

Sec.	
20132.	Visible markers for rear cars.
20133.	Passenger cars.
20134.	Grade crossings and railroad rights of way.
20135.	Licensing or certification of locomotive operators.
20136.	Automatic train control and related systems.
20137.	Event recorders.
20138.	Tampering with safety and operational monitoring devices.
20139.	Maintenance-of-way operations on railroad bridges.
20140.	Alcohol and controlled substances testing.
20141.	Power brake safety.
20142.	Track safety.
20143.	Locomotive visibility.
20144.	Blue signal protection for on-track vehicles.
20145.	Report on bridge displacement detection systems.
20146.	Institute for Railroad Safety.
20147.	Warning of civil liability.
20148.	Railroad car visibility.
20149.	Coordination with the Department of Labor.
20150.	Positive train control system progress report.
20151.	Railroad trespassing, vandalism, and highway-rail grade crossing warning sign violation prevention strategy.
20152.	Notification of grade crossing problems.
20153.	Audible warnings at highway-rail grade crossings.
20154.	Capital grants for rail line relocation projects.
20155.	Tank cars.
20156.	Railroad safety risk reduction program.
20157.	Implementation of positive train control systems.
20158.	Railroad safety technology grants.
20159.	Roadway user sight distance at highway-rail grade crossings.
20160.	National crossing inventory.
20161.	Postering introduction of new technology to improve safety at highway-rail grade crossings.
20162.	Minimum training standards and plans.
20163.	Certification of train conductors.
20164.	Development and use of rail safety technology.
20165.	Limitations on non-Federal alcohol and drug testing by railroad carriers. ²
20166.	Emergency escape breathing apparatus.
20167.	Railroad safety infrastructure improvement grants.

AMENDMENTS

Pub. L. 110-432, div. A, title I, §§103(b), 104(b), 105(b), 107(b), 109(b), title II, §§203(b), 204(b), 205(b), 208(b), 210(b), title III, §303(b), title IV, §§401(b), 402(e), 406(b), 409(b), 413(b), 418(b), Oct. 16, 2008, 122 Stat. 4856, 4858-4860, 4867, 4869, 4871, 4873, 4876, 4877, 4879, 4883, 4884, 4886, 4887, 4889, 4892, added items 20116 and 20118 to 20120, substituted "Railroad trespassing, vandalism, and highway-rail grade crossing warning sign violation prevention strategy" for "Railroad trespassing and vandalism prevention strategy" in item 20151 and "Notification of grade crossing problems" for "Emergency notification of grade crossing problems" in item 20152, and added items 20156 to 20167.

2005—Pub. L. 109-59, title IX, §§9002(a)(2), 9005(b)(2), Aug. 10, 2005, 119 Stat. 1921, 1925, added items 20154 and 20155.

1995—Pub. L. 104-66, title I, §1121(g)(2), Dec. 21, 1995, 109 Stat. 724, struck out item 20116 "Biennial report".

1994—Pub. L. 103-440, title II, §§206(b), 207(b), 210(b), 211(b), 212(b), 213(b), 214(b), 215(b), 219(b), title III, §§301(b), 302(b), Nov. 2, 1994, 108 Stat. 4621-4624, 4626, 4628, substituted "Biennial" for "Annual" in item 20116 and "cars" for "equipment" in item 20133 and added items 20145 to 20153.

² So in original. Does not conform to section catchline.

SUBCHAPTER I—GENERAL

§ 20101. Purpose

The purpose of this chapter is to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 863.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20101	45:421.	Oct. 16, 1970, Pub. L. 91-458, §101, 84 Stat. 971.

The words "The Congress declares that" are omitted as surplus. The words "accidents and incidents" are substituted for "accidents" for consistency with the source provisions restated in section 20105(b)(1)(B) of the revised title. The words "and to reduce deaths and injuries to persons and to reduce damage to property caused by accidents involving any carrier of hazardous materials" are omitted as obsolete because they applied to 49 App.:1761 and 1762, that were repealed by section 113(g) of the Hazardous Materials Transportation Act (Public Law 93-633, 88 Stat. 2163).

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-432, div. A, §1(a), Oct. 16, 2008, 122 Stat. 4848, provided that: "This division [see Tables for classification] may be cited as the 'Rail Safety Improvement Act of 2008'."

Pub. L. 110-432, div. B, §1(a), Oct. 16, 2008, 122 Stat. 4907, provided that: "This division [enacting chapters 227, 244, and 285 of this title and sections 24105, 24310, 24316, 24702, 24710, 24711, 24910, and 26106 of this title, amending sections 103, 24101, 24102, 24302, 24308, 24706, 24904, 24905, 26101, and 26104 of this title, enacting provisions set out as notes under sections 24101, 24302, 24305, 24307, 24308, 24405, 24702, 24709, 24711, 24902, and 26106 of this title, and amending provisions set out as a note under section 24101 of this title] may be cited as the 'Passenger Rail Investment and Improvement Act of 2008'."

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105-134, §1(a), Dec. 2, 1997, 111 Stat. 2570, provided that: "This Act [enacting section 28103 of this title, amending sections 24101, 24102, 24104, 24301 to 24307, 24309, 24312, 24315, 24701, 24706, 24902, and 24904 of this title, section 8G of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, Government Organization and Employees, and section 9101 of Title 31, Money and Finance, repealing sections 24310, 24314, 24501 to 24506, 24702 to 24705, 24707, 24708, and 24903 of this title, and section 1111 of Title 45, Railroads, and enacting provisions set out as notes under this section and sections 24101, 24104, 24301, 24304, 24305, 24307, 24312, 24315, 24501, and 24706 of this title, section 8G of the Appendix to Title 5, and section 172 of Title 26, Internal Revenue Code] may be cited as the 'Amtrak Reform and Accountability Act of 1997'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-440, title I, §101, Nov. 2, 1994, 108 Stat. 4615, provided that: "This title [enacting sections 26101 to 26105 of this title, renumbering former sections 26101 and 26102 of this title as 28101 and 28102 of this title, respectively, and enacting provisions set out as notes under section 26101 of this title and section 838 of Title 45, Railroads] may be cited as the 'Swift Rail Development Act of 1994'."

Pub. L. 103-440, title II, §201, Nov. 2, 1994, 108 Stat. 4619, provided that: "This title [enacting sections 20145 to 20151 and 21108 of this title, amending sections 103, 20103, 20111, 20116, 20117, 20133, 20142, and 21303 of this title, and enacting provisions set out as a note under section 11504 of this title] may be cited as the 'Federal Railroad Safety Authorization Act of 1994'."

RAILROAD SAFETY STRATEGY

Pub. L. 110-432, div. A, title I, §102, Oct. 16, 2008, 122 Stat. 4852, provided that:

“(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 [Oct. 16, 2008], 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.

“(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.—No 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).”

[For definitions of “railroad”, “Department”, “Secretary”, and “crossing”, as used in section 102 of Pub. L. 110-432, set out above, see section 2(a) of Pub. L. 110-432, set out as a note under section 20102 of this title.]

REPORTS ON STATUTORY MANDATES AND RECOMMENDATIONS

Pub. L. 110-432, div. A, title I, §106, Oct. 16, 2008, 122 Stat. 4859, provided that: “Not later than December 31, 2008, and annually thereafter, the Secretary shall transmit a report to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Trans-

portation on the specific actions taken to implement unmet statutory mandates regarding railroad safety and each open railroad safety recommendation made by the National Transportation Safety Board or the Department’s Inspector General.”

[For definitions of “Secretary”, “railroad”, and “Department”, as used in section 106 of Pub. L. 110-432, set out above, see section 2(a) of Pub. L. 110-432, set out as a note under section 20102 of this title.]

§ 20102. Definitions

In this part—

(1) “Class I railroad”, “Class II railroad”, and “Class III railroad” mean railroad carriers that have annual carrier operating revenues that meet the threshold amount for Class I carriers, Class II carriers, and Class III carriers, respectively, as determined by the Surface Transportation Board under section 1201.1-1 of title 49, Code of Federal Regulations.

