

**Editorial Notes**

## REFERENCES IN TEXT

Section 5338, referred to in subssecs. (c) and (d)(1), was amended generally by Pub. L. 117-58, div. C, § 30017, Nov. 15, 2021, 135 Stat. 912. As amended, section 5338 no longer contains a subsec. (f). Provisions relating to oversight, formerly contained in section 5338(f), can be found elsewhere in section 5338.

## AMENDMENTS

2015—Subsec. (c). Pub. L. 114-94, § 3012(1), which directed substitution of section “5338(f)” for “section 5338(i)”, was executed by substituting “section 5338(f)” for “section 5338(i)”, to reflect the probable intent of Congress.

Subsec. (d)(1). Pub. L. 114-94, § 3012(2)(A)(i), which directed substitution of section 5338(f) for “section 5338(i)” without placing quotation marks around the language to be substituted, was executed by substituting “section 5338(f)” for “section 5338(i)”, to reflect the probable intent of Congress.

Subsec. (d)(2), (3). Pub. L. 114-94, § 3012(2)(A)(ii), (B), added pars. (2) and (3) and struck out former par. (2), which read as follows: “a requirement that oversight begin during the project development phase of a project, unless the Secretary finds it more appropriate to begin the oversight during another phase of the project, to maximize the transportation benefits and cost savings associated with project management oversight.”

2012—Subsec. (a). Pub. L. 112-141, § 20020(1)(A), in introductory provisions, substituted “Federal financial assistance for a major capital project for public transportation under this chapter or any other provision of Federal law, a recipient must prepare a project management plan approved by the Secretary and carry out the project in accordance with the project management plan” for “United States Government financial assistance for a major capital project under this chapter or the National Capital Transportation Act of 1969 (Public Law 91-143, 83 Stat. 320), a recipient must prepare and carry out a project management plan approved by the Secretary of Transportation”.

Subsec. (a)(12). Pub. L. 112-141, § 20020(1)(B), substituted “quarterly” for “each month”.

Subsec. (c). Pub. L. 112-141, § 20020(2), (3), added subsec. (c) and struck out former subsec. (c) which related to limitations.

Subsec. (d). Pub. L. 112-141, § 20020(2), (4), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to access to sites and records.

Subsec. (d)(1). Pub. L. 112-141, § 20020(5)(A), substituted “section 5338(i)” for “subsection (c) of this section”.

Subsec. (d)(2). Pub. L. 112-141, § 20020(5)(B), substituted “project development phase” for “preliminary engineering stage” and “another phase” for “another stage”.

Subsec. (e). Pub. L. 112-141, § 20020(4), redesignated subsec. (e) as (d).

Subsec. (f). Pub. L. 112-141, § 20020(2), struck out subsec. (f). Text read as follows: “A recipient of financial assistance for a project under this chapter with an estimated total cost of \$1,000,000,000 or more shall submit to the Secretary an annual financial plan for the project. The plan shall be based on detailed annual estimates of the cost to complete the remaining elements of the project and on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.”

2005—Subsec. (a)(13). Pub. L. 109-59, § 3026(a), added par. (13).

Subsec. (c). Pub. L. 109-59, § 3026(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) specified limitations on use of available amounts for certain purposes.

1998—Subsec. (c)(2). Pub. L. 105-178, § 3024(a), substituted “enter into contracts” for “make contracts”

and inserted “and to provide technical assistance to correct deficiencies identified in compliance reviews and audits carried out under this section” before period at end of first sentence.

Subsec. (f). Pub. L. 105-178, § 3024(b), added subsec. (f). 1996—Subsec. (c)(1). Pub. L. 104-287 substituted “to carry out a major project under section 5309” for “to carry out a major project under section 5307”.

1994—Subsec. (c)(1). Pub. L. 103-429 substituted “section 5307, 5309, 5311, or 103(e)(4) or that Act” for “section 5307, 5309, 5311, or 103(e)(4) of that Act”.

**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.

## EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

## 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.

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

## FINANCING OF OVERSIGHT ACTIVITIES

Pub. L. 107-87, title III, § 319, Dec. 18, 2001, 115 Stat. 858, provided that: “Beginning in fiscal year 2002 and thereafter, the Secretary may use up to 1 percent of the amounts made available to carry out 49 U.S.C. 5309 for oversight activities under 49 U.S.C. 5327.”

**[§ 5328. Repealed. Pub. L. 112-141, div. B, § 20002(a), July 6, 2012, 126 Stat. 622]**

Section, Pub. L. 103-272, § 1(d), July 5, 1994, 108 Stat. 828; Pub. L. 104-205, title III, § 336, Sept. 30, 1996, 110 Stat. 2974; Pub. L. 104-287, § 5(9), Oct. 11, 1996, 110 Stat. 3389; Pub. L. 105-178, title III, § 3009(h)(2), (3)(B), (C), June 9, 1998, 112 Stat. 356; Pub. L. 105-206, title IX, § 9009(h)(2), (3), July 22, 1998, 112 Stat. 856; Pub. L. 109-59, title III, § 3027, Aug. 10, 2005, 119 Stat. 1623, related to project review and advancement by the Secretary.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

**§ 5329. Public transportation safety program**

(a) DEFINITION.—In this section, the term “recipient” means a State or local governmental authority, or any other operator of a public transportation system, that receives financial assistance under this chapter.

