph (1).
- (3) The Federal Government shall pay the entire cost of carrying out a contract under this subsection.

(c) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this chapter shall provide the Secretary and a contractor the Secretary chooses under subsection (b) of this section with access to the construction sites and records of the recipient when reasonably necessary.

\* \* \* \* \*

CHAPTER 247—AMTRAK ROUTE SYSTEM

\* \* \* \* \*

**§ 24702. Transportation requested by States, authorities, and other persons**

(a) CONTRACTS FOR TRANSPORTATION.—Amtrak may enter into a contract with a State, a regional or local authority, or another person for Amtrak to operate an intercity rail service or route [not included in the national rail passenger transportation system] upon such terms as the parties thereto may agree.

(b) DISCONTINUANCE.—Upon termination of a contract entered into under this section, or the cessation of financial support under such a contract by either party, Amtrak may discontinue such service or route, notwithstanding any other provision of law.

\* \* \* \* \*

**§ 24706. Discontinuance**

(a) NOTICE OF DISCONTINUANCE.—(1) Except as provided in subsection (b) of this section, at least 180 days before [a discontinuance under section 24704 or] discontinuing service over a route, Amtrak shall give notice of the discontinuance in the way Amtrak decides will give a State, a regional or local authority, or another person the opportunity to agree to share or assume the cost of any part of the train, route, or service to be discontinued.

(2) Notice of the discontinuance under [section 24704 or] paragraph (1) shall be posted in all stations served by the train to be discontinued at least 14 days before the discontinuance.

(b) DISCONTINUANCE FOR LACK OF APPROPRIATIONS.—(1) Amtrak may discontinue service under [section 24704 or] subsection (a)(1) during—

(A) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not enacted at least 90 days before the beginning of the fiscal year; and

(B) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

(2) Amtrak shall notify each affected State or regional or local transportation authority of a discontinuance under this subsection as soon as possible after Amtrak decides to discontinue the service.

(c) APPLICABILITY.—This section applies to all service over routes provided by Amtrak, notwithstanding any provision of section 24701 of this title or any other provision of this title except section 24702(b).

\* \* \* \* \*

**§ 24709. International transportation**

Amtrak may develop and operate international intercity rail passenger transportation between the United States and Canada and between the United States and Mexico. [The Secretary of the Treasury and the Attorney General,] *The Secretary of Homeland Security*, in cooperation with Amtrak, shall maintain, consistent with the effective enforcement of the immigration and customs laws, en route customs inspection and immigration procedures for international intercity rail passenger transportation that will—

(1) be convenient for passengers; and

(2) result in the quickest possible international intercity rail passenger transportation.

\* \* \* \* \*

CHAPTER 249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

\* \* \* \* \*

**§ 24905. Northeast Corridor Infrastructure and Operations Advisory Commission; Safety Committee**

(a) NORTHEAST CORRIDOR INFRASTRUCTURE AND OPERATIONS ADVISORY COMMISSION.—

(1) Within 180 days after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, the Secretary of Transportation shall establish a Northeast Corridor Infrastructure and Operations Advisory Commission (referred to in this section as the “Commission”) to promote mutual cooperation and planning pertaining to the rail operations and related activities of the Northeast Corridor. The Commission shall be made up of—

- (A) members representing Amtrak;
- (B) members representing the Department of Transportation, including the Federal Railroad Administration;
- (C) 1 member from each of the States (including the District of Columbia) that constitute the Northeast Corridor as defined in section 24102, designated by, and serving at the pleasure of, the chief executive officer thereof; and
- (D) non-voting representatives of freight railroad carriers using the Northeast Corridor selected by the Secretary.

(2) The Secretary shall ensure that the membership belonging to any of the groups enumerated under paragraph (1) shall not constitute a majority of the Commission’s memberships.

(3) The Commission shall establish a schedule and location for convening meetings, but shall meet no less than four times per fiscal year, and the Commission shall develop rules and procedures to govern the Commission’s proceedings.

(4) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(5) Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(6) The Chairman of the Commission shall be elected by the members.

(7) The Commission may appoint and fix the pay of such personnel as it considers appropriate.

(8) Upon request of the Commission, the head of any department or agency of the United States may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this section.

(9) Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services nec-

essary for the Commission to carry out its responsibilities under this section.

(10) The Commission shall consult with other entities as appropriate.

(b) STATEMENT OF GOALS AND RECOMMENDATIONS.—

(1) STATEMENT OF GOALS.—The Commission shall develop a statement of goals concerning the future of Northeast Corridor rail infrastructure and operations based on achieving expanded and improved intercity, commuter, and freight rail services operating with greater safety and reliability, reduced travel times, increased frequencies and enhanced intermodal connections designed to address airport and highway congestion, reduce transportation energy consumption, improve air quality, and increase economic development of the Northeast Corridor region.

(2) RECOMMENDATIONS.—The Commission shall develop recommendations based on the statement developed under this section addressing, as appropriate—

(A) short-term and long-term capital investment needs beyond those specified in the state-of-good-repair plan under section 211 of the Passenger Rail Investment and Improvement Act of 2008;

(B) future funding requirements for capital improvements and maintenance;

(C) operational improvements of intercity passenger rail, commuter rail, and freight rail services;

(D) opportunities for additional non-rail uses of the Northeast Corridor;

(E) scheduling and dispatching;

(F) safety and security enhancements;

(G) equipment design;

(H) marketing of rail services;

(I) future capacity requirements; and

(J) potential funding and financing mechanisms for projects of corridor-wide significance.