(2) “railroad”—

(A) means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—

(i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but

(B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

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

(4) “safety-related railroad employee” means—

(A) a railroad employee who is subject to chapter 211;

(B) another operating railroad employee who is not subject to chapter 211;

(C) an employee who maintains the right of way of a railroad;

(D) an employee of a railroad carrier who is a hazmat employee as defined in section 5102(3) of this title;

(E) an employee who inspects, repairs, or maintains locomotives, passenger cars, or freight cars; and

(F) any other employee of a railroad carrier who directly affects railroad safety, as determined by the Secretary.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 863; Pub. L. 110-432, div. A, §2(b), title IV, §407, Oct. 16, 2008, 122 Stat. 4850, 4886.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20102(1)	45:16.	Apr. 14, 1910, ch. 160, §1, 36 Stat. 298; restated June 22, 1988, Pub. L. 100-342, §13(3)(E), 102 Stat. 632.
	45:22.	Feb. 17, 1911, ch. 103, §1, 36 Stat. 913; June 7, 1924, ch. 355, §1, 43 Stat. 659; restated June 22, 1988, Pub. L. 100-342, §14(1), 102 Stat. 632.
	45:38 (last sentence).	May 6, 1910, ch. 208, 36 Stat. 350, §1 (last sentence); added June 22, 1988, Pub. L. 100-342, §15(1)(C), 102 Stat. 633.
	45:61(a).	Mar. 4, 1907, ch. 2939, §1(a), 34 Stat. 1415; Dec. 26, 1969, Pub. L. 91-169, §1, 83 Stat. 463; restated Nov. 2, 1978, Pub. L. 95-574, §5, 92 Stat. 2461; June 22, 1988, Pub. L. 100-342, §16(1)(A), 102 Stat. 634.
	45:61(b)(1).	Mar. 4, 1907, ch. 2939, §1(b)(1), 34 Stat. 1415; restated Dec. 26, 1969, Pub. L. 91-169, §1, 83 Stat. 463; June 22, 1988, Pub. L. 100-342, §16(1)(B), 102 Stat. 634.
	45:431(e).	Oct. 16, 1970, Pub. L. 91-458, §202(e), 84 Stat. 971; restated June 22, 1988, Pub. L. 100-342, §7(a), 102 Stat. 628.
	49:App.:26(a).	Feb. 4, 1887, ch. 104, 24 Stat. 379, §25(a); added Feb. 28, 1920, ch. 91, §441, 41 Stat. 498; Aug. 26, 1937, ch. 818, 50 Stat. 835; Sept. 18, 1940, ch. 722, §14(b), 54 Stat. 919; restated June 22, 1988, Pub. L. 100-342, §17(1), 102 Stat. 635.
20102(2)	(no source).	

Clause (1) is substituted for the source provisions to avoid repeating the definition of "railroad" in each chapter in this part.

Clause (2) is added to distinguish between railroad transportation and the entity providing railroad transportation.

AMENDMENTS

2008—Pub. L. 110-432, §2(b), added pars. (1) and (4) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Par. (3). Pub. L. 110-432, §407, amended par. (3) generally. Prior to amendment, text read as follows: "railroad carrier" means a person providing railroad transportation."

DEFINITIONS APPLICABLE TO DIVISION A OF PUB. L. 110-432

Pub. L. 110-432, div. A, §2(a), Oct. 16, 2008, 122 Stat. 4849, provided that: "In this division [see Short Title of 2008 Amendment note set out under section 20101 of this title]:

"(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[,] 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 nonvehicular 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."

§ 20103. General authority

(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970. When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.

(b) REGULATIONS OF PRACTICE FOR PROCEEDINGS.—The Secretary shall prescribe regulations of practice applicable to each proceeding under this chapter. The regulations shall reflect the varying nature of the proceedings and include time limits for disposition of the proceedings. The time limit for disposition of a proceeding may not be more than 12 months after the date it begins.

(c) CONSIDERATION OF INFORMATION AND STANDARDS.—In prescribing regulations and issuing orders under this section, the Secretary shall consider existing relevant safety information and standards.

(d) NONEMERGENCY WAIVERS.—The Secretary may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety. The Secretary shall make public the reasons for granting the waiver.

(e) HEARINGS.—The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this part, including a regulation or order establishing, amending, or providing a waiver, described in subsection (d), of compliance with a railroad safety regulation prescribed or order issued under this part. An opportunity for an oral presentation shall be provided.

(f) TOURIST RAILROAD CARRIERS.—In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or other factors that may be unique to such railroad carriers. The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.

(g) EMERGENCY WAIVERS.—

(1) IN GENERAL.—The Secretary may waive compliance with any part of a regulation prescribed or order issued under this part without prior notice and comment if the Secretary determines that—

(A) it is in the public interest to grant the waiver;

(B) the waiver is not inconsistent with railroad safety; and

(C) the waiver is necessary to address an actual or impending emergency situation or emergency event.

(2) PERIOD OF WAIVER.—A waiver under this subsection may be issued for a period of not more than 60 days and may be renewed upon application to the Secretary only after notice and an opportunity for a hearing on the waiver. The Secretary shall immediately revoke the waiver if continuation of the waiver would not be consistent with the goals and objectives of this part.

(3) STATEMENT OF REASONS.—The Secretary shall state in the decision issued under this subsection the reasons for granting the waiver.

(4) CONSULTATION.—In granting a waiver under this subsection, the Secretary shall consult and coordinate with other Federal agencies, as appropriate, for matters that may impact such agencies.

(5) EMERGENCY SITUATION; EMERGENCY EVENT.—In this subsection, the terms “emergency situation” and “emergency event” mean a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, explosive, or biological material, or a war-related activity, that poses a risk of death, serious illness, severe injury, or substantial property damage. The disaster may be local, regional, or national in scope.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 863; Pub. L. 103–440, title II, §217, Nov. 2, 1994, 108 Stat. 4624; Pub. L. 107–296, title XVII, §1710(b), Nov. 25, 2002, 116 Stat. 2319; Pub. L. 110–432, div. A, title III, §308, Oct. 16, 2008, 122 Stat. 4881.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20103(a)	45:431(a) (1st sentence cl. (1)).	Oct. 16, 1970, Pub. L. 91–458, §202(a) (1st sentence cl. (1)), (b), (c), 84 Stat. 971.
20103(b)	45:431(d) (21st–last words).	Oct. 16, 1970, Pub. L. 91–458, §202(d), 84 Stat. 971; restated July 8, 1976, Pub. L. 94–348, §5(a), 90 Stat. 819.
20103(c)	45:431(d) (1st–20th words).	
20103(d)	45:431(c).	
20103(e)	45:431(b).	

In this part, the word “rule” is omitted as being synonymous with “regulation”. The word “standard” is omitted as being included in “regulation”.

In subsection (a), the words “(hereafter in this subchapter referred to as the ‘Secretary’)” in 45:431(a) (1st sentence cl. (1)) are omitted as surplus because the complete name of the Secretary of Transportation is used the first time the term appears in a section.

In subsection (b), the words “within 180 days after July 8, 1976” are omitted as expired. The word “prescribe” is substituted for “take such action as may be necessary to develop and publish” for consistency in the revised title and with other titles of the United States Code and to eliminate unnecessary words.

In subsection (d), the words “after hearing in accordance with subsection (b) of this section” are omitted as surplus because of the language restated in subsection (e) of this section.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–432, §308(1), substituted “Nonemergency Waivers” for “Waivers” in heading.

Subsec. (e). Pub. L. 110–432, §308(2), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: “The Secretary shall conduct a

hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided.”

Subsec. (g). Pub. L. 110–432, §308(3), added subsec. (g).

2002—Subsec. (a). Pub. L. 107–296 inserted at end “When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.”

1994—Subsec. (f). Pub. L. 103–440 added subsec. (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

REGULATIONS

Section 4(t) of Pub. L. 103–272 provided that:

“(1) Not later than March 3, 1995, the Secretary of Transportation shall complete a regulatory proceeding to consider prescribing regulations to improve the safety and working conditions of locomotive cabs. The proceeding shall assess—

“(A) the adequacy of Locomotive Crashworthiness Requirements Standard S–580, or any successor standard, adopted by the Association of American Railroads in 1989 in improving the safety of locomotive cabs; and

“(B) the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect productivity, health, and the safe operation of locomotives.

“(2) SUPPORTING RESEARCH AND ANALYSIS.—In support of the proceeding required under paragraph (1) of this subsection, the Secretary shall conduct research and analysis, including computer modeling and full-scale crash testing, as appropriate, to consider—

“(A) the costs and benefits associated with equipping locomotives with—

- “(i) braced collision posts;
- “(ii) rollover protection devices;
- “(iii) deflection plates;
- “(iv) shatterproof windows;
- “(v) readily accessible crash refuges;
- “(vi) uniform sill heights;
- “(vii) anticlimbers, or other equipment designed to prevent overrides resulting from head-on locomotive collisions;
- “(viii) equipment to deter post-collision entry of flammable liquids into locomotive cabs;
- “(ix) any other devices intended to provide crash protection for occupants of locomotive cabs; and
- “(x) functioning and regularly maintained sanitary facilities; and

“(B) the effects on train crews of the presence of asbestos in locomotive components.

“(3) REPORT.—If, on the basis of the proceeding required under paragraph (1) of this subsection, the Secretary decides not to prescribe regulations, the Secretary shall report to Congress on the reasons for that decision.”

LOCOMOTIVE CAB STUDIES

Pub. L. 110–432, div. A, title IV, §405, Oct. 16, 2008, 122 Stat. 4885, provided that:

“(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Oct. 16, 2008], 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, 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.”

[For definitions of “Secretary” and “railroad”, as used in section 405 of Pub. L. 110-432, set out above, see section 2(a) of Pub. L. 110-432, set out as a note under section 20102 of this title.]

TUNNEL INFORMATION

Pub. L. 110-432, div. A, title IV, §414, Oct. 16, 2008, 122 Stat. 4889, provided that: “Not later than 120 days after the date of enactment of this Act [Oct. 16, 2008], 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 [probably should be “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 [probably should be “section”] 1520.5 of title 49, Code of Federal Regulations) provided by the railroad carrier under this section, consistent with national security interests.”

