

PL 102-365, 1992 HR 2607

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PL 102-365 (HR 2607)

September 3, 1992

**RAIL SAFETY ENFORCEMENT AND REVIEW ACT**

An Act to authorize activities under the Federal Railroad Safety Act of 1970 for fiscal years 1992 through 1994, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

<< 45 USCA § 421 NOTE >>

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rail Safety Enforcement and Review Act".

<< 45 USCA § 431 >>

SEC. 2. ISSUANCE OF REGULATIONS.

Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended--

(1) in subsection (i)(1), by striking "such rules, regulations, orders, and standards as may be necessary" and inserting in lieu thereof "rules, regulations, orders, and standards";

(2) in subsection (n)--

(A) by striking "such rules, regulations, orders, and standards as may be necessary" and inserting in lieu thereof "rules, regulations, orders, and standards";

(B) by striking ", including" and inserting in lieu thereof "on railroad bridges. At a minimum, the Secretary shall provide";

(C) by striking "such as" and inserting in lieu thereof "including"; and

(D) by striking "relating to instances when boats shall be used" and inserting in lieu thereof "for the use of boats when work is performed on bridges located over bodies of water";

(3) in subsection (o)(1), by striking "such rules, regulations, orders, and standards as may be necessary" and inserting in lieu thereof "rules, regulations, orders, and standards"; and

(4) in subsection (q), by striking "such rules, regulations, orders, and standards as may be necessary" and inserting in lieu thereof "rules, regulations, orders, and standards".

<< 45 USCA § 437 NOTE >>

### SEC. 3. REMEDIAL ACTIONS.

(a) REGULATIONS.--The Secretary of Transportation (hereafter in this Act referred to as the "Secretary") shall issue regulations to require that any railroad notified by the Secretary that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws, as such term is defined in section 212(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441(e)), or any rule, regulation, order, or standard issued under such provision, shall report to the Secretary, within 30 days after the end of the month in which such notification is received, actions taken to remedy that failure.

(b) EXPLANATION OF DELAY.--Regulations issued under subsection (a) shall provide that, if appropriate remedial actions cannot be taken by a railroad within such 30-day period, such railroad shall submit to the Secretary an explanation of the reasons for any delay.

(c) SCHEDULE FOR REGULATIONS.--The Secretary shall--

(1) within 9 months after the date of enactment of this Act, issue a notice of proposed rulemaking for regulations to implement this section; and

(2) within 2 years after the date of enactment of this Act, issue final regulations to implement this section.

### SEC. 4. ENFORCEMENT.

<< 45 USCA §§ 6, 13, 34, 43, 438 >>

<< 49 App. USCA § 26 >>

(a) MINIMUM AND MAXIMUM PENALTIES.--(1) Section 209(b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(b)), section 6 of the Act of March 2, 1893, and section 4 of the Act of April 14, 1910 (45 U.S.C. 6 and 13; commonly referred to as the "Safety Appliance Acts"), section 7 of the Act of May 6, 1910 (45 U.S.C. 43; commonly referred to as the "Accident Reports Act"), section 25(h) of the Interstate Commerce Act (49 U.S.C. App. 26; commonly referred to as the "Signal Inspection Act"), and section 9 of the Act of February 17, 1911 (45 U.S.C. 34; commonly referred to as the "Locomotive Inspection Act") are each amended by striking "\$250" and inserting in lieu thereof "\$500".

<< 45 USCA § 64a >>

(2) Section 5(a)(1) of the Act of March 4, 1907 (45 U.S.C. 64a(a)(1); commonly referred to as the "Hours of Service Act") is amended by striking "penalty of up to \$1,000 per violation, as the Secretary of Transportation

deems reasonable," and inserting in lieu thereof "civil penalty, as the Secretary of Transportation deems reasonable, in an amount not less than \$500 nor more than \$10,000, except that where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty of not to exceed \$20,000 may be assessed, and".

<< 45 USCA § 39 >>

(3) Section 2 of the Act of May 6, 1910 (45 U.S.C. 39; commonly referred to as the "Accident Reports Act") is amended by striking "one hundred dollars" and inserting in lieu thereof "\$500".

<< 31 USCA § 3711 >>

(4) Section 3711(c)(2) of title 31, United States Code, is amended by striking "\$250" and inserting in lieu thereof "\$500".