(b) NATIONAL PUBLIC TRANSPORTATION SAFETY PLAN.—

(1) IN GENERAL.—The Secretary shall create and implement a national public transportation safety plan to improve the safety of all public transportation systems that receive funding under this chapter.

(2) CONTENTS OF PLAN.—The national public transportation safety plan under paragraph (1) shall include—

(A) safety performance criteria for all modes of public transportation, or, in the case of a recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more, safety performance measures, including measures related to the risk reduction program under subsection (d)(1)(I), for all modes of public transportation;

(B) the definition of the term “state of good repair” established under section 5326(b);

(C) minimum safety performance standards for public transportation vehicles used in revenue operations that—

(i) do not apply to rolling stock otherwise regulated by the Secretary or any other Federal agency; and

(ii) to the extent practicable, take into consideration—

(I) relevant recommendations of the National Transportation Safety Board;

(II) recommendations of, and best practices standards developed by, the public transportation industry; and

(III) innovations in driver assistance technologies and driver protection infrastructure, where appropriate, and a reduction in visibility impairments that contribute to pedestrian fatalities;

(D) in consultation with the Secretary of Health and Human Services, precautionary and reactive actions required to ensure public and personnel safety and health during an emergency (as defined in section 5324(a));

(E) minimum safety standards to ensure the safe operation of public transportation systems that—

(i) are not related to performance standards for public transportation vehicles developed under subparagraph (C); and

(ii) to the extent practicable, take into consideration—

(I) relevant recommendations of the National Transportation Safety Board;

(II) best practices standards developed by the public transportation industry;

(III) any minimum safety standards or performance criteria being implemented across the public transportation industry;

(IV) relevant recommendations from the report under section 3020 of the Federal Public Transportation Act of 2015; and

(V) any additional information that the Secretary determines necessary and appropriate;

(F) a public transportation safety certification training program, as described in subsection (c); and

(G) consideration, where appropriate, of performance-based and risk-based methodologies.

(3) PLAN UPDATES.—The Secretary shall update the national public transportation safety plan under paragraph (1) as necessary with re-

spect to recipients receiving assistance under section 5307 that serve an urbanized area with a population of 200,000 or more.

(c) PUBLIC TRANSPORTATION SAFETY CERTIFICATION TRAINING PROGRAM.—The Secretary shall establish a public transportation safety certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems and employees of public transportation agencies directly responsible for safety oversight.

(d) PUBLIC TRANSPORTATION AGENCY SAFETY PLAN.—

(1) IN GENERAL.—Each recipient or State, as described in paragraph (3), shall certify that the recipient or State has established a comprehensive agency safety plan that includes, at a minimum—

(A) a requirement that the board of directors (or equivalent entity) of the recipient approve, or, in the case of a recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more, the safety committee of the entity established under paragraph (5), followed by the board of directors (or equivalent entity) of the recipient approve, the agency safety plan and any updates to the agency safety plan;

(B) for each recipient serving an urbanized area with a population of fewer than 200,000, a requirement that the agency safety plan be developed in cooperation with frontline employee representatives;

(C) methods for identifying and evaluating safety risks throughout all elements of the public transportation system of the recipient;

(D) strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions, and consistent with guidelines of the Centers for Disease Control and Prevention or a State health authority, minimize exposure to infectious diseases;

(E) a process and timeline for conducting an annual review and update of the safety plan of the recipient;

(F) performance targets based on—

(i) the safety performance criteria and state of good repair standards established under subparagraphs (A) and (B), respectively, of subsection (b)(2); or

(ii) in the case of a recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more, safety performance measures established under the national public transportation safety plan, as described in subsection (b)(2)(A);

(G) assignment of an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the recipient;

(H) a comprehensive staff training program for—

(i) the operations personnel and personnel directly responsible for safety of the recipient that includes—

- (I) the completion of a safety training program; and
- (II) continuing safety education and training; or
- (ii) in the case of a recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more, the operations and maintenance personnel and personnel directly responsible for safety of the recipient that includes—
- (I) the completion of a safety training program;
- (II) continuing safety education and training; and
- (III) de-escalation training; and
- (I) in the case of a recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more, a risk reduction program for transit operations to improve safety by reducing the number and rates of accidents, injuries, and assaults on transit workers based on data submitted to the national transit database under section 5335, including—
- (i) a reduction of vehicular and pedestrian accidents involving buses that includes measures to reduce visibility impairments for bus operators that contribute to accidents, including retrofits to buses in revenue service and specifications for future procurements that reduce visibility impairments; and
- (ii) the mitigation of assaults on transit workers, including the deployment of assault mitigation infrastructure and technology on buses, including barriers to restrict the unwanted entry of individuals and objects into the workstations of bus operators when a risk analysis performed by the safety committee of the recipient established under paragraph (5) determines that such barriers or other measures would reduce assaults on transit workers and injuries to transit workers.
- (2) INTERIM AGENCY SAFETY PLAN.—A system safety plan developed pursuant to part 659 of title 49, Code of Federal Regulations, as in effect on the date of enactment of the Federal Public Transportation Act of 2012, shall remain in effect until such time as this subsection takes effect.
- (3) PUBLIC TRANSPORTATION AGENCY SAFETY PLAN DRAFTING AND CERTIFICATION.—
- (A) SECTION 5311.—For a recipient receiving assistance under section 5311, a State safety plan may be drafted and certified by the recipient or a State.
- (B) SECTION 5307.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a rule designating recipients of assistance under section 5307 that are small public transportation providers or systems that may have their State safety plans drafted or certified by a State.
- (4) RISK REDUCTION PERFORMANCE TARGETS.—
- (A) IN GENERAL.—The safety committee of a recipient receiving assistance under sec-