(c) ACCESS COSTS.—

(1) DEVELOPMENT OF FORMULA.—Within 2 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, the Commission shall—

(A) develop a standardized formula for determining and allocating costs, revenues, and compensation for Northeast Corridor commuter rail passenger transportation, as defined in section 24102 of this title, on the Northeast Corridor main line between Boston, Massachusetts, and Washington, District of Columbia, and the Northeast Corridor branch lines connecting to Harrisburg, Pennsylvania, Springfield, Massachusetts, and Spuyten Duyvil, New York, that use Amtrak facilities or services or that provide such facilities or services to Amtrak that ensures that—

(i) there is no cross-subsidization of commuter rail passenger, intercity rail passenger, or freight rail transportation;

(ii) each service is assigned the costs incurred only for the benefit of that service, and a proportionate share, based upon factors that reasonably reflect rel-

ative use, of costs incurred for the common benefit of more than 1 service; and

(iii) all financial contributions made by an operator of a service that benefit an infrastructure owner other than the operator are considered, including but not limited to, any capital infrastructure investments and in-kind services;

(B) develop a proposed timetable for implementing the formula before the end of the 6th year following the date of enactment of that Act;

(C) transmit the proposed timetable to the Surface Transportation Board; and

(D) at the request of a Commission member, petition the Surface Transportation Board to appoint a mediator to assist the Commission members through non-binding mediation to reach an agreement under this section.

(2) IMPLEMENTATION.—Amtrak and public authorities providing commuter rail passenger transportation on the Northeast Corridor shall implement new agreements for usage of facilities or services based on the formula proposed in paragraph (1) in accordance with the timetable established therein. If the entities fail to implement such new agreements in accordance with the timetable, the Commission shall petition the Surface Transportation Board to determine the appropriate compensation amounts for such services in accordance with section 24904(c) of this title. The Surface Transportation Board shall enforce its determination on the party or parties involved.

(3) REVISIONS.—The Commission may make necessary revisions to the formula developed under paragraph (1), including revisions based on Amtrak's financial accounting system developed pursuant to section 203 of the Passenger Rail Investment and Improvement Act of 2008.

(d) TRANSMISSION OF STATEMENT OF GOALS AND RECOMMENDATIONS.—The Commission shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

(1) the statement of goals developed under subsection (b) within 1 year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008; and

(2) the recommendations developed under subsection (b) and the formula and timetable developed under subsection (c)(1) annually.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary for the period encompassing fiscal years 2009 through 2013 to carry out this section.

(f) NORTHEAST CORRIDOR SAFETY COMMITTEE.—

(1) IN GENERAL.—The Secretary shall establish a Northeast Corridor Safety Committee composed of members appointed by the Secretary. The members shall be representatives of—

(A) the Department of Transportation, including the Federal Railroad Administration;

(B) Amtrak;

- (C) **[freight carriers]** *freight railroad carriers* operating more than 150,000 train miles a year on the main line of the Northeast Corridor;
  - (D) commuter rail agencies;
  - (E) rail passengers;
  - (F) **[rail labor;]** *representatives of nonprofit employee labor organizations representing railroad employees; and*
  - (G) other individuals and organizations the Secretary decides have a significant interest in rail safety or security.
- (2) **FUNCTION; MEETINGS.**—The Secretary shall consult with the Committee about safety and security improvements on the Northeast Corridor main line. The Committee shall meet at least two times per year to consider safety and security matters on the main line.
- (3) **REPORT.**—At the beginning of the first session of each Congress, the Secretary shall submit a report to the Commission and to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of efforts to improve safety and security on the Northeast Corridor main line. The report shall include the safety and security recommendations of the Committee and the comments of the Secretary on those recommendations.

\* \* \* \* \*

PART D—HIGH-SPEED RAIL

CHAPTER 261—HIGH-SPEED RAIL ASSISTANCE

\* \* \* \* \*

**§ 26106. High-speed rail corridor development**

- (a) **IN GENERAL.**—The Secretary of Transportation shall establish and implement a high-speed rail corridor development program.
- (b) **DEFINITIONS.**—In this section, the following definitions apply:
- (1) **APPLICANT.**—The term “applicant” means a State, a group of States, an Interstate Compact, a public agency established by one or more States and having responsibility for providing high-speed rail service, or Amtrak.
  - (2) **CORRIDOR.**—The term “corridor” means a corridor designated by the Secretary pursuant to section 104(d)(2) of title 23.
  - (3) **CAPITAL PROJECT.**—The term “capital project” means a project or program in a State rail plan developed under chapter 227 of this title for acquiring, constructing, improving, or inspecting equipment, track, and track structures, or a facility of use in or for the primary benefit of high-speed rail service, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, highway-rail grade crossing improvements related to high-speed rail service, mitigating environmental impacts, communication and signalization improvements, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing.

(4) HIGH-SPEED RAIL.—The term “high-speed rail” means intercity passenger rail service that is reasonably expected to reach speeds of at least 110 miles per hour.

(5) INTERCITY PASSENGER RAIL SERVICE.—The term “intercity passenger rail service” has the meaning given the term “intercity rail passenger transportation” in section 24102 of this title.

(6) STATE.—The term “State” means any of the 50 States or the District of Columbia.

(c) GENERAL AUTHORITY.—The Secretary may make grants under this section to an applicant to finance capital projects in high-speed rail corridors.

(d) APPLICATIONS.—Each applicant seeking to receive a grant under this section to develop a high-speed rail corridor shall submit to the Secretary an application in such form and in accordance with such requirements as the Secretary shall establish.

(e) COMPETITIVE GRANT SELECTION AND CRITERIA FOR GRANTS.—

(1) IN GENERAL.—The Secretary shall—

(A) establish criteria for selecting among projects that meet the criteria specified in paragraph (2);

(B) conduct a national solicitation for applications; and

(C) award grants on a competitive basis.