<< 45 USCA § 437 NOTE >>

(b) REGIONAL ENFORCEMENT PILOT PROJECT.--(1) The Secretary shall establish a pilot project in more than one region of the Federal Railroad Administration to demonstrate the benefits that may accrue to the Federal railroad safety program from assigning an attorney, who is a Federal employee within the Department of Transportation, to regional offices of the Federal Railroad Administration to perform initial case review, assess penalties, settle cases, and provide legal advice to Federal Railroad Administration regional personnel on enforcement and other issues, as compared to performing such functions at the headquarters level.

(2) The pilot program shall be completed within 18 months after the date of enactment of this Act.

(3) Within 2 years after the date of enactment of this Act, the Secretary shall submit a report to the Congress describing the results of the pilot program. Factors to be considered in the report shall include--

(A) the speed, volume, and effectiveness of civil penalty actions;

(B) the efficiency of the delivery of legal advice on safety issues;

(C) the financial and other costs of assigning attorneys in each region;

(D) the effects on uniformity of enforcement resulting from performing in the regions of the Federal Railroad Administration the functions described in paragraph (1); and

(E) the advisability of assigning attorneys to some or all of the regions of the Federal Railroad Administration.

<< 45 USCA § 438 >>

(c) CONSIDERATIONS FOR COMPROMISE OF CIVIL PENALTIES.--(1) Section 209(c) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(c)) is amended by inserting "In compromising a civil penalty assessed under this section, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior or subsequent offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require." after "referral to the Attorney General."

## &lt;&lt; 45 USCA § 64a &gt;&gt;

(2) Section 5(a)(1) of the Act of March 4, 1907 (45 U.S.C. 64a(a)(1); commonly referred to as the "Hours of Service Act") is amended by adding at the end the following sentence: "In compromising a civil penalty assessed under this section, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior or subsequent offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require."

## &lt;&lt; 45 USCA § 6 &gt;&gt;

(3) Section 6 of the Act of March 2, 1893 (45 U.S.C. 6; commonly referred to as the "Safety Appliance Acts") is amended by adding at the end the following sentence: "In compromising a civil penalty assessed under this section, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior or subsequent offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require."

## &lt;&lt; 45 USCA § 13 &gt;&gt;

(4) Section 4 of the Act of April 14, 1910 (45 U.S.C. 13; commonly referred to as the "Safety Appliance Acts") is amended by adding at the end the following sentence: "In compromising a civil penalty assessed under this section, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior or subsequent offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require."

## &lt;&lt; 45 USCA § 43 &gt;&gt;

(5) Section 7 of the Act of May 6, 1910 (45 U.S.C. 43; commonly referred to as the "Accident Reports Act") is amended by adding at the end the following sentence: "In compromising a civil penalty assessed under this section, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior or subsequent offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require."

## &lt;&lt; 49 App. USCA § 26 &gt;&gt;

(6) Section 25(h) of the Interstate Commerce Act (49 U.S.C. App. 26; commonly referred to as the "Signal Inspection Act") is amended by adding at the end the following sentence: "In compromising a civil penalty assessed under this section, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior or subsequent offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require."

## &lt;&lt; 45 USCA § 34 &gt;&gt;

(7) Section 9 of the Act of February 17, 1911 (45 U.S.C. 34; commonly referred to as the "Locomotive Inspection Act") is amended by adding at the end the following sentence: "In compromising a civil penalty assessed under this section, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior or subsequent offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require."

SEC. 5. REVIEW OF AGENCY ACTION.

<< 45 USCA § 431 >>

(a) IN GENERAL.--(1) Section 202(f) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(f)) is amended to read as follows:

"(f) Any final agency action taken by the Secretary under this title or under any of the other Federal railroad safety laws, as defined in section 212(e) of this title, is subject to judicial review as provided in chapter 7 of title 5, United States Code. Except as provided in section 203(e) of this title, any proceeding to review such final agency action shall be brought in the appropriate court of appeals as provided by and in the manner prescribed in chapter 158 of title 28, United States Code."

<< 45 USCA § 431 NOTE >>

(2) The amendment made by subsection (a) shall apply to final agency actions of the Secretary whenever taken, except that the amendment shall not apply in a case where a civil action has been brought before the date of enactment of this Act.