tion 5307 that is serving an urbanized area with a population of 200,000 or more established under paragraph (5) shall establish performance targets for the risk reduction program required under paragraph (1)(I) using a 3-year rolling average of the data submitted by the recipient to the national transit database under section 5335.

(B) SAFETY SET ASIDE.—A recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more shall allocate not less than 0.75 percent of those funds to safety-related projects eligible under section 5307.

(C) FAILURE TO MEET PERFORMANCE TARGETS.—A recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more that does not meet the performance targets established under subparagraph (A) shall allocate the amount made available in subparagraph (B) in the following fiscal year to projects described in subparagraph (D).

(D) ELIGIBLE PROJECTS.—Funds set aside under subparagraph (C) shall be used for projects that are reasonably likely to assist the recipient in meeting the performance targets established in subparagraph (A), including modifications to rolling stock and de-escalation training.

(5) SAFETY COMMITTEE.—

(A) IN GENERAL.—For purposes of this subsection, the safety committee of a recipient shall—

(i) be convened by a joint labor-management process;

(ii) consist of an equal number of—

(I) frontline employee representatives, selected by a labor organization representing the plurality of the frontline workforce employed by the recipient or, if applicable, a contractor to the recipient, to the extent frontline employees are represented by labor organizations; and

(II) management representatives; and

(iii) have, at a minimum, responsibility for—

(I) identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment;

(II) identifying mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended; and

(III) identifying safety deficiencies for purposes of continuous improvement.

(B) APPLICABILITY.—This paragraph applies only to a recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more.

(e) STATE SAFETY OVERSIGHT PROGRAM.—

(1) APPLICABILITY.—This subsection applies only to eligible States.

(2) DEFINITION.—In this subsection, the term “eligible State” means a State that has—

(A) a rail fixed guideway public transportation system within the jurisdiction of the State that is not subject to regulation by the Federal Railroad Administration; or

(B) a rail fixed guideway public transportation system in the engineering or construction phase of development within the jurisdiction of the State that will not be subject to regulation by the Federal Railroad Administration.

(3) IN GENERAL.—In order to obligate funds apportioned under section 5338 to carry out this chapter, effective 3 years after the date on which a final rule under this subsection becomes effective, an eligible State shall have in effect a State safety oversight program approved by the Secretary under which the State—

(A) assumes responsibility for overseeing rail fixed guideway public transportation safety;

(B) adopts and enforces Federal and relevant State laws on rail fixed guideway public transportation safety;

(C) establishes a State safety oversight agency;

(D) determines, in consultation with the Secretary, an appropriate staffing level for the State safety oversight agency that is commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems in the eligible State;

(E) requires that employees and other designated personnel of the eligible State safety oversight agency who are responsible for rail fixed guideway public transportation safety oversight are qualified to perform such functions through appropriate training, including successful completion of the public transportation safety certification training program established under subsection (c); and

(F) prohibits any public transportation agency from providing funds to the State safety oversight agency or an entity designated by the eligible State as the State safety oversight agency under paragraph (4).

(4) STATE SAFETY OVERSIGHT AGENCY.—

(A) IN GENERAL.—Each State safety oversight program shall establish a State safety oversight agency that—

(i) is financially and legally independent from any public transportation entity that the State safety oversight agency oversees;

(ii) does not directly provide public transportation services in an area with a rail fixed guideway public transportation system subject to the requirements of this section;

(iii) does not employ any individual who is also responsible for the administration of rail fixed guideway public transportation programs subject to the requirements of this section;

(iv) has the authority to review, approve, oversee, and enforce the implementation by the rail fixed guideway public transportation agency of the public transportation agency safety plan required under subsection (d);

(v) has investigative, inspection, and enforcement authority with respect to the safety of rail fixed guideway public transportation systems of the eligible State;

(vi) audits, at least once triennially, the compliance of the rail fixed guideway public transportation systems in the eligible State subject to this subsection with the public transportation agency safety plan required under subsection (d); and

(vii) provides, at least once annually, a status report on the safety of the rail fixed guideway public transportation systems the State safety oversight agency oversees to—

(I) the Federal Transit Administration;

(II) the Governor of the eligible State;

and

(III) the board of directors, or equivalent entity, of any rail fixed guideway public transportation system that the State safety oversight agency oversees.

