

49 U.S.C.

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Title 49 - TRANSPORTATION

SUBTITLE V - RAIL PROGRAMS

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§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

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|-----------------------------------|---|
| 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.]

§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

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|----------------------------|---------------------------|---|
| 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 documents, take depositions, and prescribe recordkeeping 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). | Oct. 16, 1970, Pub. L. 91–458, §208(a) (1st sentence words before 9th and after 14th commas), 84 Stat. 974, 975. |
| | 45:437(d)(1) (1st sentence). | Oct. 16, 1970, Pub. L. 91–458, 84 Stat. |

| | | |
|----------|------------|--|
| 20107(b) | 45:437(b). | 971, §208(d)(1) (1st sentence); added Oct. 10, 1980, Pub. L. 96–423, §6(b), 94 Stat. 1813. Oct. 16, 1970, Pub. L. 91–458, §208(b), 84 Stat. 975; restated Nov. 2, 1978, Pub. L. 95–574, §9, 92 Stat. 2462; Oct. 10, 1980, Pub. L. 96–423, §6(a), 94 Stat. 1813. |
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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 authorized 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.]

§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.)

SUBCHAPTER I—CIVIL PENALTIES

§21301. Chapter 201 general violations

(a) Penalty.—(1) A person may not fail to comply with section 20160 or with a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title. Subject to section 21304 of this title, a person violating section 20160 of this title or a regulation prescribed or order issued by the Secretary under chapter 201 is liable to the United States Government for a civil penalty. The Secretary shall impose the penalty applicable under paragraph (2) of this subsection. A separate violation occurs for each day the violation continues.

(2) The Secretary shall include in, or make applicable to, each regulation prescribed and order issued under chapter 201 of this title a civil penalty for a violation. The Secretary shall impose a

civil penalty for a violation of section 20160 of this title. The amount of the penalty shall be at least \$500 but not more than \$25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than \$100,000.

(3) The Secretary may compromise the amount of a civil penalty imposed under this subsection to not less than \$500 before referring the matter to the Attorney General for collection. In determining the amount of a compromise, the Secretary shall consider—

- (A) the nature, circumstances, extent, and gravity of the violation;
- (B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and
- (C) other matters that justice requires.

(b) Setoff.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) Deposit in Treasury.—A civil penalty collected under this section or section 20113(b) of this title shall be deposited in the Treasury as miscellaneous receipts.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 891; Pub. L. 104–287, §5(53), Oct. 11, 1996, 110 Stat. 3393; Pub. L. 110–432, div. A, title II, §204(d), title III, §302(a), Oct. 16, 2008, 122 Stat. 4871, 4878.)

Historical and Revision Notes
Pub. L. 103–272

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|----------------------------|---|--|
| 21301(a)(1) | 45:438(a). 45:438(c) (1st, 3d sentences). | Oct. 16, 1970, Pub. L. 91–458, §209(a), 84 Stat. 975; restated Jan. 14, 1983, Pub. L. 97–468, §706, 96 Stat. 2581; June 22, 1988, Pub. L. 100–342, §3(a)(1), 102 Stat. 624; Sept. 3, 1992, Pub. L. 102–365, §9(a)(1), 106 Stat. 977. Oct. 16, 1970, Pub. L. 91–458, §209(c) (1st, 3d, 5th–8th sentences), 84 Stat. 975; June 22, 1988, Pub. L. 100–342, §3(a)(3)(A), (C), 102 Stat. 624; Sept. 3, 1992, Pub. L. 102–365, §4(c)(1), 106 Stat. 974. |
| 21301(a)(2) | 45:438(b) (related to rules, regulations, orders, or standards issued under this subchapter). | Oct. 16, 1970, Pub. L. 91–458, §209(b) (related to rules, regulations, orders, or standards issued under this title), 84 Stat. 975; Jan. 3, 1975, Pub. L. 93–633, §204(a), 88 Stat. 2165; June 22, 1988, Pub. L. 100–342, §3(a)(2), 102 Stat. 624; Sept. 3, 1992, Pub. L. 102–365, §4(a)(1), 106 Stat. 973. |
| 21301(a)(3) | 45:438(c) (5th, 6th sentences). | |

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| 21301(b) | 45:438(c) (7th sentence). | |
| 21301(c) | 45:438(c) (8th sentence). | |

In subsection (a), the words “impose” and “imposed” are substituted for “assessed”, for consistency in the revised title.