<< 45 USCA § 441 >>

(b) FEDERAL RAILROAD SAFETY LAWS.--Section 212(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441(e)) is amended by inserting "the Sanitary Food Transportation Act of 1990 (49 U.S.C.App. 2801 note)," before "and those laws transferred".

<< 28 USCA § 2341 >>

(c) TECHNICAL AMENDMENTS.--(1) Section 2341(3)(B) of title 28, United States Code, is amended by inserting "or the Secretary of Transportation" after "Secretary of Agriculture".

<< 28 USCA § 2342 >>

(2) Section 2342 of title 28, United States Code, is amended--

(A) by striking "and" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following new paragraph:

"(7) all final agency actions described in section 202(f) of the Federal Railroad Safety Act of 1970."

<< 18 USCA § 1114 >>

#### SEC. 6. PROTECTION OF RAILROAD SAFETY ENFORCEMENT PERSONNEL.

Section 1114 of title 18, United States Code, is amended by inserting "any officer or employee of the Federal Railroad Administration assigned to perform investigative, inspection, or law enforcement functions," after "any employee of the Coast Guard assigned to perform investigative, inspection or law enforcement functions,".

<< 45 USCA § 431 >>

#### SEC. 7. POWER BRAKE SAFETY.

Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end the following new subsection:

"(r) POWER BRAKE SAFETY.--(1) The Secretary shall conduct a review of the Department of Transportation's rules with respect to railroad power brakes, and, not later than December 31, 1993, shall revise such rules based on such safety data as may be presented during that review.

"(2) In carrying out paragraph (1), the Secretary shall, where applicable, prescribe standards regarding dynamic braking equipment.

"(3)(A) The Secretary shall require 2-way end of train devices (or devices able to perform the same function) on road trains other than locals, road switchers, or work trains to enable the initiation of emergency braking from the rear of a train. The Secretary shall promulgate rules as soon as possible, but not later than December 31, 1993, requiring such 2-way end of train devices. Such rules shall, at a minimum--

"(i) set standards for such devices based on performance;

"(ii) prohibit any railroad, on or after the date that is one year after promulgation of such rules, from acquiring any end of train device for use on trains which is not a 2-way device meeting the standards set under clause (i);

"(iii) require that such trains be equipped with 2-way end of train devices meeting such standards not later than 4 years after promulgation of such rules; and

"(iv) provide that any 2-way end of train device acquired for use on trains before such promulgation shall be deemed to meet such standards.

"(B) The Secretary may consider petitions to amend the rules promulgated under subparagraph (A) to allow the use of alternative technologies which meet the same basic performance requirements established by such rules.

"(C) In developing the rules required by subparagraph (A), the Secretary shall consider data presented under paragraph (1).

"(4) The Secretary may exclude from the rules required by paragraphs (1), (2), and (3) any category of trains or rail operations if the Secretary determines that such an exclusion is in the public interest and is consistent with railroad safety. The Secretary shall make public the reasons for granting any such exclusion. The Secretary shall at a minimum exclude from the requirements of paragraph (3)--

"(A) trains that have manned cabooses;

"(B) passenger trains with emergency brakes;

"(C) trains that operate exclusively on track that is not part of the general railroad system;

"(D) trains that do not exceed 30 miles per hour and do not operate on heavy grades, except for any categories of such trains specifically designated by the Secretary; and

"(E) trains that operate in a push mode."

<< 45 USCA § 431 >>

#### SEC. 8. TRACK SAFETY.

Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431), as amended by this Act, is further amended by adding at the end the following new subsection:

"(s) TRACK SAFETY.--(1) The Secretary shall, within 6 months after the date of enactment of this subsection, initiate a review of the Department of Transportation's standards relating to track safety. Within 2 years after the date of enactment of this subsection, the Secretary shall issue rules, regulations, orders, or standards to revise such track safety standards, considering such safety data as may be presented during that review and the General Accounting Office report submitted under paragraph (3).

"(2) The review required under paragraph (1) shall, at a minimum, include--

"(A) an evaluation of procedures associated with maintaining and installing continuous welded rail and its attendant structure;

"(B) an evaluation of the need for revisions to rules with respect to track subject to exception from track safety standards; and

"(C) an evaluation of employee safety.