(B) WAIVER.—At the request of an eligible State, the Secretary may waive clauses (i) and (iii) of subparagraph (A) for eligible States with 1 or more rail fixed guideway systems in revenue operations, design, or construction, that—

(i) have fewer than 1,000,000 combined actual and projected rail fixed guideway revenue miles per year; or

(ii) provide fewer than 10,000,000 combined actual and projected unlinked passenger trips per year.

(5) PROGRAMS FOR MULTI-STATE RAIL FIXED GUIDEWAY PUBLIC TRANSPORTATION SYSTEMS.—An eligible State that has within the jurisdiction of the eligible State a rail fixed guideway public transportation system that operates in more than 1 eligible State shall—

(A) jointly with all other eligible States in which the rail fixed guideway public transportation system operates, ensure uniform safety standards and enforcement procedures that shall be in compliance with this section, and establish and implement a State safety oversight program approved by the Secretary; or

(B) jointly with all other eligible States in which the rail fixed guideway public transportation system operates, designate an entity having characteristics consistent with the characteristics described in paragraph (3) to carry out the State safety oversight program approved by the Secretary.

(6) GRANTS.—

(A) IN GENERAL.—The Secretary shall make grants to eligible States to develop or carry out State safety oversight programs under this subsection. Grant funds may be used for program operational and administrative expenses, including employee training activities.

(B) APPORTIONMENT.—

(i) FORMULA.—The amount made available for State safety oversight under section 5336(h) shall be apportioned among eligible States under a formula to be established by the Secretary. Such formula shall take into account fixed guideway ve-

hicle revenue miles, fixed guideway route miles, and fixed guideway vehicle passenger miles attributable to all rail fixed guideway systems not subject to regulation by the Federal Railroad Administration within each eligible State.

(ii) ADMINISTRATIVE REQUIREMENTS.—Grant funds apportioned to States under this paragraph shall be subject to uniform administrative requirements for grants and cooperative agreements to State and local governments under part 18 of title 49, Code of Federal Regulations, and shall be subject to the requirements of this chapter as the Secretary determines appropriate.

(C) GOVERNMENT SHARE.—

(i) IN GENERAL.—The Government share of the reasonable cost of a State safety oversight program developed or carried out using a grant under this paragraph shall be 80 percent.

(ii) IN-KIND CONTRIBUTIONS.—Any calculation of the non-Government share of a State safety oversight program shall include in-kind contributions by an eligible State.

(iii) NON-GOVERNMENT SHARE.—The non-Government share of the cost of a State safety oversight program developed or carried out using a grant under this paragraph may not be met by—

(I) any Federal funds;

(II) any funds received from a public transportation agency; or

(III) any revenues earned by a public transportation agency.

(iv) SAFETY TRAINING PROGRAM.—Recipients of funds made available to carry out sections 5307 and 5311 may use not more than 0.5 percent of their formula funds to pay not more than 80 percent of the cost of participation in the public transportation safety certification training program established under subsection (c), by an employee of a State safety oversight agency or a recipient who is directly responsible for safety oversight.

(7) CERTIFICATION PROCESS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall determine whether or not each State safety oversight program meets the requirements of this subsection and the State safety oversight program is adequate to promote the purposes of this section.

(B) ISSUANCE OF CERTIFICATIONS AND DENIALS.—The Secretary shall issue a certification to each eligible State that the Secretary determines under subparagraph (A) adequately meets the requirements of this subsection, and shall issue a denial of certification to each eligible State that the Secretary determines under subparagraph (A) does not adequately meet the requirements of this subsection.

(C) DISAPPROVAL.—If the Secretary determines that a State safety oversight program does not meet the requirements of this subsection and denies certification, the Sec-

retary shall transmit to the eligible State a written explanation and allow the eligible State to modify and resubmit the State safety oversight program for approval.

(D) FAILURE TO CORRECT.—If the Secretary determines that a modification by an eligible State of the State safety oversight program is not sufficient to certify the program, the Secretary—

(i) shall notify the Governor of the eligible State of such denial of certification and failure to adequately modify the program, and shall request that the Governor take all possible actions to correct deficiencies in the program to ensure the certification of the program; and

(ii) may—

(I) withhold funds available under paragraph (6) in an amount determined by the Secretary;

(II) withhold not more than 5 percent of the amount required to be appropriated for use in a State or urbanized area in the State under section 5307 of this title, until the State safety oversight program has been certified; or

(III) require fixed guideway public transportation systems under such State safety oversight program to provide up to 100 percent of Federal assistance made available under this chapter only for safety-related improvements on such systems, until the State safety oversight program has been certified.

(8) FEDERAL SAFETY MANAGEMENT.—

(A) IN GENERAL.—If the Secretary determines that a State safety oversight program is not being carried out in accordance with this section, has become inadequate to ensure the enforcement of Federal safety regulation, or is incapable of providing adequate safety oversight consistent with the prevention of substantial risk of death, or personal injury, the Secretary shall administer the State safety oversight program until the eligible State develops a State safety oversight program certified by the Secretary in accordance with this subsection.