[For definition of “railroad carrier”, as used in section 414 of Pub. L. 110-432, set out above, see section 2(a) of Pub. L. 110-432, set out as a note under section 20102 of this title.]

RAILROAD BRIDGE SAFETY ASSURANCE

Pub. L. 110-432, div. A, title IV, §417, Oct. 16, 2008, 122 Stat. 4890, provided that:

“(a) IN GENERAL.—Not later than 12 months after the date of enactment of this Act [Oct. 16, 2008], 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 [sic]—

“(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 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.”

[For definitions of “Secretary”, “railroad”, and “railroad carrier”, as used in section 417 of Pub. L. 110-432, set out above, see section 2(a) of Pub. L. 110-432, set out as a note under section 20102 of this title.]

§ 20104. Emergency authority

(a) ORDERING RESTRICTIONS AND PROHIBITIONS.—(1) If, through testing, inspection, investigation, or research carried out under this chapter, the Secretary of Transportation decides that an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment, the Secretary immediately may order restrictions and prohibitions, without

regard to section 20103(e) of this title, that may be necessary to abate the situation.

(2) The order shall describe the condition or practice, or a combination of conditions and practices, that causes the emergency situation and prescribe standards and procedures for obtaining relief from the order. This paragraph does not affect the Secretary's discretion under this section to maintain the order in effect for as long as the emergency situation exists.

(b) REVIEW OF ORDERS.—After issuing an order under this section, the Secretary shall provide an opportunity for review of the order under section 554 of title 5. If a petition for review is filed and the review is not completed by the end of the 30-day period beginning on the date the order was issued, the order stops being effective at the end of that period unless the Secretary decides in writing that the emergency situation still exists.

(c) CIVIL ACTIONS TO COMPEL ISSUANCE OF ORDERS.—An employee of a railroad carrier engaged in interstate or foreign commerce who may be exposed to imminent physical injury during that employment because of the Secretary's failure, without any reasonable basis, to issue an order under subsection (a) of this section, or the employee's authorized representative, may bring a civil action against the Secretary in a district court of the United States to compel the Secretary to issue an order. The action must be brought in the judicial district in which the emergency situation is alleged to exist, in which that employing carrier has its principal executive office, or for the District of Columbia. The Secretary's failure to issue an order under subsection (a) of this section may be reviewed only under section 706 of title 5.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 864; Pub. L. 110–432, div. A, title III, §304, Oct. 16, 2008, 122 Stat. 4879.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20104(a)	45:432(a), (d).	Oct. 16, 1970, Pub. L. 91–458, §203, 84 Stat. 972; restated Oct. 10, 1980, Pub. L. 96–423, §3, 94 Stat. 1811.
20104(b)	45:432(b), (c).	
20104(c)	45:432(e).	

In subsection (a)(1), the words “or both” are omitted as surplus. The words “immediately may order restrictions and prohibitions . . . that may be necessary to abate the situation” are substituted for “may immediately issue an order . . . imposing such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation” to eliminate unnecessary words.

In subsection (a)(2), the words “or a combination of conditions and practices” are added for consistency with paragraph (1). The words “(as determined by the Secretary)” are omitted as surplus. The last sentence is substituted for 45:432(d) (last sentence) for clarity.

In subsection (b), the words “the Secretary” are added for clarity.

In subsection (c), the words “issue an order” are substituted for “seek relief” for consistency in this section. The words “The action must be brought in the judicial district” are substituted for “for the judicial district” for consistency in the revised title.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–432 substituted “death, personal injury, or significant harm to the environment” for “death or personal injury”.

§ 20105. State participation

(a) INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—The Secretary concerned may prescribe investigative and surveillance activities necessary to enforce the safety regulations prescribed and orders issued by the Secretary¹ that apply to railroad equipment, facilities, rolling stock, and operations in a State. The State may participate in those activities when the safety practices for railroad equipment, facilities, rolling stock, and operations in the State are regulated by a State authority and the authority submits to the Secretary concerned an annual certification as provided in subsection (b) of this section.

(b) ANNUAL CERTIFICATION.—(1) A State authority's annual certification must include—

- (A) a certification that the authority—
 - (i) has regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations in the State;
 - (ii) was given a copy of each safety regulation prescribed and order issued by the Secretary concerned, that applies to the equipment, facilities, rolling stock, or operations, as of the date of certification; and
 - (iii) is conducting the investigative and surveillance activities prescribed by the Secretary concerned under subsection (a) of this section; and

(B) a report, in the form the Secretary concerned prescribes by regulation, that includes—

- (i) the name and address of each railroad carrier subject to the safety jurisdiction of the authority;
- (ii) each accident or incident reported during the prior 12 months by a railroad carrier involving a fatality, personal injury requiring hospitalization, or property damage of more than \$750 (or a higher amount prescribed by the Secretary concerned), and a summary of the authority's investigation of the cause and circumstances surrounding the accident or incident;
- (iii) the record maintenance, reporting, and inspection practices conducted by the authority to aid the Secretary concerned in enforcing railroad safety regulations prescribed and orders issued by the Secretary concerned, including the number of inspections made of railroad equipment, facilities, rolling stock, and operations by the authority during the prior 12 months; and
- (iv) other information the Secretary concerned requires.

(2) An annual certification applies to a safety regulation prescribed or order issued after the date of the certification only if the State authority submits an appropriate certification to provide the necessary investigative and surveillance activities.

¹ So in original. Probably should be “Secretary concerned”.

(3) If, after receipt of an annual certification, the Secretary concerned decides the State authority is not complying satisfactorily with the investigative and surveillance activities prescribed under subsection (a) of this section, the Secretary concerned may reject any part of the certification or take other appropriate action to achieve adequate enforcement. The Secretary concerned must give the authority notice and an opportunity for a hearing before taking action under this paragraph. When the Secretary concerned gives notice, the burden of proof is on the authority to show that it is complying satisfactorily with the investigative and surveillance activities prescribed by the Secretary concerned.

(c) AGREEMENT WHEN CERTIFICATION NOT RECEIVED.—(1) If the Secretary concerned does not receive an annual certification under subsection (a) of this section related to any railroad equipment, facility, rolling stock, or operation, the Secretary concerned may make an agreement with a State authority for the authority to provide any part of the investigative and surveillance activities prescribed by the Secretary concerned as necessary to enforce the safety regulations and orders applicable to the equipment, facility, rolling stock, or operation.

(2) The Secretary concerned may terminate any part of an agreement made under this subsection on finding that the authority has not provided every part of the investigative and surveillance activities to which the agreement relates. The Secretary concerned must give the authority notice and an opportunity for a hearing before making such a finding. The finding and termination shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication.

(d) AGREEMENT FOR INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—In addition to providing for State participation under this section, the Secretary concerned may make an agreement with a State to provide investigative and surveillance activities related to the duties under chapters 203–213 of this title (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security).

(e) PAYMENT.—On application by a State authority that has submitted a certification under subsections (a) and (b) of this section or made an agreement under subsection (c) or (d) of this section, the Secretary concerned shall pay not more than 50 percent of the cost of the personnel, equipment, and activities of the authority needed, during the next fiscal year, to carry out a safety program under the certification or agreement. However, the Secretary concerned may pay an authority only when the authority assures the Secretary concerned that it will provide the remaining cost of the safety program and that the total State money expended for the safety program, excluding grants of the United States Government, will be at least as much as the average amount expended for the fiscal years that ended June 30, 1969, and June 30, 1970.

(f) MONITORING.—The Secretary concerned may monitor State investigative and surveillance practices and carry out other inspections and investigations necessary to help enforce this

chapter (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security).

(g) DEFINITIONS.—In this section—

(1) the term “safety” includes security; and

(2) the term “Secretary concerned” means—

(A) the Secretary of Transportation, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary; and

(B) the Secretary of Homeland Security, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 864; Pub. L. 107–296, title XVII, §1710(a), Nov. 25, 2002, 116 Stat. 2319.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
20105(a)	45:435(a) (1st sentence related to authority for State participation).	Oct. 16, 1970, Pub. L. 91–458, §206(a) (1st sentence), (b), (f), 84 Stat. 972, 973, 974; Nov. 16, 1990, Pub. L. 101–615, §28(a)(1)–(3), (b), (c), 104 Stat. 3276, 3277.
20105(b) (1)(A).	45:435(a) (1st sentence related to contents of certification).	
20105(b) (1)(B).	45:435(b) (1st sentence).	
20105(b)(2) ..	45:435(f).	
20105(b)(3) ..	45:435(b) (2d–last sentences).	
20105(c)	45:435(c).	Oct. 16, 1970, Pub. L. 91–458, §206(c), (e), 84 Stat. 973, 974.
20105(d)	45:435(g).	Oct. 16, 1970, Pub. L. 91–458, 84 Stat. 971, §206(g); added Oct. 10, 1980, Pub. L. 96–423, §4(a), 94 Stat. 1812.
20105(e)	45:435(d).	Oct. 16, 1970, Pub. L. 91–458, §206(d), 84 Stat. 974; Oct. 10, 1980, Pub. L. 96–423, §4(b), 94 Stat. 1812.
20105(f)	45:435(e).	