"(3) The General Accounting Office shall conduct a study of the effectiveness of the Secretary's enforcement of track safety standards, with particular attention to recent relevant railroad accident experience and data. Within one year after the date of enactment of this subsection, the General Accounting Office shall submit to the Secretary and Congress a report on the results of such study, together with recommendations for improving such enforcement."

#### SEC. 9. APPLICABILITY OF RULES, REGULATIONS, ORDERS, AND STANDARDS.

<< 45 USCA § 438 >>

(a) AMENDMENT.--(1) Section 209(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(a)) is amended by striking the parenthetical clause and inserting in lieu thereof the following: "(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

&lt;&lt; 45 USCA § 64a &gt;&gt;

(2) Section 5(a)(1) of the Act of March 4, 1907 (45 U.S.C. 64a(a)(1); commonly referred to as the "Hours of Service Act") is amended by striking the parenthetical clause and inserting in lieu thereof the following: "(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

&lt;&lt; 45 USCA § 6 &gt;&gt;

(3) Section 6 of the Act of March 2, 1893 (45 U.S.C. 6; commonly referred to as the "Safety Appliance Acts") is amended by striking the first parenthetical clause and inserting in lieu thereof the following: "(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

&lt;&lt; 45 USCA § 10 &gt;&gt;

(4) Section 3 of the Act of March 2, 1903 (45 U.S.C. 10; commonly referred to as the "Safety Appliance Acts") is amended by striking the parenthetical clause and inserting in lieu thereof the following: "(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

&lt;&lt; 45 USCA § 13 &gt;&gt;

(5) Section 4 of the Act of April 14, 1910 (45 U.S.C. 13; commonly referred to as the "Safety Appliance Acts") is amended by striking the first parenthetical clause and inserting in lieu thereof the following: "(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

&lt;&lt; 45 USCA § 43 &gt;&gt;

(6) Section 7 of the Act of May 6, 1910 (45 U.S.C. 43; commonly referred to as the "Accident Reports Act") is amended by striking the first parenthetical clause and inserting in lieu thereof the following: "(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

&lt;&lt; 49 App. USCA § 26 &gt;&gt;



(7) Section 25(h) of the Interstate Commerce Act (49 U.S.C.App. 26; commonly referred to as the "Signal Inspection Act") is amended by striking the first parenthetical clause and inserting in lieu thereof the following: "(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

<< 45 USCA § 34 >>

(8) Section 9 of the Act of February 17, 1911 (45 U.S.C. 34; commonly referred to as the "Locomotive Inspection Act") is amended by striking the first parenthetical clause and inserting in lieu thereof the following: "(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

<< 45 USCA §§ 6 NOTE, 10 nt, 13 nt, 34 nt, 43 nt, 64a nt, 438 nt >>

<< 49 App. USCA § 26 nt >>

(b) EFFECT ON OTHER LAW.--Nothing in the amendment made by subsection (a) shall affect the authority or responsibilities of the Secretary of Labor under the Occupational Safety and Health Act of 1970.

<< 45 USCA § 431 >>

#### SEC. 10. LOCOMOTIVE CRASHWORTHINESS AND WORKING CONDITIONS.

Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431), as amended by this Act, is further amended by adding at the end the following new subsection:

"(t) LOCOMOTIVE CRASHWORTHINESS AND WORKING CONDITIONS.--(1) The Secretary shall, within 30 months after the date of enactment of this subsection, complete a rulemaking proceeding to consider prescribing regulations to improve the safety and working conditions of locomotive cabs. Such proceeding shall assess--

"(A) the adequacy of Locomotive Crashworthiness Requirements Standard S-580, or any successor standard thereto, adopted by the Association of American Railroads in 1989, in improving the safety of locomotive cabs; and

"(B) the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect productivity, health, and the safe operation of locomotives.

"(2) In support of the proceeding required under paragraph (1), the Secretary shall conduct research and analysis, including computer modeling and full-scale crash testing, as appropriate, to consider--

"(A) the costs and benefits associated with equipping locomotives with--

"(i) braced collision posts;

"(ii) rollover protection devices;

"(iii) deflection plates;

"(iv) shatterproof windows;  
"(v) readily accessible crash refuges;

"(vi) uniform sill heights;

"(vii) anticlimbers, or other equipment designed to prevent overrides resulting from head-on locomotive collisions;

"(viii) equipment to deter post-collision entry of flammable liquids into locomotive cabs;

"(ix) any other devices intended to provide crash protection for occupants of locomotive cabs; and

"(x) functioning and regularly maintained sanitary facilities; and

"(B) the effects on train crews of the presence of asbestos in locomotive components.