(B) TEMPORARY FEDERAL OVERSIGHT.—In making a determination under subparagraph (A), the Secretary shall—

(i) transmit to the eligible State and affected recipient or recipients, a written explanation of the determination or subsequent finding, including any intention to withhold funding under this section, the amount of funds proposed to be withheld, and if applicable, a formal notice of a withdrawal of State safety oversight program approval; and

(ii) require the State to submit a State safety oversight program or modification for certification by the Secretary that meets the requirements of this subsection.

(C) FAILURE TO CORRECT.—If the Secretary determines in accordance with subparagraph (A), that a State safety oversight program or modification required pursuant to subparagraph (B)(ii), submitted by a State is not sufficient, the Secretary may—

(i) withhold funds available under paragraph (6) in an amount determined by the Secretary;

(ii) beginning 1 year after the date of the determination, withhold not more than 5 percent of the amount required to be appropriated for use in a State or an urbanized area in the State under section 5307, until the State safety oversight program or modification has been certified; and

(iii) use any other authorities authorized under this chapter considered necessary and appropriate.

(D) ADMINISTRATIVE AND OVERSIGHT ACTIVITIES.—To carry out administrative and oversight activities authorized by this paragraph, the Secretary may use grant funds apportioned to an eligible State, under paragraph (6), to develop or carry out a State safety oversight program.

(9) EVALUATION OF PROGRAM AND ANNUAL REPORT.—The Secretary shall continually evaluate the implementation of a State safety oversight program by a State safety oversight agency, and shall submit on or before July 1 of each year to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on—

(A) the amount of funds apportioned to each eligible State; and

(B) the certification status of each State safety oversight program, including what steps a State program that has been denied certification must take in order to be certified.

(10) FEDERAL OVERSIGHT.—The Secretary shall—

(A) oversee the implementation of each State safety oversight program under this subsection;

(B) audit the operations of each State safety oversight agency at least once triennially; and

(C) issue rules to carry out this subsection.

(11) EFFECTIVENESS OF ENFORCEMENT AUTHORITIES AND PRACTICES.—The Secretary shall develop and disseminate to State safety oversight agencies the process and methodology that the Secretary will use to monitor the effectiveness of the enforcement authorities and practices of State safety oversight agencies.

(f) AUTHORITY OF SECRETARY.—In carrying out this section, the Secretary may—

(1) conduct inspections, investigations, audits, examinations, and testing of the equipment, facilities, rolling stock, and operations of the public transportation system of a recipient;

(2) make reports and issue directives with respect to the safety of the public transportation system of a recipient or the public transportation industry generally;

(3) in conjunction with an accident investigation or an investigation into a pattern or practice of conduct that negatively affects public safety, issue a subpoena to, and take the deposition of, any employee of a recipient or a State safety oversight agency, if—

(A) before the issuance of the subpoena, the Secretary requests a determination by the Attorney General of the United States as to whether the subpoena will interfere with an ongoing criminal investigation; and

(B) the Attorney General—

(i) determines that the subpoena will not interfere with an ongoing criminal investigation; or

(ii) fails to make a determination under clause (i) before the date that is 30 days after the date on which the Secretary makes a request under subparagraph (A);

(4) require the production of documents by, and prescribe recordkeeping and reporting requirements for, a recipient or a State safety oversight agency;

(5) investigate public transportation accidents and incidents and provide guidance to recipients regarding prevention of accidents and incidents;

(6) at reasonable times and in a reasonable manner, enter and inspect equipment, facilities, rolling stock, operations, and relevant records of the public transportation system of a recipient; and

(7) issue rules to carry out this section.

(g) ENFORCEMENT ACTIONS.—

(1) TYPES OF ENFORCEMENT ACTIONS.—The Secretary may take enforcement action against a recipient that does not comply with Federal law with respect to the safety of the public transportation system, including—

(A) issuing directives;

(B) requiring more frequent oversight of the recipient by a State safety oversight agency or the Secretary;

(C) imposing more frequent reporting requirements;

(D) requiring that any Federal financial assistance provided under this chapter be spent on correcting safety deficiencies identified by the Secretary or the State safety oversight agency before such funds are spent on other projects; and

(E) withholding not more than 25 percent of financial assistance under section 5307.

(2) USE OR WITHHOLDING OF FUNDS.—

(A) IN GENERAL.—The Secretary may require the use of funds or withhold funds in accordance with paragraph (1)(D) or (1)(E) only if the Secretary finds that a recipient is engaged in a pattern or practice of serious safety violations or has otherwise refused to comply with Federal law relating to the safety of the public transportation system.

(B) NOTICE.—Before withholding funds from a recipient, the Secretary shall provide to the recipient—

(i) written notice of a violation and the amount proposed to be withheld; and

(ii) a reasonable period of time within which the recipient may address the violation or propose and initiate an alternative means of compliance that the Secretary determines is acceptable.

