

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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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 rail-

road 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 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).