(2) GRANT CRITERIA.—The Secretary, in selecting the recipients of high-speed rail development grants to be provided under subsection (c), shall—

(A) require—

(i) that the project be part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008;

(ii) that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities;

(iii) that the project be based on the results of preliminary engineering studies or other planning, including corridor planning activities funded under section 26101 of this title;

(iv) that the applicant provides sufficient information upon which the Secretary can make the findings required by this subsection;

(v) that if an applicant has selected the proposed operator of its service, that the applicant provide written justification to the Secretary showing why the proposed operator is the best, taking into account costs and other factors;

(vi) that each proposed project meet all safety and security requirements that are applicable to the project under law; and

(vii) that each project be compatible with, and operated in conformance with—

(I) plans developed pursuant to the requirements of section 135 of title 23; and

- (II) the national rail plan (if it is available);
- (B) select high-speed rail projects—
  - (i) that are anticipated to result in significant improvements to intercity rail passenger service, including, but not limited to, consideration of the project's—
    - (I) levels of estimated ridership, increased on-time performance, reduced trip time, additional service frequency to meet anticipated or existing demand, or other significant service enhancements as measured against minimum standards developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008;
    - (II) anticipated favorable impact on air or highway traffic congestion, capacity, or safety; and
  - (ii) for which there is a high degree of confidence that the proposed project is feasible and will result in the anticipated benefits, as indicated by—
    - (I) the project's precommencement compliance with environmental protection requirements;
    - (II) the readiness of the project to be commenced;
    - (III) the commitment of any affected host rail carrier to ensure the realization of the anticipated benefits; and
    - (IV) other relevant factors as determined by the Secretary;
  - (iii) for which the level of the anticipated benefits compares favorably to the amount of Federal funding requested under this section; and
- (C) give greater consideration to projects—
  - (i) that are anticipated to result in benefits to other modes of transportation and to the public at large, including, but not limited to, consideration of the project's—
    - (I) encouragement of intermodal connectivity through provision of direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;
    - (II) anticipated improvement of conventional intercity passenger, freight, or commuter rail operations;
    - (III) use of positive train control technologies;
    - (IV) environmental benefits, including projects that involve the purchase of environmentally sensitive, fuel-efficient, and cost-effective passenger rail equipment;
    - (V) anticipated positive economic and employment impacts;
    - (VI) encouragement of State and private contributions toward station development, energy and environmental efficiency, and economic benefits; and

(VII) falling under the description in section 5302(a)(1)(G) of this title as defined to support intercity passenger rail service; and  
 (ii) that incorporate equitable financial participation in the project's financing, including, but not limited to, consideration of—

(I) donated property interests or services;

(II) financial contributions by intercity passenger, freight, and commuter rail carriers commensurate with the benefit expected to their operations; and

(III) financial commitments from host railroads, non-Federal governmental entities, non-governmental entities, and others.

(3) GRANT CONDITIONS.—The Secretary shall require each recipient of a grant under this chapter to comply with the grant requirements of section 24405 of this title.

(4) STATE RAIL PLANS.—State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2008 that substantially meet the requirements of chapter 227 of this title, as determined by the Secretary pursuant to section [22506] 22706 of this title, shall be deemed by the Secretary to have met the requirements of paragraph (2)(A)(i) of this subsection.

(f) FEDERAL SHARE.—The Federal share of the cost of a project financed under this section shall not exceed 80 percent of the project net capital cost.

(g) ISSUANCE OF REGULATIONS.—Within 1 year after the date of enactment of this section, the Secretary shall issue regulations to carry out this section.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section—

- (1) \$150,000,000 for fiscal year 2009;
- (2) \$300,000,000 for fiscal year 2010;
- (3) \$350,000,000 for fiscal year 2011;
- (4) \$350,000,000 for fiscal year 2012; and
- (5) \$350,000,000 for fiscal year 2013.

## RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

### SEC. 502. DIRECT LOANS AND LOAN GUARANTEES

[45 U.S.C. 822]

(a) GENERAL AUTHORITY.—The Secretary shall provide direct loans and loan guarantees to—

- (1) State and local governments;
- (2) interstate compacts consented to by Congress under section 410(a) of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 note);
- (3) government sponsored authorities and corporations;
- (4) railroads;
- (5) joint ventures that include at least one railroad; and
- (6) solely for the purpose of constructing a rail connection between a plant or facility and a second rail carrier, limited op-

tion rail freight shippers that own or operate a plant or other facility that is served by no more than a single railroad.

(b) ELIGIBLE PURPOSES.—

(1) IN GENERAL.—Direct loans and loan guarantees under this section shall be used to—

(A) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops;

(B) refinance outstanding debt incurred for the purposes described in subparagraph (A); **or**

(C) develop or establish new intermodal or railroad **[facilities.] facilities; or**

(D) *provide financial assistance to purchase or lease a rail line subject to terms established by the Surface Transportation Board under section 11708(d) of title 49, United States Code.*

(2) OPERATING EXPENSES NOT ELIGIBLE.—Direct loans and loan guarantees under this section shall not be used for railroad operating expenses.

(c) PRIORITY PROJECTS.—In granting applications for direct loans or guaranteed loans under this section, the Secretary shall give priority to projects that—

(1) enhance public safety;

(2) enhance the environment;

(3) promote economic development;

(4) enable United States companies to be more competitive in international markets;

(5) are endorsed by the plans prepared under section 135 of title 23, United States Code, by the State or States in which they are located;

(6) preserve or enhance rail or intermodal service to small communities or rural areas;

(7) enhance service and capacity in the national rail system;

or

(8) would materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.

(d) EXTENT OF AUTHORITY.—The aggregate unpaid principal amounts of obligations under direct loans and loan guarantees made under this section shall not exceed \$35,000,000,000 at any one time. Of this amount, not less than \$7,000,000,000 shall be available solely for projects primarily benefiting freight railroads other than Class I carriers. The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.