(h) RESTRICTIONS AND PROHIBITIONS.—

(1) RESTRICTIONS AND PROHIBITIONS.—The Secretary shall issue restrictions and prohibi-

tions by whatever means are determined necessary and appropriate, without regard to section 5334(c), if, through testing, inspection, investigation, audit, or research carried out under this chapter, the Secretary determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, exist such that there is a substantial risk of death or personal injury.

(2) NOTICE.—The notice of restriction or prohibition shall describe the condition or practice, the subsequent risk and the standards and procedures required to address the restriction or prohibition.

(3) CONTINUED AUTHORITY.—Nothing in this subsection shall be construed as limiting the Secretary's authority to maintain a restriction or prohibition for as long as is necessary to ensure that the risk has been substantially addressed.

(i) CONSULTATION BY THE SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall consult with the Secretary of Transportation before the Secretary of Homeland Security issues a rule or order that the Secretary of Transportation determines affects the safety of public transportation design, construction, or operations.

(j) ACTIONS UNDER STATE LAW.—

(1) RULE OF CONSTRUCTION.—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 has failed to comply with—

(A) a Federal standard of care established by a regulation or order issued by the Secretary under this section; or

(B) its own program, rule, or standard that it created pursuant to a rule or order issued by the Secretary.

(2) EFFECTIVE DATE.—This subsection shall apply to any cause of action under State law arising from an event or activity occurring on or after the date of enactment of the Federal Public Transportation Act of 2012.

(3) JURISDICTION.—Nothing in this section shall be construed to create a cause of action under Federal law on behalf of an injured party or confer Federal question jurisdiction for a State law cause of action.

(k) INSPECTIONS.—

(1) INSPECTION ACCESS.—

(A) IN GENERAL.—A State safety oversight program shall provide the State safety oversight agency established by the program with the authority and capability to enter the facilities of each rail fixed guideway public transportation system that the State safety oversight agency oversees to inspect infrastructure, equipment, records, personnel, and data, including the data that the rail fixed guideway public transportation agency collects when identifying and evaluating safety risks.

(B) POLICIES AND PROCEDURES.—A State safety oversight agency, in consultation with each rail fixed guideway public transportation agency that the State safety oversight agency oversees, shall establish policies and procedures regarding the access of

the State safety oversight agency to conduct inspections of the rail fixed guideway public transportation system, including access for inspections that occur without advance notice to the rail fixed guideway public transportation agency.

(2) DATA COLLECTION.—

(A) IN GENERAL.—A rail fixed guideway public transportation agency shall provide the applicable State safety oversight agency with the data that the rail fixed guideway public transportation agency collects when identifying and evaluating safety risks, in accordance with subparagraph (B).

(B) POLICIES AND PROCEDURES.—A State safety oversight agency, in consultation with each rail fixed guideway public transportation agency that the State safety oversight agency oversees, shall establish policies and procedures for collecting data described in subparagraph (A) from a rail fixed guideway public transportation agency, including with respect to frequency of collection, that is commensurate with the size and complexity of the rail fixed guideway public transportation system.

(3) INCORPORATION.—Policies and procedures established under this subsection shall be incorporated into—

(A) the State safety oversight program standard adopted by a State safety oversight agency under section 674.27 of title 49, Code of Federal Regulations (or any successor regulation); and

(B) the public transportation agency safety plan established by a rail fixed guideway public transportation agency under subsection (d).

(4) ASSESSMENT BY SECRETARY.—In assessing the capability of a State safety oversight agency to conduct inspections as required under paragraph (1), the Secretary shall ensure that—

(A) the inspection practices of the State safety oversight agency are commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems that the State safety oversight agency oversees;

(B) the inspection program of the State safety oversight agency is risk-based; and

(C) the State safety oversight agency has sufficient resources to conduct the inspections.

(5) SPECIAL DIRECTIVE.—The Secretary shall issue a special directive to each State safety oversight agency on the development and implementation of risk-based inspection programs under this subsection.

(6) ENFORCEMENT.—The Secretary may use any authority under this section, including any enforcement action authorized under subsection (g), to ensure the compliance of a State safety oversight agency or State safety oversight program with this subsection.

(Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 830; Pub. L. 109-59, title III, §3028(a), Aug. 10, 2005, 119 Stat. 1624; Pub. L. 112-141, div. B, §20021(a), July 6, 2012, 126 Stat. 709; Pub. L. 114-94, div. A, title

III, §3013, Dec. 4, 2015, 129 Stat. 1476; Pub. L. 117-58, div. C, §30012(a), Nov. 15, 2021, 135 Stat. 904.)

#### APPLICABILITY OF AMENDMENT

*Amendment of section by section 30012(a)(5) of div. C of Pub. L. 117-58 applicable with respect to a State safety oversight agency on and after the date that is 2 years after the date on which the Secretary of Transportation issues the special directive to the State safety oversight agency under subsec. (k)(5) of this section. See 2021 Amendment note below.*

#### HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5329(a) .....	49 App.:1618(a).	July 9, 1964, Pub. L. 88-365, 78 Stat. 302, §22(a); added Jan. 6, 1983, Pub. L. 97-424, §318(b), 96 Stat. 2154; Dec. 18, 1991, Pub. L. 102-240, §3026(1), 105 Stat. 2114.
5329(b) .....	49 App.:1618(b).	July 9, 1964, Pub. L. 88-365, 78 Stat. 302, §22(b); added Dec. 18, 1991, Pub. L. 102-240, §3026(2), 105 Stat. 2114.