In subsection (a), the first sentence is added for clarity.

In subsection (b)(1)(A)(iii), the words “as necessary for the enforcement by him of each rule, regulation, order, and standard referred to in paragraph (2) of this subsection, as interpreted by the Secretary” are omitted as surplus.

In subsection (b)(1)(B)(i) and (ii), the words “railroad carrier” are substituted for “railroad” because of the definition of “railroad carrier” in section 20102 of the revised title.

In subsection (b)(1)(B)(iii), the words “a detail of” are omitted as surplus.

In subsection (b)(3), the text of 45:435(b) (2d sentence) and the words “as he deems”, “reasonable”, and “with respect to such safety rules, regulations, orders, and standards” are omitted as surplus.

In subsection (c)(1), the word “enforce” is substituted for “obtain compliance with” for clarity and consistency in this section.

In subsection (e), the words “out of funds appropriated pursuant to this subchapter or otherwise made available”, “reasonably”, and “satisfactory” are omitted as surplus. The words “will be at least as much as the average amount expended” are substituted for “will be maintained at a level which does not fall below the average level of such expenditures” for clarity and to eliminate unnecessary words.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296, §1710(a)(2), substituted “the Secretary concerned” for “the Secretary” in second sentence.

Pub. L. 107-296, §1710(a)(1), substituted “The Secretary concerned” for “The Secretary of Transportation” in first sentence.

Subsecs. (b), (c). Pub. L. 107-296, §1710(a)(2), substituted “Secretary concerned” for “Secretary” wherever appearing.

Subsec. (d). Pub. L. 107-296, §1710(a)(2), (3), substituted “Secretary concerned” for “Secretary” and “duties under chapters 203-213 of this title (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)” for “Secretary’s duties under chapters 203-213 of this title”.

Subsec. (e). Pub. L. 107-296, §1710(a)(2), substituted “Secretary concerned” for “Secretary” wherever appearing.

Subsec. (f). Pub. L. 107-296, §1710(a)(2), (4), substituted “Secretary concerned” for “Secretary” and “chapter (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)” for “chapter”.

Subsec. (g). Pub. L. 107-296, §1710(a)(5), added subsec. (g).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 20106. Preemption

(a) NATIONAL UNIFORMITY OF REGULATION.—(1) Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.

(2) A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order—

(A) is necessary to eliminate or reduce an essentially local safety or security hazard;

(B) is not incompatible with a law, regulation, or order of the United States Government; and

(C) does not unreasonably burden interstate commerce.

(b) CLARIFICATION REGARDING STATE LAW CAUSES OF ACTION.—(1) Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party—

(A) has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), covering the subject matter as provided in subsection (a) of this section;

(B) has failed to comply with its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries; or

(C) has failed to comply with a State law, regulation, or order that is not incompatible with subsection (a)(2).

(2) This subsection shall apply to all pending State law causes of action arising from events or activities occurring on or after January 18, 2002.

(c) JURISDICTION.—Nothing in this section creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for such State law causes of action.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 866; Pub. L. 107-296, title XVII, §1710(c), Nov. 25, 2002, 116 Stat. 2319; Pub. L. 110-53, title XV, §1528, Aug. 3, 2007, 121 Stat. 453.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 20106, 45:434, Oct. 16, 1970, Pub. L. 91-458, §205, 84 Stat. 972.

In this section, before clause (1), the words “The Congress declares that” are omitted as unnecessary. In clause (3), the word “unreasonably” is substituted for “undue” for consistency in the revised title and with other titles of the United States Code.

AMENDMENTS

2007—Pub. L. 110-53 amended section generally. Prior to amendment, text of section read as follows: “Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order—

“(1) is necessary to eliminate or reduce an essentially local safety or security hazard;

“(2) is not incompatible with a law, regulation, or order of the United States Government; and

“(3) does not unreasonably burden interstate commerce.”

2002—Pub. L. 107-296, §1710(c), in introductory provisions, in first sentence inserted “and laws, regulations, and orders related to railroad security” after “safety”, in second sentence substituted “Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters),” for “Transportation”, and in second and third sentences inserted “or security” after “order related to railroad safety”.

Par. (1). Pub. L. 107-296, §1710(c)(2), inserted “or security” after “safety”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 20107. Inspection and investigation

(a) GENERAL.—To carry out this part, the Secretary of Transportation may take actions the Secretary considers necessary, including—

(1) conduct investigations, make reports, issue subpoenas, require the production of docu-

ments, take depositions, and prescribe record-keeping and reporting requirements; and

(2) delegate to a public entity or qualified person the inspection, examination, and testing of railroad equipment, facilities, rolling stock, operations, and persons.

(b) ENTRY AND INSPECTION.—In carrying out this part, an officer, employee, or agent of the Secretary, at reasonable times and in a reasonable way, may enter and inspect railroad equipment, facilities, rolling stock, operations, and relevant records. When requested, the officer, employee, or agent shall display proper credentials. During an inspection, the officer, employee, or agent is an employee of the United States Government under chapter 171 of title 28.

(c) RAILROAD RADIO COMMUNICATIONS.—

(1) IN GENERAL.—To carry out the Secretary's responsibilities under this part and under chapter 51, the Secretary may authorize officers, employees, or agents of the Secretary to conduct, with or without making their presence known, the following activities in circumstances the Secretary finds to be reasonable:

(A) Intercepting a radio communication, with or without the consent of the sender or other receivers of the communication, but only where such communication is broadcast or transmitted over a radio frequency which is—

(i) authorized for use by one or more railroad carriers by the Federal Communications Commission; and

(ii) primarily used by such railroad carriers for communications in connection with railroad operations.

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

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

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

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

(2) ACCIDENT AND INCIDENT PREVENTION AND INVESTIGATION.—The Secretary, and officers, employees, and agents of the Department of Transportation authorized by the Secretary, may engage in the activities authorized by paragraph (1) for the purpose of accident and incident prevention and investigation.

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

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

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

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

(C) No evidence shall be excluded in an administrative or judicial proceeding solely because the government would not have learned of the existence of or obtained such evidence but for the interception of information that is not admissible in such proceeding under subparagraph (A).

(D) Information obtained through activities set forth in paragraphs (1) and (2) shall not be subject to publication or disclosure, or search or review in connection therewith, under section 552 of title 5.

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

(4) APPLICATION WITH OTHER LAW.—Section 705 of the Communications Act of 1934 (47 U.S.C. 605) and chapter 119 of title 18 shall not apply to conduct authorized by and pursuant to this subsection.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 866; Pub. L. 110-432, div. A, title III, §306, Oct. 16, 2008, 122 Stat. 4880.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
20107(a)	45:437(a) (1st sentence words before 9th and after 14th commas). 45:437(d)(1) (1st sentence).	Oct. 16, 1970, Pub. L. 91-458, §208(a) (1st sentence words before 9th and after 14th commas), 84 Stat. 974, 975. Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §208(d)(1) (1st sentence); added Oct. 10, 1980, Pub. L. 96-423, §6(b), 94 Stat. 1813.
20107(b)	45:437(b).	Oct. 16, 1970, Pub. L. 91-458, §208(b), 84 Stat. 975; re-stated Nov. 2, 1978, Pub. L. 95-574, §9, 92 Stat. 2462; Oct. 10, 1980, Pub. L. 96-423, §6(a), 94 Stat. 1813.

In subsection (a), before clause (1), the words "To carry out this part, the Secretary of Transportation may" are substituted for "In carrying out his functions under this subchapter, the Secretary is authorized to perform . . . to carry out the provisions of this subchapter" and "In carrying out the functions formerly vested in the Interstate Commerce Commission and transferred to the Secretary by section 1655(e)(1), (e)(2), and (e)(6)(A) of title 49, Appendix, the Secretary is au-

thorized to perform any act authorized in subsection (a) of this section . . . to carry out such transferred functions” to eliminate unnecessary words. In clause (2), the word “entity” is substituted for “bodies” for consistency in the revised title and with other titles of the United States Code.

In subsection (b), the words “In carrying out this part” are substituted for “To carry out the Secretary’s responsibilities under this subchapter and under the functions transferred by section 1655(e)(1), (e)(2), and (e)(6)(A) of title 49, Appendix” to eliminate unnecessary words. The word “way” is substituted for “manner” for consistency in the revised title and with other titles of the Code. The word “examine” is omitted as being included in “inspect”. The word “considered” is omitted as surplus.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-432 added subsec. (c).

SAFETY INSPECTIONS IN MEXICO

Pub. L. 110-432, div. A, title IV, §416, Oct. 16, 2008, 122 Stat. 4890, provided that: “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 for review; and

“(4) the Federal Railroad Administration is permitted to perform onsite inspections for the purpose of ensuring compliance with the requirements of this subsection [sic].”