(e) RATES OF INTEREST.—

(1) DIRECT LOANS.—The Secretary shall require interest to be paid on a direct loan made under this section at a rate not less than that necessary to recover the cost of making the loan.

(2) LOAN GUARANTEES.—The Secretary shall not make a loan guarantee under this section if the interest rate for the loan exceeds that which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates and customary fees incurred under similar obligations in the private capital market.

(3) *INTEREST RATE REDUCTION.*—Subject to the availability of funds authorized by subsection (k), the Secretary may reduce the interest to be paid on direct loans provided to a Class II or Class III rail carrier for the purpose of subsection (b)(1)(D).

(f) *INFRASTRUCTURE PARTNERS.*—

(1) *AUTHORITY OF SECRETARY.*—In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 504(b)(1) of the Federal Credit Reform Act of 1990, the Secretary may accept on behalf of an applicant for assistance under this section a commitment from a non-Federal source to fund in whole or in part credit risk or private insurance, including bond insurance, premiums with respect to the loan that is the subject of the application. In no event shall the aggregate of appropriations of budget authority and credit risk or insurance, including bond insurance, premiums described in this paragraph with respect to a direct loan or loan guarantee be less than the cost of that direct loan or loan guarantee.

(2) *CREDIT RISK PREMIUM AMOUNT.*—The Secretary shall determine the amount required for credit risk premiums under this subsection on the basis of—

(A) the circumstances of the applicant, including the amount of collateral offered, if any;

(B) the proposed schedule of loan disbursements;

(C) historical data on the repayment history of similar borrowers;

(D) consultation with the Congressional Budget Office;

(E) the size and characteristics of the cohort of which the loan or loan guarantee is a member; and

(F) any other factors the Secretary considers relevant.

(3) *PAYMENT OF PREMIUMS.*—Credit risk premiums under this subsection shall be paid to the Secretary before the disbursement of loan [amounts.] amounts or, at the discretion of the Secretary, in a series of payments over the term of the loan. If insurance, including bond insurance, is used, the policy premium shall be paid before the loan is disbursed.

(4) *COHORTS OF LOANS.*—In order to maintain sufficient balances of credit risk premiums to adequately protect the Federal Government from risk of default, while minimizing the length of time the Government retains possession of those balances, the Secretary shall establish cohorts of loans. When all obligations attached to a cohort of loans have been satisfied, credit risk premiums paid for the cohort, and interest accrued thereon, which were not used to mitigate losses shall be returned to the original source on a pro rata basis. A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for 1 loan or loan guarantee.

(g) *PREREQUISITES FOR ASSISTANCE.*—The Secretary shall not make a direct loan or loan guarantee under this section unless the Secretary has made a finding in writing that—

(1) repayment of the obligation is required to be made within a term of not more than 35 years from the date of its execution;

(2) the direct loan or loan guarantee is justified by the present and probable future demand for rail services or intermodal facilities;

(3) the applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, improved, developed, or established with the proceeds of the obligation will be economically and efficiently utilized;

(4) the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government; and

(5) the purposes of the direct loan or loan guarantee are consistent with subsection (b).

(h) CONDITIONS OF ASSISTANCE.—

(1) The Secretary shall, before granting assistance under this section, require the applicant to agree to such terms and conditions as are sufficient, in the judgment of the Secretary, to ensure that, as long as any principal or interest is due and payable on such obligation, the applicant, and any railroad or railroad partner for whose benefit the assistance is intended—

(A) will not use any funds or assets from railroad or intermodal operations for purposes not related to such operations, if such use would impair the ability of the applicant, railroad, or railroad partner to provide rail or intermodal services in an efficient and economic manner, or would adversely affect the ability of the applicant, railroad, or railroad partner to perform any obligation entered into by the applicant under this section;

(B) will, consistent with its capital resources, maintain its capital program, equipment, facilities, and operations on a continuing basis; and

(C) will not make any discretionary dividend payments that unreasonably conflict with the purposes stated in subsection (b).

(2) The Secretary shall not require an applicant for a direct loan or loan guarantee under this section to provide collateral. Any collateral provided or thereafter enhanced shall be valued as a going concern after giving effect to the present value of improvements contemplated by the completion and operation of the project. The Secretary shall not require that an applicant for a direct loan or loan guarantee under this section have previously sought the financial assistance requested from another source.

(3) The Secretary shall require recipients of direct loans or loan guarantees under this section to comply with—

(A) the standards of section 24312 of title 49, United States Code, as in effect on September 1, 2002, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with such standards for construction work financed under an agreement made under section 24308(a) of that title; and

(B) the protective arrangements established under section 504 of this Act, with respect to employees affected by actions taken in connection with the project to be financed by the loan or loan guarantee.

(i) **TIME LIMIT FOR APPROVAL OR DISAPPROVAL.**—Not later than 90 days after receiving a complete application for a direct loan or loan guarantee under this section, the Secretary shall approve or disapprove the application.

(j) **REPAYMENT SCHEDULES.**—

(1) **IN GENERAL.**—The Secretary shall establish a repayment schedule requiring payments to commence not later than the sixth anniversary date of the original loan disbursement.

(2) **ACCRUAL.**—Interest shall accrue as of the date of disbursement, and shall be amortized over the remaining term of the loan beginning at the time the payments begin.

(k) **AUTHORIZATION OF APPROPRIATIONS.**—*There are authorized to be appropriated to the Secretary for purposes of carrying out subsection (e)(3) such funds as may be necessary for fiscal years 2010 through 2014.*

## RAIL SAFETY IMPROVEMENT ACT OF 2008

### SEC. 2. DEFINITIONS.

[49 U.S.C. 20102 note]

(a) **IN GENERAL.**—In this division:

(1) **CROSSING.**—The term “crossing” means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks at **[grade]** *grade*, 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 explicitly authorized by a public authority or a railroad carrier that is 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) **DEPARTMENT.**—The term “Department” means the Department of Transportation.