In subsection (a), the words “manner of” are omitted as surplus. The word “how” is substituted for “the means which might best be employed” to eliminate unnecessary words. The words “or eliminating” and “from the local public body” are omitted as surplus. The words “a plan is approved and carried out” are substituted for “he approves such plan and the local public body implements such plan” to eliminate unnecessary words.

In subsection (b)(1) and (2), the words “a description of” are added for clarity.

#### Editorial Notes

#### REFERENCES IN TEXT

Section 3020 of the Federal Public Transportation Act of 2015, referred to in subsec. (b)(2)(D)(ii)(IV), is section 3020 of Pub. L. 114-94, Dec. 4, 2015, 129 Stat. 1491, which is not classified to the Code.

The date of enactment of the Federal Public Transportation Act of 2012, referred to in subsections (d)(2), (3)(B), (e)(7)(A), (j)(2), and (k), is deemed to be Oct. 1, 2012, see section 3(a), (b) of Pub. L. 112-141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of Title 23, Highways.

#### AMENDMENTS

2021—Subsec. (b)(2)(A). Pub. L. 117-58, §30012(a)(1)(A)(i), inserted “, or, in the case of a recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more, safety performance measures, including measures related to the risk reduction program under subsection (d)(1)(I), for all modes of public transportation” after “public transportation”.

Subsec. (b)(2)(C)(ii)(III). Pub. L. 117-58, §30012(a)(1)(A)(ii), added subcl. (III).

Subsec. (b)(2)(D) to (G). Pub. L. 117-58, §30012(a)(1)(A)(iii)-(vii), added subpars. (D) and (G), and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (b)(3). Pub. L. 117-58, §30012(a)(1)(B), added par. (3).

Subsec. (c). Pub. L. 117-58, §30012(a)(2), struck out par. (1) designation and heading and par. (2). Prior to amendment, text of par. (2) read as follows: “Not later than 90 days after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall establish interim provisions for the certification and training of the personnel described in paragraph (1),

which shall be in effect until the effective date of the final rule issued by the Secretary to implement this subsection.”

Subsec. (d)(1). Pub. L. 117-58, §30012(a)(3)(A)(i), substituted “Each recipient” for “Effective 1 year after the effective date of a final rule issued by the Secretary to carry out this subsection, each recipient” in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 117-58, §30012(a)(3)(A)(ii), inserted “, or, in the case of a recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more, the safety committee of the entity established under paragraph (5), followed by the board of directors (or equivalent entity) of the recipient approve,” after “recipient approve”.

Subsec. (d)(1)(B) to (H). Pub. L. 117-58, §30012(a)(3)(A)(iii)-(viii), added subpar. (B) and redesignated former subpars. (B) to (G) as (C) to (H), respectively; in subpar. (D), inserted “, and consistent with guidelines of the Centers for Disease Control and Prevention or a State health authority, minimize exposure to infectious diseases” before semicolon at end; added subpar. (F) and struck out former subpar. (F), which related to performance targets; and added subpars. (H) and (I) and struck out former subpar. (H), which related to comprehensive staff training programs.

Subsec. (d)(4), (5). Pub. L. 117-58, §30012(a)(3)(B), added pars. (4) and (5).

Subsec. (e)(4)(A)(v). Pub. L. 117-58, §30012(a)(4)(A), inserted “, inspection,” after “investigative”.

Subsec. (e)(11). Pub. L. 117-58, §30012(a)(4)(B), added par. (11).

Subsec. (k). Pub. L. 117-58, §30012(a)(5), added subsec. (k) and struck out former subsec. (k). Prior to amendment, text read as follows: “Not later than 3 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

“(1) analyzes public transportation safety trends among the States and documents the most effective safety programs implemented using grants under this section; and

“(2) describes the effect on public transportation safety of activities carried out using grants under this section.”

2015—Subsec. (b)(2)(D), (E). Pub. L. 114-94, §3013(1), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (e)(8) to (10). Pub. L. 114-94, §3013(2), added par. (8) and redesignated former pars. (8) and (9) as (9) and (10), respectively.

Subsec. (f)(2). Pub. L. 114-94, §3013(3), which directed insertion of “or the public transportation industry generally” after “recipients”, was executed by making the insertion after “recipient”, to reflect the probable intent of Congress.

Subsec. (g)(1). Pub. L. 114-94, §3013(4)(A), substituted “a recipient” for “an eligible State, as defined in subsection (e),” in introductory provisions.

Subsec. (g)(1)(E). Pub. L. 114-94, §3013(4)(B)-(D), added subpar. (E).

Subsec. (g)(2)(A). Pub. L. 114-94, §3013(5), inserted “or withhold funds” after “use of funds” and “or (1)(E)” after “paragraph (1)(D)”.