[For definition of “railroad”, as used in section 416 of Pub. L. 110-432, set out above, see section 2(a) of Pub. L. 110-432, set out as a note under section 20102 of this title.]

§ 20108. Research, development, testing, and training

(a) GENERAL.—The Secretary of Transportation shall carry out, as necessary, research, development, testing, evaluation, and training for every area of railroad safety.

(b) CONTRACTS.—To carry out this part, the Secretary may make contracts for, and carry out, research, development, testing, evaluation, and training (particularly for those areas of railroad safety found to need prompt attention).

(c) AMOUNTS FROM NON-GOVERNMENT SOURCES FOR TRAINING SAFETY EMPLOYEES.—The Secretary may request, receive, and expend amounts received from non-United States Government sources for expenses incurred in training safety employees of private industry, State and local authorities, or other public authorities, except State rail safety inspectors participating in training under section 20105 of this title.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 867.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20108(a)	45:431(a) (1st sentence cl. (2)).	Oct. 16, 1970, Pub. L. 91-458, §§202(a) (1st sentence cl. (2)), 208(a) (1st sentence words before 3d comma and between 9th-14th commas), 84 Stat. 971, 974.
20108(b)	45:437(a) (1st sentence words before 3d comma and between 9th-14th commas). 45:437(d)(1) (1st sentence).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §208(d)(1) (1st sentence); added Oct. 10, 1980, Pub. L. 96-423, §6(b), 94 Stat. 1813.
20108(c)	45:444(a) (last sentence).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §214(a) (last sentence); added Oct. 10, 1980, Pub. L. 96-423, §2, 94 Stat. 1811; Aug. 13, 1981, Pub. L. 97-35, §1195, 95 Stat. 702; Jan. 14, 1983, Pub. L. 97-468, §703, 96 Stat. 2580; restated June 22, 1988, Pub. L. 100-342, §2, 102 Stat. 624; Nov. 5, 1990, Pub. L. 101-508, §10501(b), 104 Stat. 1388-400; restated Sept. 3, 1992, Pub. L. 102-365, §12, 106 Stat. 980.

In subsection (b), the words “To carry out this part, the Secretary may” are substituted for “In carrying out his functions under this subchapter, the Secretary is authorized to perform such acts including, but not limited to . . . as he deems necessary to carry out the provisions of this subchapter” and “In carrying out the functions formerly vested in the Interstate Commerce Commission and transferred to the Secretary by section 1655(e)(1), (e)(2), and (e)(6)(A) of title 49, Appendix, the Secretary is authorized to perform any act authorized in subsection (a) of this section that he considers necessary to carry out such transferred functions, including, but not limited to” to eliminate unnecessary words.

§ 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 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 (d)(1)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 Sec-

¹ So in original. Probably should be preceded by "subsection".

retary 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 42121.²

(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),³ 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.

(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.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 867; Pub. L. 110-53, title XV, §1521, Aug. 3, 2007, 121 Stat. 444; Pub. L. 110-432, div. A, title IV, §419, Oct. 16, 2008, 122 Stat. 4892.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20109(a)	45:441(a).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §212(a)-(c)(1), (d); added Oct. 10, 1980, Pub. L. 96-423, §10, 94 Stat. 1815.
	45:441(e).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §212(e); added Oct. 10, 1980, Pub. L. 96-423, §10, 94 Stat. 1815; Sept. 3, 1992, Pub. L. 102-365, §5(b), 106 Stat. 975.
20109(b)	45:441(b).	
20109(c)	45:441(c)(1).	

² So in original. Probably should be preceded by "section".

³ So in original. The comma probably should not appear.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
	45:441(c)(2).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, § 212(c)(2); added Oct. 10, 1980, Pub. L. 96-423, § 10, 94 Stat. 1815; restated June 22, 1988, Pub. L. 100-342, § 5(a), 102 Stat. 627.
20109(d)	45:441(d).	
20109(e)	45:441(e).	
	45:441(f).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, § 212(f); added June 22, 1988, Pub. L. 100-342, § 5(b), 102 Stat. 627.

In subsections (a) and (b), the words “railroad carrier” are substituted for “common carrier by railroad” because of the definition of “railroad carrier” in section 20102 of the revised title.

In subsection (a)(1), the words “under or” are omitted as surplus.

In subsection (b)(1)(B), before subclause (i), the words “the hazardous condition is of such a nature that” are omitted as surplus. The word “individual” is substituted for “person” as being more appropriate. In subclause (ii), the words “resort to” are omitted as surplus.

In subsection (b)(1)(C), the words “his apprehension of” are omitted as surplus.

In subsection (b)(2), the words “by a carrier . . . transported by railroad” are substituted for “by a railroad . . . transported by such railroad” for consistency in the revised title.

Subsection (d) is substituted for 45:441(d) for clarity and to eliminate unnecessary words.

Subsection (e)(2) is substituted for 45:441(f)(2) to eliminate unnecessary words.

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (a)(1)(A), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-432, § 419(a)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110-432, § 419(a)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 110-432, § 419(b)(1)(A), substituted “(a), (b), or (c)” for “(a) or (b)”.

Subsec. (d)(2)(A)(i). Pub. L. 110-432, § 419(b)(1)(B), substituted “(d)(1)” for “(c)(1)”.

Subsec. (d)(2)(A)(ii). Pub. L. 110-432, § 419(b)(1)(C), substituted “(a), (b), or (c)” for “(a) or (b)”.

Subsec. (e). Pub. L. 110-432, § 419(a)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 110-432, § 419(b)(2)(A), substituted “(d)” for “(c)”.

Subsec. (e)(2). Pub. L. 110-432, § 419(b)(2)(B), (C), substituted “(d)” for “(c)” and “(d)(3)” for “(c)(3)” in introductory provisions.

Subsec. (e)(3). Pub. L. 110-432, § 419(b)(2)(D), substituted “(d)” for “(c)”.

Subsecs. (f) to (j). Pub. L. 110-432, § 419(a)(1), redesignated subsecs. (e) to (i) as (f) to (j), respectively.

2007—Pub. L. 110-53 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (e) relating to prohibition against discharge or discrimination for filing of complaints or testifying, prohibition against discharge or discrimination for refusal to work because of hazardous conditions, dispute resolution, election of remedies, and nondisclosure of identity of employee who had provided information regarding a violation.

CRITICAL INCIDENT STRESS PLAN

Pub. L. 110-432, div. A, title IV, § 410, Oct. 16, 2008, 122 Stat. 4887, provided that:

“(a) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, as appropriate, shall require each Class I railroad carrier, each intercity passenger railroad carrier, and each commuter railroad carrier to develop and submit for approval to the Secretary a critical incident stress plan that provides for debriefing, counseling, guidance, and other appropriate support services to be offered to an employee affected by a critical incident.

“(b) PLAN REQUIREMENTS.—Each such plan shall include provisions for—

“(1) relieving an employee who was involved in a critical incident of his or her duties for the balance of the duty tour, following any actions necessary for the safety of persons and contemporaneous documentation of the incident;

“(2) upon the employee’s request, relieving an employee who witnessed a critical incident of his or her duties following any actions necessary for the safety of persons and contemporaneous documentation of the incident; and

“(3) providing such leave from normal duties as may be necessary and reasonable to receive preventive services, treatment, or both, related to the incident.

“(c) SECRETARY TO DEFINE WHAT CONSTITUTES A CRITICAL INCIDENT.—Within 30 days after the date of enactment of this Act [Oct. 16, 2008], the Secretary shall initiate a rulemaking proceeding to define the term ‘critical incident’ for the purposes of this section.”

[For definitions of “railroad carrier” and “Secretary”, as used in section 410 of Pub. L. 110-432, set out above, see section 2(a) of Pub. L. 110-432, set out as a note under section 20102 of this title.]

§ 20110. Effect on employee qualifications and collective bargaining

This chapter does not—

(1) authorize the Secretary of Transportation to prescribe regulations and issue orders related to qualifications of employees, except qualifications specifically related to safety; or

(2) prohibit the bargaining representatives of railroad carriers and their employees from making collective bargaining agreements under the Railway Labor Act (45 U.S.C. 151 et seq.), including agreements related to qualifications of employees, that are not inconsistent with regulations prescribed and orders issued under this chapter.

(Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 868.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20110	45:431(a) (2d, last sentences).	Oct. 16, 1970, Pub. L. 91-458, § 202(a) (2d, last sentences), 84 Stat. 971.

In clause (2), the words “railroad carriers” are substituted for “common carriers” for consistency in this part.

REFERENCES IN TEXT

The Railway Labor Act, referred to in par. (2), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

§ 20111. Enforcement by the Secretary of Transportation

(a) EXCLUSIVE AUTHORITY.—The Secretary of Transportation has exclusive authority—

(1) to impose and compromise a civil penalty for a violation of a railroad safety regulation prescribed or order issued by the Secretary;

(2) except as provided in section 20113 of this title, to request an injunction for a violation of a railroad safety regulation prescribed or order issued by the Secretary; and

(3) to recommend appropriate action be taken under section 20112(a) of this title.