(3) **RAILROAD.**—The term “railroad” has the meaning given that term by section 20102 of title 49, United States Code.

(4) **RAILROAD CARRIER.**—The term “railroad carrier” has the meaning given that term by section 20102 of title 49, United States Code.

(5) **SECRETARY.**—The term “Secretary” means the Secretary of Transportation.

(6) **STATE.**—The term “State” means a State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) [Executed]

### SEC. 102. RAILROAD SAFETY STRATEGY.

[49 U.S.C. 20101 note]

(a) **SAFETY GOALS.**—In conjunction with existing federally-required and voluntary strategic planning efforts ongoing at the Department and the Federal Railroad Administration as of the date of enactment of this Act, the Secretary shall develop a long-term strategy for improving railroad safety to cover a period of not less

than 5 years. The strategy shall include an annual plan and schedule for achieving, at a minimum, the following goals:

(1) Reducing the number and rates of accidents, incidents, injuries, and fatalities involving railroads including train collisions, derailments, and human factors.

(2) Improving the consistency and effectiveness of enforcement and compliance programs.

(3) Improving the identification of high-risk highway-rail grade crossings and strengthening enforcement and other methods to increase grade crossing safety.

(4) Improving research efforts to enhance and promote railroad safety and performance.

(5) Preventing railroad trespasser accidents, incidents, injuries, and fatalities.

[(6) Improving the safety of railroad bridges, tunnels, and related infrastructure to prevent accidents, incidents, injuries, and fatalities caused by catastrophic failures and other bridge and tunnel failures.]

*(6) Improving the safety of railroad bridges, tunnels, and related infrastructure to prevent accidents, incidents, injuries, and fatalities caused by catastrophic and other failures of such infrastructure.”*

(b) **RESOURCE NEEDS.**—The strategy and annual plan shall include estimates of the funds and staff resources needed to accomplish the goals established by subsection (a). Such estimates shall also include the staff skills and training required for timely and effective accomplishment of each such goal.

(c) **SUBMISSION WITH THE PRESIDENT’S BUDGET.**—The Secretary shall submit the strategy and annual plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure at the same time as the President’s budget submission.

(d) **ACHIEVEMENT OF GOALS.**—

(1) **PROGRESS ASSESSMENT.**—Not less frequently than annually, the Secretary shall assess the progress of the Department toward achieving the strategic goals described in subsection (a). The Secretary shall identify any deficiencies in achieving the goals within the strategy and develop and institute measures to remediate such deficiencies. The Secretary and the Administrator shall convey their assessment to the employees of the Federal Railroad Administration and shall identify any deficiencies that should be remediated before the next progress assessment.

(2) **REPORT TO CONGRESS.**—Beginning in 2009, not later than November 1 of each year, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the performance of the Federal Railroad Administration containing the progress assessment required by paragraph (1) toward achieving the goals of the railroad safety strategy and annual plans under subsection (a).

**SEC. 108. HOURS-OF-SERVICE REFORM.**

[49 U.S.C. 21101 note]

(a) **CHANGE IN DEFINITION OF SIGNAL EMPLOYEE.**—[Executed]

(b) LIMITATION ON DUTY HOURS OF TRAIN EMPLOYEES.—[Executed]

(c) LIMITATION ON DUTY HOURS OF SIGNAL EMPLOYEES.—[Executed]

(d) ALTERNATE HOURS OF SERVICE REGIME.—[Executed]

(e) REGULATORY AUTHORITY.—[Executed]

(f) RECORD 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] *requirements for record keeping 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.—Delay in Implementation of Duty Hours Limitation Changes.—The amendments made by subsections (a), (b), and (c) shall take effect 9 months after the date of enactment of this Act.

**[SEC. 201. PEDESTRIAN CROSSING SAFETY.]**

**SEC. 201. PEDESTRIAN SAFETY AT OR NEAR RAILROAD PASSENGER STATIONS.**

[49 U.S.C. 20134 note]

Not later than 1 year after the date of enactment of this Act, the Secretary shall provide guidance to railroads on [strategies and methods to prevent pedestrian accidents, incidents, injuries, and fatalities at or near passenger stations, including—] *strategies and methods to prevent train-related accidents, incidents, injuries, and fatalities that involve a pedestrian at or near a railroad passenger station, including—*

(1) providing audible warning of approaching trains to the pedestrians [at railroad passenger stations];

(2) using signs, signals, or other visual devices to warn pedestrians of approaching trains;

(3) installing infrastructure at pedestrian crossings to improve the safety of pedestrians crossing railroad tracks;

(4) installing fences to prohibit access to railroad tracks; and

(5) other strategies or methods as determined by the Secretary.

**SEC. 206. OPERATION LIFESAVER.**

[49 U.S.C. 22501 note]

(a) GRANT.—The Federal Railroad Administration shall make a grant or grants to Operation Lifesaver to carry out a public information and education program to help prevent and reduce pedestrian, motor vehicle, and other accidents, incidents, injuries, and fatalities, and to improve awareness along railroad rights-of-way and at highway-rail grade crossings. The program shall include, as appropriate, development, placement, and dissemination of [Public Service Announcements] *public service announcements* in newspaper, radio, television, and other media. The program shall also include, as appropriate, school presentations, brochures and materials, support for public awareness campaigns, and related support for the activities of Operation Lifesaver's member organizations. As part of an educational program funded by grants awarded under this section, Operation Lifesaver shall provide information to the public on how to identify and report to the appropriate authorities unsafe or malfunctioning highway-rail grade crossings.