In subsection (a)(1), the first 2 sentences are substituted for 45:438(a) and (c) (1st sentence) for consistency in the revised title and to eliminate unnecessary words. The words “(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)” are omitted as surplus because of the definition of “person” in 1:1 and because the provision being violated indicates to whom it applies. The word “shall” in 45:438(c) (1st sentence) is retained from the source provisions. For a discussion of whether the authority of the Secretary of Transportation to impose a penalty is mandatory or permissive, see *Railway Labor Executives’ Ass’n v. Dole*, 760 F.2d 1021, 1024, 1025 (9th Cir. 1985); H.R. Conf. Rept. No. 100–637, 100th Cong., 2d Sess., p. 20; 134 Cong. Rec. H3470, May 23, 1988 (daily ed.); 134 Cong. Rec. S7510, June 9, 1988 (daily ed.). See also 134 Cong. Rec. E1946, June 10, 1988 (daily ed.). For an extended discussion of FRA’s prosecutorial discretion, see *Nationwide Rail Safety: Hearing Before the Subcommittee on Transportation, Tourism, and Hazardous Materials of the House Energy and Commerce Committee*, 100th Cong., 1st Sess., pp. 54–65 (1987). See also section 6 of this bill that provides that this bill restates, without substantive change, the provisions of law replaced by this bill, and that this bill may not be construed as making a substantive change in the law restated. Therefore, the word “shall” in this subsection has the same meaning it has under existing law. The words “A separate violation” are substituted for “a separate offense” for consistency.

In subsection (a)(3), the words “may compromise the amount . . . to not less than \$500” are substituted for “may, however, be compromised . . . for any amount, but in no event for an amount less than the minimum provided in subsection (b) of this section” for clarity and to eliminate unnecessary words. In clause (B), the words “prior or subsequent” are omitted as unnecessary.

In subsection (c), the words “deposited in” are substituted for “covered into” for consistency in the revised title and with other titles of the United States Code.

PUB. L. 104–287

This amends 49:21301(a)(1) to clarify the restatement of 45:438(a) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 891).

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–432, §204(d)(1), inserted “with section 20160 or” after “comply” and “section 20160 of this title or” after “violating”.

Subsec. (a)(2). Pub. L. 110–432, §302(a), substituted “\$25,000.” for “\$10,000.” and “\$100,000.” for “\$20,000.”

Pub. L. 110–432, §204(d)(2), inserted “The Secretary shall impose a civil penalty for a violation of section 20160 of this title.” after first sentence.

1996—Subsec. (a)(1). Pub. L. 104–287, §5(53)(B), substituted “Secretary under chapter 201 is liable” for “Secretary of Transportation under chapter 201 of this title is liable”.

Pub. L. 104–287, §5(53)(A), inserted “A person may not fail to comply with a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title.” before “Subject to”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of this title.

§21304. Willfulness requirement for penalties against individuals

A civil penalty under this subchapter may be imposed against an individual only for a willful violation. An individual is deemed not to have committed a willful violation if the individual was following the direct order of a railroad carrier official or supervisor under protest communicated to the official or supervisor. The individual is entitled to document the protest.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 893.)