Subsec. (h). Pub. L. 114-94, §3013(6), added subsec. (h) and struck out former subsec. (h), which related to cost-benefit analysis.

2012—Pub. L. 112-141 amended section generally. Prior to amendment, section related to investigations of safety hazards and security risks.

2005—Pub. L. 109-59 amended section catchline and text generally, substituting provisions relating to investigations of safety hazards and security risks for provisions relating to investigation of safety hazards.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117-58, div. C, §30012(b)(2), Nov. 15, 2021, 135 Stat. 909, provided that: “Section 5329(k) of title 49, United States Code (as amended by subsection (a)), shall apply with respect to a State safety oversight agency on and after the date that is 2 years after the date on which the Secretary of Transportation issues the special directive to the State safety oversight agency under paragraph (5) of that section 5329(k).”

## 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.

## EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

## SPECIAL DIRECTIVE ON RISK-BASED INSPECTION PROGRAMS

Pub. L. 117-58, div. C, §30012(b)(1), Nov. 15, 2021, 135 Stat. 909, provided that: “Not later than 1 year after the date of enactment of this Act [Nov. 15, 2021], the Secretary of Transportation shall issue each special directive required under section 5329(k)(5) of title 49, United States Code (as added by subsection (a)).”

## NO EFFECT ON INITIAL CERTIFICATION PROCESS

Pub. L. 117-58, div. C, §30012(c), Nov. 15, 2021, 135 Stat. 909, provided that: “Nothing in this section [amending this section and enacting provisions set out as a note under this section] or the amendments made by this section affects the requirements for initial approval of a State safety oversight program, including the initial deadline, under section 5329(e)(3) of title 49, United States Code.”

## IMPROVED PUBLIC TRANSPORTATION SAFETY MEASURES

Pub. L. 114-94, div. A, title III, §3022, Dec. 4, 2015, 129 Stat. 1493, provided that:

“(a) REQUIREMENTS.—Not later than 90 days after publication of the report required in section 3020, the Secretary [of Transportation] shall issue a notice of proposed rulemaking on protecting public transportation operators from the risk of assault.

“(b) CONSIDERATION.—In the proposed rulemaking, the Secretary shall consider—

“(1) different safety needs of drivers of different modes;

“(2) differences in operating environments;

“(3) the use of technology to mitigate driver assault risks;

“(4) existing experience, from both agencies and operators that already are using or testing driver assault mitigation infrastructure; and

“(5) the impact of the rule on future rolling stock procurements and vehicles currently in revenue service.

“(c) SAVINGS CLAUSE.—Nothing in this section may be construed as prohibiting the Secretary from issuing different comprehensive worker protections, including standards for mitigating assaults.”

**[§ 5330. Repealed. Pub. L. 112-141, div. B, § 20030(e), July 6, 2012, 126 Stat. 731]**

Section, Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 831; Pub. L. 109-59, title III, §§3002(b)(4), 3029(a), Aug. 10, 2005, 119 Stat. 1545, 1625, related to State safety oversight of certain rail fixed guideway public transportation systems.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF REPEAL

Pub. L. 112-141, div. B, §20030(e), July 6, 2012, 126 Stat. 731, provided that the repeal of this section is effective 3 years after the effective date of the final rules issued by the Secretary of Transportation under section 5329(e) of this title. Such effective date is Apr. 15, 2016, see 81 F.R. 14230.

**§ 5331. Alcohol and controlled substances testing**

(a) DEFINITIONS.—In this section—

(1) “controlled substance” means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) whose use the Secretary decides has a risk to transportation safety.

(2) “person” includes any entity organized or existing under the laws of the United States, a State, territory, or possession of the United States, or a foreign country.

(3) “public transportation” means any form of public transportation, except a form the Secretary decides is covered adequately, for employee alcohol and controlled substances testing purposes, under section 20140 or 31306 of this title or section 2303a, 7101(i), or 7302(e) of title 46. The Secretary may also decide that a form of public transportation is covered adequately, for employee alcohol and controlled substances testing purposes, under the alcohol and controlled substance statutes or regulations of an agency within the Department of Transportation or the Coast Guard.

(b) TESTING PROGRAM FOR PUBLIC TRANSPORTATION EMPLOYEES.—(1)(A) In the interest of public transportation safety, the Secretary shall prescribe regulations that establish a program requiring public transportation operations that receive financial assistance under section 5307, 5309, or 5311 of this title to conduct preemployment, reasonable suspicion, random, and post-accident testing of public transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of a controlled substance in violation of law or a United States Government regulation, and to conduct reasonable suspicion, random, and post-accident testing of such employees for the use of alcohol in violation of law or a United States Government regulation. The regulations shall permit such operations to conduct preemployment testing of such employees for the use of alcohol.

(B) When the Secretary considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring testing of public transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(2) In prescribing regulations under this subsection, the Secretary—

(A) shall require that post-accident testing of such a public transportation employee be conducted when loss of human life occurs in an accident involving public transportation; and

(B) may require that post-accident testing of such a public transportation employee be con-