(b) COMPLIANCE ORDERS.—The Secretary may issue an order directing compliance with this part or with a railroad safety regulation prescribed or order issued under this part.

(c) ORDERS PROHIBITING INDIVIDUALS FROM PERFORMING SAFETY-SENSITIVE FUNCTIONS.—

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

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

(d) REGULATIONS REQUIRING REPORTING OF REMEDIAL ACTIONS.—(1) The Secretary shall prescribe regulations to require that a railroad carrier notified by the Secretary that imposition of a civil penalty will be recommended for a failure to comply with this part, chapter 51 or 57 of this title, or a regulation prescribed or order issued under any of those provisions, shall report to the Secretary, not later than the 30th day after the end of the month in which the notification is received—

- (A) actions taken to remedy the failure; or
- (B) if appropriate remedial actions cannot be taken by that 30th day, an explanation of the reasons for the delay.

(2) The Secretary—

(A) not later than June 3, 1993, shall issue a notice of a regulatory proceeding for proposed regulations to carry out this subsection; and

(B) not later than September 3, 1994, shall prescribe final regulations to carry out this subsection.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 868; Pub. L. 103-440, title II, §205, Nov. 2, 1994, 108 Stat. 4620; Pub. L. 110-432, div. A, title III, §305, Oct. 16, 2008, 122 Stat. 4879.)

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
	45:437(d)(1) (last sentence).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §208(d)(1) (last sentence); added Oct. 10, 1980, Pub. L. 96-423, §6(b), 94 Stat. 1814.
20111(c)	45:438(f).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §209(f); added June 22, 1988, Pub. L. 100-342, §3(a)(4), 102 Stat. 625.
20111(d)	45:437 (note).	Sept. 3, 1992, Pub. L. 102-365, §3, 106 Stat. 972.

In this section, the word “impose” is substituted for “assess” for consistency.

In subsection (b), the word “further” is omitted as surplus.

In subsection (d), the words “this part, chapter 51 or 57 of this title” are substituted for “the Federal railroad safety laws, as such term is defined in section 441(e) of this title” because 45:441(e) is not restated as a definition.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-432 amended subsec. (c) generally. Prior to amendment, text read as follows: “If an individual's violation of this chapter or any of the laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e)(1), (2), and (6)(A) of section 6 of the Department of Transportation Act, as in effect on June 1, 1994, or a regulation prescribed or order issued by the Secretary under this chapter is shown to make that individual unfit for the performance of safety-sensitive functions, the Secretary, after notice and opportunity for a hearing, may issue an order prohibiting the individual from performing safety-sensitive functions in the railroad industry for a specified period of time or until specified conditions are met. This subsection does not affect the Secretary's authority under section 20104 of this title to act on an emergency basis.”

1994—Subsec. (c). Pub. L. 103-440 inserted “this chapter or any of the laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e)(1), (2), and (6)(A) of section 6 of the Department of Transportation Act, as in effect on June 1, 1994, or” after “individual's violation of”.

§ 20112. Enforcement by the Attorney General

(a) CIVIL ACTIONS.—At the request of the Secretary of Transportation, the Attorney General may bring a civil action in a district court of the United States—

(1) to enjoin a violation of, or to enforce, this part, except for section 20109 of this title, or a railroad safety regulation prescribed or order issued by the Secretary;

(2) to collect a civil penalty imposed or an amount agreed on in compromise under section 21301, 21302, or 21303 of this title; or

(3) to enforce a subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition issued by the Secretary under this part.

(b) VENUE.—(1) Except as provided in paragraph (2) of this subsection, a civil action under this section may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If an action to collect a penalty is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action to enforce a subpoena issued by the Secretary or a compliance order issued

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20111(a)	45:435(a) (last sentence).	Oct. 16, 1970, Pub. L. 91-458, §206(a) (last sentence), 84 Stat. 973; Nov. 16, 1990, Pub. L. 101-615, §28(a)(4), 104 Stat. 3276.
20111(b)	45:437(a) (2d sentence).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §208(a) (2d sentence); added Jan. 3, 1975, Pub. L. 93-633, §206, 88 Stat. 2166; June 22, 1988, Pub. L. 100-342, §8, 102 Stat. 628.

under section 20111(b) of this title may be brought in the judicial district in which the defendant resides, does business, or is found.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 869; Pub. L. 110-432, div. A, title III, §309, Oct. 16, 2008, 122 Stat. 4882.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
20112(a)	45:437(a) (last sentence related to authority to bring actions). 45:437(d)(2). 45:438(c) (4th sentence related to authority to bring actions). 45:439(a) (related to actions by Attorney General).	Oct. 16, 1970, Pub. L. 91-458, §4 Stat. 971, §208(a) (last sentence); added June 22, 1988, Pub. L. 100-342, §8, 102 Stat. 628. Oct. 16, 1970, Pub. L. 91-458, §4 Stat. 971, §208(d)(2); added Oct. 10, 1980, Pub. L. 96-423, §6(b), 94 Stat. 1814. Oct. 16, 1970, Pub. L. 91-458, §209(c) (4th sentence), 84 Stat. 975; Oct. 10, 1980, Pub. L. 96-423, §9(a), 94 Stat. 1814; June 22, 1988, Pub. L. 100-342, §3(a)(3)(A), (B), 102 Stat. 624. Oct. 16, 1970, Pub. L. 91-458, §210(a) (related to actions by Attorney General), 84 Stat. 975; Oct. 10, 1980, Pub. L. 96-423, §9(a), 94 Stat. 1814; Nov. 16, 1990, Pub. L. 101-615, §28(f), 104 Stat. 3277.
20112(b)(1) ..	45:438(c) (4th sentence related to venue). 45:439(c) (related to actions by Attorney General).	Oct. 16, 1970, Pub. L. 91-458, §4 Stat. 971, §210(c) (related to actions by Attorney General); added Oct. 10, 1980, Pub. L. 96-423, §9(b), 94 Stat. 1815.
20112(b)(2) ..	45:437(a) (last sentence related to venue).	

In subsection (a), before clause (1), the words “At the request of the Secretary of Transportation” are substituted for “at the request of the Secretary” in 45:439(a), and are made applicable to all of the source provisions restated in this subsection, for clarity and consistency. The words “at the request of the Secretary” in 45:439(a) are interpreted and restated to mean that the Secretary’s request is to the Attorney General rather than to the district court. See H.R. Rept. No. 91-1194, 91st Cong., 2d Sess., p. 20 (1970). The words “the Attorney General may bring a civil action in a district court of the United States” are substituted for “such district court shall have jurisdiction, upon petition by the Attorney General” in 45:437(a) (last sentence), “The district courts of the United States shall have jurisdiction, upon petition by the Attorney General” in 45:437(d)(2), and “The United States district court shall . . . upon petition by the Attorney General on behalf of the United States . . . have jurisdiction” in 45:439(a) for clarity and consistency. It is not necessary to restate that the district court has jurisdiction because of 28:1331 and 1345. See also the statement of Senator Prouty in 115 Cong. Rec. 40205 (1969) explaining that similar language in section 110 of S. 1933, 91st Cong., 1st Sess. (the derivative source for 45:439) would grant the Attorney General the power to seek injunctions. Clauses (1)–(3) are substituted for the source provisions to eliminate unnecessary words. In clause (1), the words “subject to the provisions of rules 65(a) and (b) of the Federal Rules of Civil Procedure” in 45:439(a) are omitted as surplus because the Federal Rules of Civil Procedure (28 App. U.S.C.) apply in the district court unless otherwise provided. In clause (2), the words “or an amount agreed on in compromise” are added for clarity.

In subsection (b)(1), the text of 45:439(c) (words before 1st comma) is omitted because it applies only to actions brought by a State authority. See discussion of the cross-reference in the note for section 20113(c) of

the revised title. The last sentence is substituted for “in which the individual resides” in 45:438(c) because of the restatement.

In subsection (b)(2), the words “compliance order issued under section 20111(b) of this title” are substituted for “order, or directive” because the latter words are interpreted as referring to “orders directing compliance” in 45:437(a) (2d sentence), restated in section 20111(b).

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-432, §309(1), inserted “this part, except for section 20109 of this title, or” after “enforce.”

Subsec. (a)(2). Pub. L. 110-432, §309(2), substituted “21301, 21302, or 21303” for “21301”.

Subsec. (a)(3). Pub. L. 110-432, §309(3), (4), substituted “subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition” for “subpena” and “part.” for “chapter.”

§ 20113. Enforcement by the States

(a) INJUNCTIVE RELIEF.—If the Secretary of Transportation does not begin a civil action under section 20112 of this title to enjoin the violation of a railroad safety regulation prescribed or order issued by the Secretary not later than 15 days after the date the Secretary receives notice of the violation and a request from a State authority participating in investigative and surveillance activities under section 20105 of this title that the action be brought, the authority may bring a civil action in a district court of the United States to enjoin the violation. This subsection does not apply if the Secretary makes an affirmative written finding that the violation did not occur or that the action is not necessary because of other enforcement action taken by the Secretary related to the violation.

