

ies 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.]

§ 20104. Emergency authority

(a) ORDERING RESTRICTIONS AND PROHIBITIONS.—(1) If, through testing, inspection, investigation, or research carried out under this chapter, the Secretary of Transportation decides that an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment, the Secretary immediately may order restrictions and prohibitions, without regard to section 20103(e) of this title, that may be necessary to abate the situation.

(2) The order shall describe the condition or practice, or a combination of conditions and practices, that causes the emergency situation and prescribe standards and procedures for obtaining relief from the order. This paragraph does not affect the Secretary's discretion under this section to maintain the order in effect for as long as the emergency situation exists.

(b) REVIEW OF ORDERS.—After issuing an order under this section, the Secretary shall provide an opportunity for review of the order under section 554 of title 5. If a petition for review is filed and the review is not completed by the end of the 30-day period beginning on the date the order was issued, the order stops being effective at the end of that period unless the Secretary decides in writing that the emergency situation still exists.

(c) CIVIL ACTIONS TO COMPEL ISSUANCE OF ORDERS.—An employee of a railroad carrier engaged in interstate or foreign commerce who may be exposed to imminent physical injury during that employment because of the Secretary's failure, without any reasonable basis, to issue an order under subsection (a) of this section, or the employee's authorized representative, may bring a civil action against the Secretary in a district court of the United States to compel the Secretary to issue an order. The action must be brought in the judicial district in which the emergency situation is alleged to exist, in which that employing carrier has its principal executive office, or for the District of Columbia. The Secretary's failure to issue an order under subsection (a) of this section may be reviewed only under section 706 of title 5.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 864; Pub. L. 110-432, div. A, title III, §304, Oct. 16, 2008, 122 Stat. 4879.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20104(a)	45:432(a), (d).	Oct. 16, 1970, Pub. L. 91-458, §203, 84 Stat. 972; restated Oct. 10, 1980, Pub. L. 96-423, §3, 94 Stat. 1811.
20104(b)	45:432(b), (c).	
20104(c)	45:432(e).	

In subsection (a)(1), the words "or both" are omitted as surplus. The words "immediately may order restrictions and prohibitions . . . that may be necessary to abate the situation" are substituted for "may immediately issue an order . . . imposing such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation" to eliminate unnecessary words.

In subsection (a)(2), the words "or a combination of conditions and practices" are added for consistency with paragraph (1). The words "(as determined by the Secretary)" are omitted as surplus. The last sentence is substituted for 45:432(d) (last sentence) for clarity.

In subsection (b), the words "the Secretary" are added for clarity.

In subsection (c), the words "issue an order" are substituted for "seek relief" for consistency in this section. The words "The action must be brought in the judicial district" are substituted for "for the judicial district" for consistency in the revised title.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-432 substituted "death, personal injury, or significant harm to the environment" for "death or personal injury".

§ 20105. State participation

(a) INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—The Secretary concerned may prescribe investigative and surveillance activities necessary to enforce the safety regulations prescribed and orders issued by the Secretary¹ that apply to railroad equipment, facilities, rolling stock, and operations in a State. The State may participate in those activities when the safety practices for railroad equipment, facilities, rolling stock, and operations in the State are regulated by a State authority and the authority submits to the Secretary concerned an annual

certification as provided in subsection (b) of this section.

(b) ANNUAL CERTIFICATION.—(1) A State authority's annual certification must include—

(A) a certification that the authority—

(i) has regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations in the State;

(ii) was given a copy of each safety regulation prescribed and order issued by the Secretary concerned, that applies to the equipment, facilities, rolling stock, or operations, as of the date of certification; and

(iii) is conducting the investigative and surveillance activities prescribed by the Secretary concerned under subsection (a) of this section; and

(B) a report, in the form the Secretary concerned prescribes by regulation, that includes—

(i) the name and address of each railroad carrier subject to the safety jurisdiction of the authority;

(ii) each accident or incident reported during the prior 12 months by a railroad carrier involving a fatality, personal injury requiring hospitalization, or property damage of more than \$750 (or a higher amount prescribed by the Secretary concerned), and a summary of the authority's investigation of the cause and circumstances surrounding the accident or incident;

(iii) the record maintenance, reporting, and inspection practices conducted by the authority to aid the Secretary concerned in enforcing railroad safety regulations prescribed and orders issued by the Secretary concerned, including the number of inspections made of railroad equipment, facilities, rolling stock, and operations by the authority during the prior 12 months; and

(iv) other information the Secretary concerned requires.

(2) An annual certification applies to a safety regulation prescribed or order issued after the date of the certification only if the State authority submits an appropriate certification to provide the necessary investigative and surveillance activities.

(3) If, after receipt of an annual certification, the Secretary concerned decides the State authority is not complying satisfactorily with the investigative and surveillance activities prescribed under subsection (a) of this section, the Secretary concerned may reject any part of the certification or take other appropriate action to achieve adequate enforcement. The Secretary concerned must give the authority notice and an opportunity for a hearing before taking action under this paragraph. When the Secretary concerned gives notice, the burden of proof is on the authority to show that it is complying satisfactorily with the investigative and surveillance activities prescribed by the Secretary concerned.

(c) AGREEMENT WHEN CERTIFICATION NOT RECEIVED.—(1) If the Secretary concerned does not receive an annual certification under subsection (a) of this section related to any railroad equip-

¹ So in original. Probably should be "Secretary concerned".