

ductors, relevant to their respective roles, including training related to installed technology;

“(4) determine whether such programs provide locomotive engineers and conductors the knowledge, skill, and ability to safely operate a locomotive or train, consistent with such parts 240 and 242;

“(5) determine whether such programs reflect the current operating practices of the railroad carrier;

“(6) assess the current practice by which railroads utilize simulator training, or any other technologies used to train and qualify locomotive engineers and conductors by examining how such technologies are used;

“(7) consider international experience and practice using similar technology, as appropriate, particularly before qualifying locomotive engineers on new or unfamiliar equipment, new train control, diagnostics, or other on-board technology;

“(8) assess the current practice for familiarizing locomotive engineers and conductors with new territory and using recurrency training to expose such personnel to normal and abnormal conditions; and

“(9) ensure that locomotive engineers and conductor training programs are considered separately, as appropriate, based on the unique requirements and regulations.

“(b) **AUDIT SCHEDULING.**—The Secretary shall—

“(1) schedule the audits required under subsection (a) to ensure that—

“(A) each Class I railroad, including the National Railroad Passenger Corporation and other intercity passenger rail providers, is audited not less frequently than once every 5 years; and

“(B) a select number, as determined appropriate by the Secretary, of Class II and Class III railroads, along with other railroads providing passenger rail service that are not included in subparagraph (A), are audited annually; and

“(2) conduct the audits described in paragraph (1)(B) in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 [title II of Pub. L. 104–121] (5 U.S.C. 601 note) and appendix C of part 209 of title 49, Code of Federal Regulations.

“(c) **UPDATES TO QUALIFICATION AND CERTIFICATION PROGRAM.**—If the Secretary, while conducting the audits required under this section, identifies a deficiency in a railroad’s training, qualification, and certification program for locomotive engineers or conductors, the railroad shall update the program to eliminate such deficiency.

“(d) **CONSULTATION AND COOPERATION.**—

“(1) **CONSULTATION.**—In conducting any audit required under this section, the Secretary shall consult with the railroad and its employees, including any nonprofit employee labor organization representing the engineers or conductors of the railroad.

“(2) **COOPERATION.**—The railroad and its employees, including any nonprofit employee labor organization representing engineers or conductors of the railroad, shall fully cooperate with any such audit, including by—

“(A) providing any relevant documents requested; and

“(B) making available any employees for interview without undue delay or obstruction.

“(3) **FAILURE TO COOPERATE.**—If the Secretary determines that a railroad or any of its employees, including any nonprofit employee labor organization representing engineers or conductors of the railroad is not fully cooperating with an audit, the Secretary shall electronically notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

“(e) **REVIEW OF REGULATIONS.**—The Secretary shall triennially determine whether any update to part 240 or 242 of title 49, Code of Federal Regulations, is necessary to better prepare locomotive engineers and conductors to safely operate trains by evaluating whether such regulations establish appropriate Federal standards requiring railroads—

“(1) to provide locomotive engineers or conductors the knowledge and skills to safely operate trains under conditions that reflect industry practices;

“(2) to adequately address locomotive engineer or conductor route situational awareness, including ensuring locomotive engineers and conductors to demonstrate knowledge on the physical characteristics of a territory under various conditions and using various resources;

“(3) to provide relevant and adequate hands-on training before a locomotive engineer or conductor is certified;

“(4) to adequately prepare locomotive engineers or conductors to understand relevant locomotive operating characteristics, to include instructions on functions they are required to operate on any installed technology; and

“(5) to address any other safety issue that the Secretary determines to be appropriate for better preparing locomotive engineers or conductors.

“(f) **ANNUAL REPORT.**—The Secretary shall publish an annual report on the public website of the Federal Railroad Administration that—

“(1) summarizes the findings of the prior year’s audits;

“(2) summarizes any updates made pursuant to subsection (c); and

“(3) excludes and confidential business information or sensitive security information.”

REPORT AND REGULATIONS ON CERTIFICATION OF CERTAIN CRAFTS OR CLASSES OF EMPLOYEES

Pub. L. 110–432, div. A, title IV, §402(b)–(d), Oct. 16, 2008, 122 Stat. 4884, provided that, not later than 6 months after promulgating regulations under this section, the Secretary was to issue a report to Congress about whether the certification of certain crafts or classes of railroad carrier or railroad carrier contractor or subcontractor employees was necessary to reduce the number and rate of accidents and incidents or to improve railroad safety and that the Secretary could prescribe regulations requiring the certification of certain crafts or classes of employees that the Secretary determined necessary to reduce accidents and incidents or to improve railroad safety.