(b) IMPOSITION AND COLLECTION OF CIVIL PENALTIES.—If the Secretary does not impose the applicable civil penalty for a violation of a railroad safety regulation prescribed or order issued by the Secretary not later than 60 days after the date of receiving notice from a State authority participating in investigative and surveillance activities under section 20105 of this title, the authority may bring a civil action in a district court of the United States to impose and collect the penalty. This paragraph does not apply if the Secretary makes an affirmative written finding that the violation did not occur.

(c) VENUE.—A civil action under this section may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. However, a State authority may not bring an action under this section outside the State.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 869.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
20113(a)	45:436(b)(1) (related to authority to bring actions), (2).	Oct. 16, 1970, Pub. L. 91-458, §207(b), (c), 84 Stat. 974; Nov. 2, 1978, Pub. L. 95-574, §8, 92 Stat. 2461; restated Oct. 10, 1980, Pub. L. 96-423, §5, 94 Stat. 1812.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
	45:439(a) (related to actions by States).	Oct. 16, 1970, Pub. L. 91-458, §210(a) (related to actions by States), 84 Stat. 975; Oct. 10, 1980, Pub. L. 96-423, §9(a), 94 Stat. 1814; Nov. 16, 1990, Pub. L. 101-615, §28(f), 104 Stat. 3277.
20113(b)	45:436(a)(1) (related to authority to bring actions), (2).	Oct. 16, 1970, Pub. L. 91-458, §207(a), 84 Stat. 974; Nov. 2, 1978, Pub. L. 95-574, §8, 92 Stat. 2461; restated Oct. 10, 1980, Pub. L. 96-423, §5, 94 Stat. 1812; Nov. 16, 1990, Pub. L. 101-615, §28(e), 104 Stat. 3277.
20113(c)	45:436(a)(1) (related to venue), (b)(1) (related to venue), (c). 45:439(c) (related to actions by States).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §210(c) (related to actions by States); added Oct. 10, 1980, Pub. L. 96-423, §9(b), 94 Stat. 1815.

In subsection (a), the language about jurisdiction in 45:439(a) (related to actions by States) is omitted for the reasons explained in the revision note for section 20112(a) of the revised title.

In subsection (b), the word “impose” is substituted for “assess” for consistency. The words “the authority may bring a civil action in an appropriate district court of the United States” are substituted for “agency may apply to the United States district court” for consistency in the revised title and with other titles of the United States Code. The words “included in or made applicable to such rule, regulation, order, or standard” are omitted as surplus.

In subsection (c), the reference to “section 207(d)” in section 210(c) of the Federal Railroad Safety Act of 1970 (Public Law 91-458, 84 Stat. 971), as added by section 9(b) of the Federal Railroad Safety Authorization Act of 1980 (Public Law 96-423, 94 Stat. 1815), is assumed to have been intended as a reference to section 207(c). The Federal Railroad Safety Authorization Act of 1980 was derived from S. 2730, which in turn was derived from H.R. 7104. See 126 Cong. Rec. 26535 (1980). Section 207(d) in an earlier version of H.R. 7104 was redesignated as section 207(c) during the legislative process and no section 207(d) was enacted. See H.R. Rept. No. 96-1025, 96th Cong., 2d Sess., pp. 14, 15 (1980).

§ 20114. Judicial procedures

(a) CRIMINAL CONTEMPT.—In a trial for criminal contempt for violating an injunction or restraining order issued under this chapter, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(b) SUBPENAS FOR WITNESSES.—A subpoena for a witness required to attend a district court of the United States in an action brought under this chapter may be served in any judicial district.

(c) REVIEW OF AGENCY ACTION.—Except as provided in section 20104(c) of this title, a proceeding to review a final action of the Secretary of Transportation under this part or, as applicable to railroad safety, chapter 51 or 57 of this title shall be brought in the appropriate court of appeals as provided in chapter 158 of title 28.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 870.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20114(a)	45:439(b).	Oct. 16, 1970, Pub. L. 91-458, §§209(d), 210(b), 84 Stat. 975, 976.
20114(b)	45:438(d).	
20114(c)	45:431(f).	Oct. 16, 1970, Pub. L. 91-458, §202(f), 84 Stat. 972; restated Sept. 3, 1992, Pub. L. 102-365, §5(a)(1), 106 Stat. 975.

In subsection (a), the words “the defendant may demand a jury trial” are substituted for “trial shall be by the court, or, upon demand of the accused, by a jury” to eliminate unnecessary words and for consistency in the revised title.

In subsection (b), the words “may be served in any judicial district” are substituted for “may run into any other district” for clarity.

In subsection (c), the words “a final action of the Secretary” are substituted for “Any final agency action taken by the Secretary” to eliminate unnecessary words. The words “this part or, as applicable to railroad safety, chapter 51 or 57 of this title” are substituted for “this subchapter or under any of the other Federal railroad safety laws, as defined in section 441(e) of this title” because of the restatement. The words “is subject to judicial review as provided in chapter 7 of title 5” are omitted as unnecessary because 5:ch. 7 applies unless otherwise stated. The words “by and in the manner prescribed” are omitted as surplus.

§ 20115. User fees

(a) SCHEDULE OF FEES.—The Secretary of Transportation shall prescribe by regulation a schedule of fees for railroad carriers subject to this chapter. The fees—

(1) shall cover the costs of carrying out this chapter (except section 20108(a));

(2) shall be imposed fairly on the railroad carriers, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors; and

(3) may not be based on that part of industry revenues attributable to a railroad carrier or class of railroad carriers.

(b) COLLECTION PROCEDURES.—The Secretary shall prescribe procedures to collect the fees. The Secretary may use the services of a department, agency, or instrumentality of the United States Government or of a State or local authority to collect the fees, and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

(c) COLLECTION, DEPOSIT, AND USE.—(1) The Secretary shall impose and collect fees under this section for each fiscal year before the end of the fiscal year.

(2) Fees collected under this section shall be deposited in the general fund of the Treasury as offsetting receipts. The fees may be used, to the extent provided in advance in an appropriation law, only to carry out this chapter.

(3) Fees prescribed under this section shall be imposed in an amount sufficient to pay for the costs of activities under this chapter. However, the total fees received for a fiscal year may not be more than 105 percent of the total amount of the appropriations for the fiscal year for activities to be financed by the fees.

(d) ANNUAL REPORT.—(1) Not later than 90 days after the end of each fiscal year in which fees

are collected under this section, the Secretary shall report to Congress on—

(A) the amount of fees collected during that fiscal year;

(B) the impact of the fees on the financial health of the railroad industry and its competitive position relative to each competing mode of transportation; and

(C) the total cost of Government safety activities for each other competing mode of transportation, including any part of that total cost defrayed by Government user fees.

(2) Not later than 90 days after submitting a report for a fiscal year, the Secretary shall submit to Congress recommendations for corrective legislation if the report includes a finding that—

(A) there has been an impact from the fees on the financial health of the railroad industry or its competitive position relative to each competing mode of transportation; or

(B) there is a significant difference in the burden of Government user fees on the railroad industry and other competing modes of transportation.

(e) EXPIRATION.—This section expires on September 30, 1995.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 870.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20115(a)	45:447(a)(1), (3).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §216; added Nov. 5, 1990, Pub. L. 101-508, §10501(a), 104 Stat. 1388-399.
20115(b)	45:447(a)(2).	
20115(c)	45:447(b)-(d).	
20115(d)	45:447(e).	
20115(e)	45:447(f).	

In subsection (a), before clause (1), the words “after notice and comment” are omitted as unnecessary because of 5:553.

In subsection (c), the words “beginning on March 1, 1991” are omitted as obsolete.

§ 20116. Rulemaking process

No rule or order issued by the Secretary under this part shall be effective if it incorporates by reference a code, rule, standard, requirement, or practice issued by an association or other entity that is not an agency of the Federal Government, unless the date on which the code, rule, standard, requirement, or practice was adopted is specifically cited in the rule or order, or the code, rule, standard, requirement, or practice has been subject to notice and comment under a rule or order issued under this part.

(Added Pub. L. 110-432, div. A, title I, §107(a), Oct. 16, 2008, 122 Stat. 4859.)

PRIOR PROVISIONS

A prior section 20116, Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 871; amended Pub. L. 103-440, title II, §206(a), Nov. 2, 1994, 108 Stat. 4620, related to biennial safety reports prior to repeal by Pub. L. 104-66, title I, §1121(g)(1), Dec. 21, 1995, 109 Stat. 724.

§ 20117. Authorization of appropriations

(a) IN GENERAL.—(1) There are authorized to be appropriated to the Secretary of Transportation

to carry out this part and to carry out responsibilities under chapter 51 as delegated or authorized by the Secretary—

- (A) \$225,000,000 for fiscal year 2009;
- (B) \$245,000,000 for fiscal year 2010;
- (C) \$266,000,000 for fiscal year 2011;
- (D) \$289,000,000 for fiscal year 2012; and
- (E) \$293,000,000 for fiscal year 2013.

