

paragraph (1)(D) 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) COST-BENEFIT ANALYSIS.—

(1) ANALYSIS REQUIRED.—In carrying out this section, the Secretary shall take into consideration the costs and benefits of each action the Secretary proposes to take under this section.

(2) WAIVER.—The Secretary may waive the requirement under this subsection if the Secretary determines that such a waiver is in the public interest.

(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) NATIONAL PUBLIC TRANSPORTATION SAFETY REPORT.—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.

(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.)

#### 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.

#### REFERENCES IN TEXT

The date of enactment of the Federal Public Transportation Act of 2012, referred to in subsecs. (c)(2), (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

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.

#### 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.

#### § 5330. State safety oversight

(a) APPLICATION.—This section shall only apply to—

(1) States that have rail fixed guideway public transportation systems that are not subject to regulation by the Federal Railroad Administration; and

(2) States that are designing rail fixed guideway public transportation systems that will not be subject to regulation by the Federal Railroad Administration.

(b) GENERAL AUTHORITY.—The Secretary of Transportation may 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 for a fiscal year beginning after September 30, 1994, if the State in the prior fiscal year has not met the requirements of subsection (c) of this section and the Secretary decides the State is not making an adequate effort to comply with subsection (c).

(c) STATE REQUIREMENTS.—A State meets the requirements of this section if the State—

(1) establishes and is carrying out a safety program plan for each fixed guideway public transportation system in the State that establishes at least safety requirements, lines of authority, levels of responsibility and accountability, and methods of documentation for the system; and

(2) designates a State authority as having responsibility—

(A) to require, review, approve, and monitor the carrying out of each plan;

(B) to investigate hazardous conditions and accidents on the systems; and

(C) to require corrective action to correct or eliminate those conditions.

(d) MULTISTATE INVOLVEMENT.—When more than one State is subject to this section in connection with a single public transportation authority, the affected States shall ensure uniform safety standards and enforcement or shall designate an entity (except the public transportation authority) to ensure uniform safety standards and enforcement and to meet the requirements of subsection (c) of this section.

(e) AVAILABILITY OF WITHHELD AMOUNTS.—(1) An amount withheld under subsection (b) of this section remains available for apportionment for use in the State until the end of the 2d fiscal year after the fiscal year for which the amount may be appropriated.

(2) If a State meets the requirements of subsection (c) of this section before the last day of the period for which an amount withheld under subsection (b) of this section remains available under paragraph (1) of this subsection, the Secretary, on the first day on which the State meets the requirements, shall apportion to the State the amount withheld that remains available for apportionment for use in the State. An amount apportioned under this paragraph remains available until the end of the 3d fiscal year after the fiscal year in which the amount is apportioned. An amount not obligated at the end of the 3-year period shall be apportioned for use in other States under section 5336 of this title.

(3) If a State does not meet the requirements of subsection (c) of this section at the end of the period for which an amount withheld under subsection (b) of this section remains available under paragraph (1) of this subsection, the amount shall be apportioned for use in other States under section 5336 of this title.

(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.)

In subsection (e)(1), the words “under subsection (a) of this section from apportionment for use in any State in a fiscal year” are omitted as surplus.

In subsection (e)(2) and (3), the words “from apportionment” and “for apportionment for use in a State” are omitted as surplus.

REPEAL OF SECTION

*Pub. L. 112–141, div. B, §20030(e), July 6, 2012, 126 Stat. 731, provided that, effective 3 years after the effective date of the final rules issued by the Secretary of Transportation under section 5329(e) of this title, this section is repealed.*

AMENDMENTS

2005—Pub. L. 109–59, §3029(a)(1), substituted “State safety oversight” for “Withholding amounts for non-compliance with safety requirements” in section catchline.

Subsec. (a). Pub. L. 109–59, §3029(a)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “This section applies only to States that have rail fixed guideway mass transportation systems not subject to regulation by the Federal Railroad Administration.”

Subsec. (c)(1). Pub. L. 109–59, §3002(b)(4), substituted “public transportation” for “mass transportation”.

Subsec. (d). Pub. L. 109–59, §3029(a)(2), substituted “shall ensure uniform safety standards and enforcement or shall designate” for “may designate”.

Pub. L. 109–59, §3002(b)(4), substituted “public transportation” for “mass transportation” in two places.

Subsec. (f). Pub. L. 109–59, §3029(a)(3), struck out heading and text of subsec. (f). Text read as follows: “Not later than December 18, 1992, the Secretary shall prescribe regulations stating the requirements for complying with subsection (c) of this section.”

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.

§ 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

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5330(a) .....	49 App.:1624(d).	July 9, 1964, Pub. L. 88–365, 78 Stat. 302, §28; added Dec. 18, 1991, Pub. L. 102–240, §3029, 105 Stat. 2116.
5330(b) .....	49 App.:1624(a).	
5330(c) .....	49 App.:1624(b)(1), (2).	
5330(d) .....	49 App.:1624(b)(3).	
5330(e) .....	49 App.:1624(c).	
5330(f) .....	49 App.:1624(e).	