Historical and Revision Notes

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|----------------------------|--|--|
| 21304 | 45:6 (1st sentence words between 23d and 24th commas, 2d sentence words after 2d comma, 3d sentence). | Mar. 2, 1893, ch. 196, §6 (1st sentence words between 23d and 24th commas, 2d sentence words after 2d comma, 3d sentence), 27 Stat. 532; restated June 22, 1988, Pub. L. 100–342, §13(1)(F), 102 Stat. 630; Sept. 3, 1992, Pub. L. 102–365, §9(a)(3), 106 Stat. 977. |
| | 45:13 (1st sentence words after last comma, 3d, 4th sentences). | Apr. 14, 1910, ch. 160, §4 (1st sentence words after last comma, 3d, 4th sentences), 36 Stat. 299; June 22, 1988, Pub. L. 100–342, §13(3)(C) (iii), (v), 102 Stat. 632. |
| | 45:34 (1st sentence words after last comma, 3d, 4th sentences). | Feb. 17, 1911, ch. 103, §9 (1st sentence words after last comma, 3d, 4th sentences), 36 Stat. 916; June 22, 1988, Pub. L. 100–342, §14(7), 102 Stat. 633. |
| | 45:43 (1st sentence words after last comma, 3d sentence words after 5th comma, 4th sentence). | May 6, 1910, ch. 208, §7 (1st sentence words after last comma, 3d sentence words after 5th comma, 4th sentence), 36 Stat. 351; Sept. 13, 1960, Pub. L. 86–762, §3, 74 Stat. 904; restated June 22, 1988, Pub. L. 100–342, §15(4), 102 Stat. 634. |
| | 45:64a(a)(1) (1st sentence words after last comma, 5th sentence words after last comma, 6th sentence). | Mar. 4, 1907, ch. 2939, §5(a)(1) (1st sentence words after last comma, 5th sentence words after last comma, 6th sentence), 34 Stat. 1417; restated June 22, 1988, Pub. L. 100–342, §16(6)(A), 102 Stat. 635. |
| | 45:438(c) (2d, 9th, last sentences). | Oct. 16, 1970, Pub. L. 91–458, §209(c) (2d, 8th, last sentences), 84 Stat. 975; June 22, 1988, Pub. L. 100–342, §3(a)(3)(A), (C), 102 Stat. 624; Sept. 3, 1992, Pub. L. 102–365, §4(c)(1), 106 Stat. 974. |

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| | 49 App.:26(h) (1st sentence words after last comma, 4th sentence words after last comma, 5th sentence). | Feb. 4, 1887, ch. 104, 24 Stat. 379, §25(h) (1st sentence words after last comma, 4th sentence words after last comma, 5th sentence); added Feb. 28, 1920, ch. 91, §441, 41 Stat. 498; restated Aug. 26, 1937, ch. 818, 50 Stat. 837; Sept. 18, 1940, ch. 722, §14(b), 54 Stat. 919; June 22, 1988, Pub. L. 100–342, §17(7), 102 Stat. 636. |
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The word “official” is added the 2d time it appears for consistency in this section.

SUBCHAPTER II—CRIMINAL PENALTIES

§21311. Records and reports

(a) Records and Reports Under Chapter 201.—A person shall be fined under title 18, imprisoned for not more than 2 years, or both, if the person knowingly and willfully—

(1) makes a false entry in a record or report required to be made or preserved under chapter 201 of this title;

(2) destroys, mutilates, changes, or by another means falsifies such a record or report;

(3) does not enter required specified facts and transactions in such a record or report;

(4) makes or preserves such a record or report in violation of a regulation prescribed or order issued under chapter 201 of this title; or

(5) files a false record or report with the Secretary of Transportation.

(b) Accident and Incident Reports.—A railroad carrier not filing a report in violation of section 20901 of this title shall be fined not more than \$2,500. A separate violation occurs for each day the violation continues.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 893; Pub. L. 110–432, div. A, title III, §310, 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> |
|------------------------|---------------------------|--|
| 21311(a) | 45:438(e). | Oct. 16, 1970, Pub. L. 91–458, 84 Stat. 971, §209(e); added Oct. 10, 1980, Pub. L. 96–423, §7, 94 Stat. 1814. |
| 21311(b) | 45:39 (related to fine). | May 6, 1910, ch. 208, §2 (related to fine), 36 Stat. 351; Jan. 3, 1975, Pub. L. 93–633, §204(b), 88 Stat. 2166; June 22, 1988, Pub. L. 100–342, §15(2), 102 Stat. 634; Sept. 3, 1992, Pub. L. 102–365, §4(a)(3), 106 Stat. |

In subsection (a), before clause (1), the words “fined under title 18” are substituted for “fined not more than \$5,000” for consistency with title 18. In clause (1), the word “prepared” is omitted as surplus. In clause (4), the word “prepares” is omitted as surplus.

In subsection (b), the words “shall be deemed guilty of a misdemeanor” are omitted for consistency with title 18. The words “upon conviction thereof by a court of competent jurisdiction” and “punished by a” are omitted as surplus.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–432 amended subsec. (b) generally. Prior to amendment, text read as follows: “A railroad carrier not filing the report required by section 20901 of this title shall be fined not more than \$500 for each violation and not more than \$500 for each day during which the report is overdue.”