(b) PILOT PROGRAM.—The Secretary may allow funds provided under subsection (a) also to be used by Operation Lifesaver to implement a pilot program, to be known as the Railroad Safety Public Awareness Program, that addresses the need for targeted and sustained community outreach on the subjects described in subsection (a). Such a pilot program shall be established in 1 or more States identified under section 202 of this division. In carrying out such a pilot program Operation Lifesaver shall work with the State, community leaders, school districts, and public and private partners to identify the communities at greatest risk, to develop appropriate measures to reduce such risks, and shall coordinate the pilot program with the State grade crossing action plan.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Railroad Administration for carrying out this section—

- (1) \$2,000,000 for each of fiscal years 2010 and 2011; and
- (2) \$1,500,000 for each of fiscal years 2012 and 2013.

**[SEC. 403. TRACK INSPECTION TIME STUDY.]****SEC. 403. STUDY AND RULEMAKING ON TRACK INSPECTION TIME; RULEMAKING ON CONCRETE CROSSTIES.**

[49 U.S.C. 20142 note]

(a) STUDY.—Not later than 2 years after the date of enactment of this Act, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the results of a study to determine whether—

- (1) the required intervals of track inspections for each class of track should be amended;
- (2) track remedial action requirements should be amended;
- (3) different track inspection and repair priorities or methods should be required; and
- (4) the speed at which railroad track inspection vehicles operate and the scope of the territory they generally cover allow for proper inspection of the track and whether such speed and appropriate scope should be regulated by the Secretary.

(b) CONSIDERATIONS.—In conducting the study the Secretary shall consider—

(1) the most current rail flaw, rail defect growth, rail fatigue, and other relevant track- or rail-related research and studies;

(2) the availability and feasibility of developing and implementing new or novel rail inspection technology for routine track inspections;

(3) information from National Transportation Safety Board or Federal Railroad Administration accident investigations where track defects were the cause or a contributing cause; and

(4) other relevant information, as determined by the Secretary.

(c) UPDATE OF REGULATIONS.—Not later than 2 years after the completion of the study required by subsection (a), the Secretary shall prescribe regulations based on the results of the study conducted under subsection (a).

(d) CONCRETE **[CROSS TIES]** *CROSSTIES*.—Not later than 18 months after the date of enactment of this Act, the Secretary shall promulgate regulations for concrete **[cross ties.]** *cross ties*. In developing the regulations for class 1 through 5 track, the Secretary may address, as appropriate—

(1) limits for rail seat abrasion;

(2) concrete **[cross tie]** *cross tie* pad wear limits;

(3) missing or broken rail fasteners;

(4) loss of appropriate toeload pressure;

(5) improper fastener configurations; and

(6) excessive lateral rail movement.

#### SEC. 405. LOCOMOTIVE CAB STUDIES.

[49 U.S.C. 20103 note]

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, through the Railroad Safety Advisory Committee if the Secretary makes such a request, shall complete a study on the safety impact of the use of personal electronic devices, including **[cell phones,]** *cellular telephones*, video games, and other distracting devices, by safety-related railroad employees (as defined in section 20102(4) of title 49, United States Code), during the performance of such employees' duties. The study shall consider the prevalence of the use of such devices.

(b) LOCOMOTIVE CAB ENVIRONMENT.—The Secretary may also study other elements of the locomotive cab environment and their effect on an employee's health and safety.

(c) REPORT.—Not later than 6 months after the completion of any study under this section, the Secretary shall issue a report on the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(d) AUTHORITY.—Based on the conclusions of the study required under (a), the Secretary **[of Transportation]** may prohibit the use of personal electronic devices, such as cell phones, video games, or other electronic devices that may distract employees from safely performing their duties, unless those devices are being used according to railroad operating rules or for other work purposes. Based on the conclusions of other studies conducted under subsection (b),

the Secretary may prescribe regulations to improve elements of the cab environment to protect an employee's health and safety.

**SEC. 411. RAILROAD CARRIER EMPLOYEE EXPOSURE TO RADIATION STUDY.**

[49 U.S.C. 5103 note]

(a) **STUDY.**—The Secretary of Transportation shall, in consultation with the Secretary of Energy, the Secretary of Labor, the Administrator of the Environmental Protection Agency, and the Chairman of the Nuclear Regulatory Commission, as appropriate, conduct a study of the potential hazards to which employees of railroad carriers and railroad contractors or subcontractors are exposed during the transportation of high-level radioactive waste and spent nuclear fuel (as defined in section [5101(a)] 5105(a) of title 49, United States Code), supplementing the report submitted under section [5101(b)] 5105(b) of that title, which may include—

- (1) an analysis of the potential application of “as low as reasonably achievable” principles for exposure to radiation to such employees with an emphasis on the need for special protection from radiation exposure for such employees during the first trimester of pregnancy or who are undergoing or have recently undergone radiation therapy;
- (2) the feasibility of requiring real-time dosimetry monitoring for such employees;
- (3) the feasibility of requiring routine radiation exposure monitoring in fixed railroad locations, such as yards and repair facilities; and
- (4) a review of the effectiveness of the Department's packaging requirements for radioactive materials.

(b) **REPORT.**—Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall transmit a report on the results of the study required by subsection (a) and any recommendations to further protect employees of a railroad carrier or of a contractor or subcontractor to a railroad carrier from unsafe exposure to radiation during the transportation of high-level radioactive waste and spent nuclear fuel to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(c) **REGULATORY AUTHORITY.**—The Secretary of Transportation may issue regulations that the Secretary determines appropriate, pursuant to the report required by subsection (b), to protect railroad employees from unsafe exposure to radiation during the transportation of radioactive materials.