(2) With amounts appropriated pursuant to paragraph (1), the Secretary shall purchase Gage Restraint Measurement System vehicles and track geometry vehicles or other comparable technology as needed to assess track safety consistent with the results of the track inspection study required by section 403 of the Rail Safety Improvement Act of 2008.

(3) There are authorized to be appropriated to the Secretary \$18,000,000 for the period encompassing fiscal years 2009 through 2013 to design, develop, and construct the Facility for Underground Rail Station and Tunnel at the Transportation Technology Center in Pueblo, Colorado. The facility shall be used to test and evaluate the vulnerabilities of above-ground and underground rail tunnels to prevent accidents and incidents in such tunnels, to mitigate and remediate the consequences of any such accidents or incidents, and to provide a realistic scenario for training emergency responders.

(4) Such sums as may be necessary from the amount appropriated pursuant to paragraph (1) for each of the fiscal years 2009 through 2013 shall be made available to the Secretary for personnel in regional offices and in Washington, D.C., whose duties primarily involve rail security.

(b) GRADE CROSSING SAFETY.—Not more than \$1,000,000 may be appropriated to the Secretary for improvements in grade crossing safety, except demonstration projects under section 20134(c) of this title. Amounts appropriated under this subsection remain available until expended.

(c) RESEARCH AND DEVELOPMENT, AUTOMATED TRACK INSPECTION, AND STATE PARTICIPATION GRANTS.—Amounts appropriated under this section for research and development, automated track inspection, and grants under section 20105(e) of this title remain available until expended.

(d) MINIMUM AVAILABLE FOR CERTAIN PURPOSES.—At least 50 percent of the amounts appropriated to the Secretary for a fiscal year to carry out railroad research and development programs under this chapter or another law shall be available for safety research, improved track inspection and information acquisition technology, improved railroad freight transportation, and improved railroad passenger systems.

(e) OPERATION LIFESAVER.—In addition to amounts otherwise authorized by law, there are authorized to be appropriated for railroad research and development \$300,000 for fiscal year 1995, \$500,000 for fiscal year 1996, and \$750,000 for fiscal year 1997, to support Operation Lifesaver, Inc.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 872; Pub. L. 103-440, title II, §§202, 218, Nov. 2, 1994, 108 Stat. 4619, 4625; Pub. L. 110-432, div. A, §3, Oct. 16, 2008, 122 Stat. 4850.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20117(a)(1) ..	45:444(a) (1st sentence).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §214(a) (1st sentence); added Oct. 10, 1980, Pub. L. 96-423, §2, 94 Stat. 1811; Aug. 13, 1981, Pub. L. 97-35, §1195, 95 Stat. 702; Jan. 14, 1983, Pub. L. 97-468, §703, 96 Stat. 2580; restated June 22, 1988, Pub. L. 100-342, §2, 102 Stat. 624; Nov. 5, 1990, Pub. L. 101-508, §10501(b), 104 Stat. 1388-400; restated Sept. 3, 1992, Pub. L. 102-365, §12, 106 Stat. 980.
20117(a)(2) ..	45:435(h).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §206(h); Nov. 16, 1990, Pub. L. 101-615, §28(d), 104 Stat. 3277.
20117(b)	45:445(c).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §215(c); added June 22, 1988, Pub. L. 100-342, §20, 102 Stat. 638.
20117(c)	45:444(b).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §214(b); added Oct. 10, 1980, Pub. L. 96-423, §2, 94 Stat. 1811; Jan. 14, 1983, Pub. L. 97-468, §703, 96 Stat. 2580; restated June 22, 1988, Pub. L. 100-342, §2, 102 Stat. 624.
20117(d)	45:442.	Nov. 2, 1978, Pub. L. 95-574, §3, 92 Stat. 2459.

In subsection (a), references to fiscal years prior to 1993 are omitted as obsolete.

REFERENCES IN TEXT

Section 403 of the Rail Safety Improvement Act of 2008, referred to in subsec. (a)(2), is section 403 of Pub. L. 110-432, which is set out as a note under section 20142 of this title.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-432 amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized appropriations for fiscal years 1993 through 1998.

1994—Subsec. (a)(1)(C) to (F). Pub. L. 103-440, §202, added subpars. (C) to (F).

Subsec. (e). Pub. L. 103-440, §218, added subsec. (e).

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

(a) IN GENERAL.—Except as necessary for the Secretary of Transportation or another Federal agency to enforce or carry out any provision of Federal law, any part of any record (including, but not limited to, a railroad carrier’s analysis of its safety risks and its statement of the mitigation measures it has identified with which to address those risks) that the Secretary has obtained pursuant to a provision of, or regulation or order under, this chapter related to the establishment, implementation, or modification of a railroad safety risk reduction program or pilot program is exempt from the requirements of section 552 of title 5 if the record is—

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

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

(b) EXCEPTION.—Notwithstanding subsection (a), the Secretary may disclose any part of any record comprised of facts otherwise available to the public if, in the Secretary’s sole discretion,

the Secretary determines that disclosure would be consistent with the confidentiality needed for that safety risk reduction program or pilot program.

(c) DISCRETIONARY PROHIBITION OF DISCLOSURE.—The Secretary may prohibit the public disclosure of risk analyses or risk mitigation analyses that the Secretary has obtained under other provisions of, or regulations or orders under, this chapter if the Secretary determines that the prohibition of public disclosure is necessary to promote railroad safety.

(Added Pub. L. 110-432, div. A, title I, §109(a), Oct. 16, 2008, 122 Stat. 4866.)

§ 20119. Study on use of certain reports and surveys

(a) STUDY.—The Federal Railroad Administration shall complete a study to evaluate whether it is in the public interest, including public safety and the legal rights of persons injured in railroad accidents, to withhold from discovery or admission into evidence in a Federal or State court proceeding for damages involving personal injury or wrongful death against a carrier any report, survey, schedule, list, or data compiled or collected for the purpose of evaluating, planning, or implementing a railroad safety risk reduction program required under this chapter, including a railroad carrier’s analysis of its safety risks and its statement of the mitigation measures with which it will address those risks. In conducting this study, the Secretary shall solicit input from the railroads, railroad non-profit employee labor organizations, railroad accident victims and their families, and the general public.

(b) AUTHORITY.—Following completion of the study required under subsection (a), the Secretary, if in the public interest, including public safety and the legal rights of persons injured in railroad accidents, may prescribe a rule subject to notice and comment to address the results of the study. Any such rule prescribed pursuant to this subsection shall not become effective until 1 year after its adoption.

(Added Pub. L. 110-432, div. A, title I, §109(a), Oct. 16, 2008, 122 Stat. 4867.)

§ 20120. Enforcement report

(a)¹ 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—

¹ So in original. No subsec. (b) has been enacted.

- (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;²
- (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) provide³ 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; 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.

(Added Pub. L. 110-432, div. A, title III, §303(a), Oct. 16, 2008, 122 Stat. 4878.)

SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

§ 20131. Restricted access to rolling equipment

The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to require that when railroad carrier employees (except train or yard crews) assigned to inspect, test, repair, or service rolling equipment have to work on, under, or between that equipment, every manually operated switch, including each crossover switch, providing access to the track on which the equipment is located

² So in original. Probably should be followed by “and”.

³ So in original. Probably should be “provides”.

is lined against movement to that track and secured by an effective locking device that can be removed only by the class or craft of employees performing the inspection, testing, repair, or service.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 872.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
20131	45:431(g) (1st sentence cl. (1)).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §202(g) (1st sentence cl. (1)); added July 8, 1976, Pub. L. 94-348, §5(b), 90 Stat. 820.

The words “within 180 days after July 8, 1976” are omitted as expired.

§ 20132. Visible markers for rear cars

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to require that—

- (1) the rear car of each passenger and commuter train has at least one highly visible marker that is lighted during darkness and when weather conditions restrict clear visibility; and
- (2) the rear car of each freight train has highly visible markers during darkness and when weather conditions restrict clear visibility.

(b) PREEMPTION.—Notwithstanding section 20106 of this title, subsection (a) of this section does not prohibit a State from continuing in force a law, regulation, or order in effect on July 8, 1976, related to lighted markers on the rear car of a freight train except to the extent it would cause the car to be in violation of this section.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 873.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
20132(a)	45:431(g) (1st sentence cls. (2), (3)).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §202(g) (1st sentence cls. (2), (3), last sentence); added July 8, 1976, Pub. L. 94-348, §5(b), 90 Stat. 820.
20132(b)	45:431(g) (last sentence).	

In subsection (a), before clause (1), the words “within 180 days after July 8, 1976” are omitted as expired.

§ 20133. Passenger cars

(a) MINIMUM STANDARDS.—The Secretary of Transportation shall prescribe regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers. Before prescribing such regulations, the Secretary shall consider—

- (1) the crashworthiness of the cars;
- (2) interior features (including luggage restraints, seat belts, and exposed surfaces) that may affect passenger safety;
- (3) maintenance and inspection of the cars;
- (4) emergency response procedures and equipment; and
- (5) any operating rules and conditions that directly affect safety not otherwise governed by regulations.