

tors and Federal Railroad Administration bridge experts.

“(2) AVAILABILITY OF BRIDGE CONDITION.—

“(A) IN GENERAL.—A State or political subdivision of a State may file a request with the Secretary for a public version of a bridge inspection report generated under subsection (b)(5) for a bridge located in such State or political subdivision’s jurisdiction.

“(B) PUBLIC VERSION OF REPORT.—If the Secretary determines that the request is reasonable, the Secretary shall require a railroad to submit a public version of the most recent bridge inspection report, such as a summary form, for a bridge subject to a request under subparagraph (A). The public version of a bridge inspection report shall include the date of last inspection, length of bridge, location of bridge, type of bridge, type of structure, feature crossed by bridge, and railroad contact information, along with a general statement on the condition of the bridge.

“(C) PROVISION OF REPORT.—The Secretary shall provide to a State or political subdivision of a State a public version of a bridge inspection report submitted under subparagraph (B).

“(D) TECHNICAL ASSISTANCE.—The Secretary, upon the reasonable request of State or political subdivision of a State, shall provide technical assistance to such State or political subdivision of a State to facilitate the understanding of a bridge inspection report.”

[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 representa-

tion, 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.

Editorial Notes

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, fa-

¹ So in original. Probably should be “Secretary concerned”.

cilities, 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 equipment, facility, rolling stock, or operation, the Secretary concerned may make an agreement with a State authority for the authority to provide any part of the investigative and surveillance activities prescribed by the Secretary concerned as necessary to enforce the safety regulations and orders applicable to the equipment, facility, rolling stock, or operation.

(2) The Secretary concerned may terminate any part of an agreement made under this subsection on finding that the authority has not provided every part of the investigative and surveillance activities to which the agreement relates. The Secretary concerned must give the authority notice and an opportunity for a hearing before making such a finding. The finding and termination shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication.

(d) AGREEMENT FOR INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—In addition to providing for State participation under this section, the 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.

HISTORICAL AND REVISION NOTES—CONTINUED

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

Editorial Notes

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).

Statutory Notes and Related Subsidiaries

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.)