**SEC. 412. ALCOHOL AND CONTROLLED SUBSTANCE TESTING FOR MAINTENANCE-OF-WAY EMPLOYEES.**

[49 U.S.C. 20140 note]

Not later than 2 years following the date of enactment of this Act, the Secretary [of Transportation] shall complete a rulemaking proceeding to revise the regulations prescribed under section 20140 of title 49, United States Code, to cover all employees of railroad carriers and contractors or subcontractors to railroad carriers who perform maintenance-of-way activities.

**SEC. 414. TUNNEL INFORMATION.**

[49 U.S.C. 20103 note]

Not later than 120 days after the date of enactment of this Act, each railroad carrier shall, with respect to each of its tunnels which—

(1) are longer than 1000 feet and located under a city with a population of 400,000 or greater; or

(2) carry 5 or more scheduled passenger trains per day, or 500 or more carloads of poison- or toxic-by-inhalation hazardous materials (as defined in [parts] 171.8, 173.115, sections 171.8, 173.115, and 173.132 of title 49, Code of Federal Regulations) per year,

maintain, for at least two years, historical documentation of structural inspection and maintenance activities for such tunnels, including information on the methods of ingress and egress into and out of the tunnel, the types of cargos typically transported through the tunnel, and schematics or blueprints for the tunnel, when available. Upon request, a railroad carrier shall provide periodic briefings on such information to the governments of the local jurisdiction in which the tunnel is located, including updates whenever a repair or rehabilitation project substantially alters the methods of ingress and egress. Such governments shall use appropriate means to protect and restrict the distribution of any security sensitive information (as defined in [part 1520.5] section 1520.5 of title 49, Code of Federal Regulations) provided by the railroad carrier under this section, consistent with national security interests.

**SEC. 416. SAFETY INSPECTIONS IN MEXICO.**

[49 U.S.C. 20107 note]

Mechanical and brake inspections of rail cars performed in Mexico shall not be treated as satisfying United States rail safety laws or regulations unless the Secretary [of Transportation] certifies that—

(1) such inspections are being performed under regulations and standards equivalent to those applicable in the United States;

(2) the inspections are being performed by employees that have received training similar to the training received by similar railroad employees in the United States;

(3) inspection records that are required to be available to the crewmembers on board the train, including air slips and blue cards, are maintained in both English and Spanish, and such records are available to the [Federal Railroad Administration] Secretary for review; and

(4) the [Federal Railroad Administration] Secretary is permitted to perform onsite inspections for the purpose of ensuring compliance with the requirements of this subsection.

**SEC. 417. RAILROAD BRIDGE SAFETY ASSURANCE.**

[49 U.S.C. 20103 note]

(a) **IN GENERAL.**—Not later than 12 months after the date of enactment of this Act, the Secretary shall promulgate a regulation requiring owners of track carried on one or more railroad bridges to adopt a bridge safety management program to prevent the deterioration of railroad bridges and reduce the risk of human casualties, environmental damage, and disruption to the Nation's railroad

transportation system that would result from a catastrophic bridge failure.

(b) REQUIREMENTS.—The regulations shall, at a minimum, require each track owner to—

(1) to develop and maintain an accurate inventory of its railroad bridges, which shall identify the location of each bridge, its configuration, type of construction, number of spans, span lengths, and all other information necessary to provide for the safe management of the bridges;

(2) to ensure that a professional engineer competent in the field of railroad bridge engineering, or a qualified person under the supervision of the track owner, determines bridge capacity;

(3) to maintain, and update as appropriate, a record of the safe capacity of each bridge which carries its track and, if available, maintain the original design documents of each bridge and a documentation of all repairs, modifications, and inspections of the bridge;

(4) to develop, maintain, and enforce a written procedure that will ensure that its bridges are not loaded beyond their capacities;

(5) to conduct regular comprehensive inspections of each bridge, at least once every year, and maintain records of those inspections that include the date on which the inspection was performed, the precise identification of the bridge inspected, the items inspected, an accurate description of the condition of those items, and a narrative of any inspection item that is found by the inspector to be a potential problem;

(6) to ensure that the level of detail and the inspection procedures are appropriate to the configuration of the bridge, conditions found during previous inspections, and the nature of the railroad traffic moved over the bridge, including car weights, train frequency and length, levels of passenger and hazardous materials traffic, and vulnerability of the bridge to damage;

(7) to ensure that an engineer who is competent in the field of railroad bridge engineering—

(A) is responsible for the development of all inspection procedures;

(B) reviews all inspection reports; and

(C) determines whether bridges are being inspected according to the applicable procedures and frequency, and reviews any items noted by an inspector as exceptions; and

(8) to designate qualified bridge inspectors or maintenance personnel to authorize the operation of trains on bridges following repairs, damage, or indications of potential structural problems.

(c) USE OF BRIDGE MANAGEMENT PROGRAMS REQUIRED.—The Secretary shall instruct bridge experts to obtain copies of the most recent bridge management programs of [each railroad] *each railroad carrier* within the expert's areas of responsibility, and require that experts use those programs when conducting bridge observations.

(d) REVIEW OF DATA.—The Secretary shall establish a program to periodically review bridge inspection and maintenance data from railroad carrier bridge inspectors and Federal Railroad Administration bridge experts.

**SEC. 503. ESTABLISHMENT OF TASK FORCE.**

[49 U.S.C. 1139 note]

(a) **ESTABLISHMENT.**—The Secretary, in cooperation with the National Transportation Safety Board, organizations potentially designated under section 1139(a)(2) of title 49, United States Code, rail passenger carriers (as defined in section 1139(h)(2) of title 49, United States Code), and families which have been involved in [rail accidents,] *rail passenger accidents*, shall establish a task force consisting of representatives of such entities and families, representatives of rail passenger carrier employees, and representatives of such other entities as the Secretary considers appropriate.