§ 20163. Certification of train conductors

(a) **REGULATIONS.**—Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation shall prescribe regulations to establish a program requiring the certification of train conductors. In prescribing such regulations, the Secretary shall require that train conductors be trained, in accordance with the training standards developed pursuant to section 20162.

(b) **PROGRAM REQUIREMENTS.**—In developing the regulations required by subsection (a), the Secretary may consider the requirements of section 20135(b) through (e).

(Added Pub. L. 110–432, div. A, title IV, §402(a), Oct. 16, 2008, 122 Stat. 4884.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsec. (a), is the date of enactment of div. A of Pub. L. 110–432, which was approved Oct. 16, 2008.

§ 20164. Development and use of rail safety technology

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of the Rail Safety Im-

provement Act of 2008, the Secretary of Transportation shall prescribe standards, guidance, regulations, or orders governing the development, use, and implementation of rail safety technology in dark territory, in arrangements not defined in section 20501 or otherwise not covered by Federal standards, guidance, regulations, or orders that ensure the safe operation of such technology, such as—

- (1) switch position monitoring devices or indicators;
- (2) radio, remote control, or other power-assisted switches;
- (3) hot box, high water, or earthquake detectors;
- (4) remote control locomotive zone limiting devices;
- (5) slide fences;
- (6) grade crossing video monitors;
- (7) track integrity warning systems; or
- (8) other similar rail safety technologies, as determined by the Secretary.

(b) DARK TERRITORY DEFINED.—In this section, the term “dark territory” means any territory in a railroad system that does not have a signal or train control system installed or operational.

(Added Pub. L. 110-432, div. A, title IV, §406(a), Oct. 16, 2008, 122 Stat. 4886; amended Pub. L. 114-94, div. A, title XI, §11316(i), Dec. 4, 2015, 129 Stat. 1677.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsec. (a), is the date of enactment of div. A of Pub. L. 110-432, which was approved Oct. 16, 2008.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114-94 substituted “after the date of enactment of the Rail Safety Improvement Act of 2008” for “after enactment of the Railroad Safety Enhancement Act of 2008” in introductory provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

§ 20165. Limitations on non-Federal alcohol and drug testing

(a) TESTING REQUIREMENTS.—Any non-Federal alcohol and drug testing program of a railroad carrier must provide that all post-employment tests of the specimens of employees who are subject to both the program and chapter 211 of this title be conducted using a scientifically recognized method of testing capable of determining the presence of the specific analyte at a level above the cut-off level established by the carrier.

(b) REDRESS PROCESS.—Each railroad carrier that has a non-Federal alcohol and drug testing program must provide a redress process to its employees who are subject to both the alcohol and drug testing program and chapter 211 of this title for such an employee to petition for and re-

ceive a carrier hearing to review his or her specimen test results that were determined to be in violation of the program. A dispute or grievance raised by a railroad carrier or its employee, except a probationary employee, in connection with the carrier’s alcohol and drug testing program and the application of this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153).

(Added Pub. L. 110-432, div. A, title IV, §409(a), Oct. 16, 2008, 122 Stat. 4887.)

§ 20166. Emergency escape breathing apparatus

Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation shall prescribe regulations that require railroad carriers—

- (1) to provide emergency escape breathing apparatus suitable to provide head and neck coverage with respiratory protection for all crewmembers in locomotive cabs on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of release;
- (2) to provide convenient storage in each freight train locomotive to enable crewmembers to access such apparatus quickly;
- (3) to maintain such equipment in proper working condition; and
- (4) to provide their crewmembers with appropriate training for using the breathing apparatus.

(Added Pub. L. 110-432, div. A, title IV, §413(a), Oct. 16, 2008, 122 Stat. 4889.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in text, is the date of enactment of div. A. of Pub. L. 110-432, which was approved Oct. 16, 2008.

§ 20167. Reports on highway-rail grade crossing safety

(a) REPORT.—Not later than 4 years after the date by which States are required to submit State highway-rail grade crossing action plans under section 11401(b) of the Fixing America’s Surface Transportation Act (49 U.S.C. 22907 note), the Administrator of the Federal Railroad Administration, in consultation with the Administrator of the Federal Highway Administration, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that summarizes the State highway-rail grade crossing action plans, including—

(1) an analysis and evaluation of each State railway-highway crossings program under section 130 of title 23, including—

(A) compliance with section 11401 of the Fixing America’s Surface Transportation Act and section 130(g) of title 23; and

(B) the specific strategies identified by each State to improve safety at highway-rail grade crossings, including crossings with multiple accidents or incidents;