(b) **MODEL PLAN AND RECOMMENDATIONS.**—The task force established pursuant to subsection (a) shall develop—

(1) a model plan to assist rail passenger carriers in responding to passenger rail accidents;

(2) recommendations on methods to improve the timeliness of the notification provided by passenger rail carriers to the families of passengers involved in a passenger rail accident;

(3) recommendations on methods to ensure that the families of passengers involved in a passenger rail accident who are not citizens of the United States receive appropriate assistance; and

(4) recommendations on methods to ensure that emergency services personnel have as immediate and accurate a count of the number of passengers onboard the train as possible.

(c) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit a report to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation containing the model plan and recommendations developed by the task force under subsection (b).

(d) **DEFINITIONS.**—*In this section, the terms “passenger”, “rail passenger accident”, and “rail passenger carrier” have the meaning given those terms by section 1139 of title 49, United States Code.*

(e) **FUNDING.**—*Out of funds appropriated pursuant to section 20117(a)(1)(A) of title 49, United States Code, there shall be made available to the Secretary of Transportation \$500,000 for fiscal year 2009 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.*

**PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT  
OF 2008**

**SEC. 206. ESTABLISHMENT OF GRANT PROCESS.**

[49 U.S.C. 24101 note]

(a) **GRANT REQUESTS.**—Amtrak shall submit grant requests (including a schedule for the disbursement of funds), consistent with the requirements of this division, to the Secretary for funds authorized to be appropriated to the Secretary for the use of Amtrak under sections 101(a), (b), and (c), 102, 219(b), and 302 of *this division*.

(b) **PROCEDURES FOR GRANT REQUESTS.**—The Secretary shall establish substantive and procedural requirements, including schedules, for grant requests under this section not later than 30 days after the date of enactment of this Act and shall transmit copies

of such requirements and schedules to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. As part of those requirements, the Secretary shall require, at a minimum, that Amtrak deposit grant funds, consistent with the appropriated amounts for each area of expenditure in a given fiscal year, in the following 2 accounts:

- (1) The Amtrak Operating account.
- (2) The Amtrak General Capital account.

Amtrak may not transfer such funds to another account or expend such funds for any purpose other than the purposes covered by the account in which the funds are deposited without approval by the Secretary.

(c) REVIEW AND APPROVAL.—

(1) 30-DAY APPROVAL PROCESS.—The Secretary shall complete the review of a grant request (including the disbursement schedule) and approve or disapprove the request within 30 days after the date on which Amtrak submits the grant request. If the Secretary disapproves the request or determines that the request is incomplete or deficient, the Secretary shall include the reason for disapproval or the incomplete items or deficiencies in a notice to Amtrak.

(2) 15-DAY MODIFICATION PERIOD.—Within 15 days after receiving notification from the Secretary under the preceding sentence, Amtrak shall submit a modified request for the Secretary's review.

(3) REVISED REQUESTS.—Within 15 days after receiving a modified request from Amtrak, the Secretary shall either approve the modified request, or, if the Secretary finds that the request is still incomplete or deficient, the Secretary shall identify in writing to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the remaining deficiencies and recommend a process for resolving the outstanding portions of the request.

**SEC. 211. NORTHEAST CORRIDOR STATE-OF-GOOD-REPAIR PLAN.**

[49 U.S.C. 24902 note]

(a) IN GENERAL.—Within 6 months after the date of enactment of this Act, Amtrak, in consultation with the Secretary and the States (including the District of Columbia) that make up the Northeast Corridor (as defined in section 24102 of title 49, United States Code), shall prepare a capital spending plan for capital projects required to return the railroad right-of-way (including track, signals, and auxiliary structures), facilities, stations, and equipment, of the Northeast Corridor main line to a state-of-good-repair by the end of fiscal year 2018, consistent with the funding levels authorized in this division, and shall submit the plan to the Secretary.

(b) REVIEW AND APPROVAL BY THE SECRETARY.—

(1) 60-DAY APPROVAL PROCESS.—The Secretary shall complete the review of the capital spending plan and approve or disapprove the plan within 60 days after the date on which Amtrak submits the plan. During review, the Secretary may seek comments from the Commission established under section 24905 of title 49, United States Code, and other Northeast Cor-

ridor users regarding the plan. If the Secretary disapproves the plan or determines that the plan is incomplete or deficient, the Secretary shall include the reason for disapproval or the incomplete items or deficiencies in a notice to Amtrak.

(2) 15-DAY MODIFICATION PERIOD.—Within 15 days after receiving notification from the Secretary under paragraph (1), Amtrak shall submit a modified plan for the Secretary's review.

(3) REVISED REQUESTS.—Within 15 days after receiving a modified plan from Amtrak, the Secretary shall either approve the modified plan, or, if the Secretary finds that the plan is still incomplete or deficient, the Secretary shall identify in writing to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the remaining deficiencies and recommend a process for resolving the outstanding portions of the plan.

(c) PLAN UPDATES.—The plan shall be updated at least annually and the Secretary shall review and approve such updates, in accordance with the procedures described in subsection (b).

(d) GRANTS.—The Secretary shall make grants to Amtrak with funds authorized by section 101(c) of *this division* for Northeast Corridor capital investments contained within the capital spending plan prepared by Amtrak and approved by the Secretary.

(e) OVERSIGHT.—Using the funds authorized by section 101(d) of *this division*, the Secretary shall review Amtrak's capital expenditures funded by this section to ensure that such expenditures are consistent with the capital spending plan and that Amtrak is providing adequate project management oversight and fiscal controls.

(f) ELIGIBILITY OF EXPENDITURES.—The Federal share of expenditures for capital improvements under this section may not exceed 100 percent.