"(3) If on the basis of the proceeding required under paragraph (1) the Secretary determines not to prescribe regulations, the Secretary shall report to Congress on the reasons for that determination."

<< 45 USCA § 431 NOTE >>

#### SEC. 11. RAILROAD RADIO COMMUNICATIONS.

(a) SAFETY INQUIRY.--The Secretary shall, within 18 months after the date of enactment of this Act and in consultation with the National Railroad Passenger Corporation, freight and commuter railroads, rail equipment manufacturers, and railroad employees, conduct a safety inquiry regarding the Department of Transportation's railroad radio standards and procedures. At a minimum, such inquiry shall include assessment of--

(1) the advantages and disadvantages of requiring that every locomotive (and every caboose, where applicable) be equipped with a railroad voice communications system capable of permitting a person in the locomotive (or caboose) to engage in clear two-way communications with persons on following and leading trains and with train dispatchers located at railroad stations;

(2) a requirement that replacement radios be made available at intermediate terminals;

(3) the effectiveness of radios in ensuring timely emergency response;

(4) the effect of interference and other disruptions of radio communications on safe railroad operation;

(5) how advanced communications technologies such as digital radio can be implemented to best enhance the safety of railroad operations;

(6) the status of advanced train control systems that are being developed, and the implications of such systems for effective railroad communications; and

(7) the need for minimum Federal standards to ensure that such systems provide for positive train separation and are compatible nationwide.

(b) REPORT TO CONGRESS.--The Secretary shall submit to Congress within 4 months after the completion of such inquiry a report on the results of the inquiry along with an identification of appropriate regulatory action and specific plans for taking such action.

<< 45 USCA § 444 >>

## SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

Section 214(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 444(a)) is amended to read as follows:

"(a) There are authorized to be appropriated to carry out this Act not to exceed \$54,352,000 for fiscal year 1992, \$68,283,000 for fiscal year 1993, and \$71,690,000 for fiscal year 1994. The Secretary is authorized to request, receive, and use payments from non-Federal sources for expenses incurred in training safety employees of private industry, State and local authorities, or other public authorities, other than State rail safety inspectors participating in training pursuant to section 206 of this title."

<< 45 USCA § 437 NOTE >>

## SEC. 13. TOTAL QUALITY MANAGEMENT IN SAFETY ASSESSMENTS.

In all comprehensive, multidiscipline safety assessments of railroads, the conduct of which is initiated by the Secretary between the date of enactment of this Act and the end of fiscal year 1993, the Secretary shall evaluate the use and effectiveness of total quality management techniques, if any, on the safety practices of the railroad being assessed. The Secretary shall include findings and conclusions based on such evaluation in each such safety assessment report.

<< 49 App. USCA § 1654 >>

## SEC. 14. LOCAL RAIL FREIGHT ASSISTANCE PROGRAM.

Section 5(q) of the Department of Transportation Act (49 U.S.C.App. 1654(q)) is amended--

(1) by inserting "There are authorized to be appropriated to the Secretary for the purposes of this section not to exceed \$16,000,000 for fiscal year 1992, \$25,000,000 for fiscal year 1993, and \$30,000,000 for fiscal year 1994." after "fiscal year 1991."; and

(2) by striking "any period after September 30, 1991" and inserting in lieu thereof "any period after September 30, 1994".

<< 45 USCA § 38 NOTE >>

## SEC. 15. PROCEDURE FOR DETERMINING ACCIDENT REPORTING THRESHOLD.

(a) GENERAL RULE.--In establishing or modifying a monetary damage threshold for the reporting of railroad accidents, the Secretary shall base damage cost calculations only on publicly available data--

(1) obtained from the Bureau of Labor Statistics; or

(2) otherwise obtained from an agency of the Federal Government which has been collected through objective, statistically sound survey methods or which has been previously subject to a public notice and comment process in a Federal agency proceeding.

(b) EXCEPTION.--If any data necessary for establishing or modifying a threshold described in subsection (a) is not available as provided in subsection (a)(1) or (2), the Secretary may use any other source to obtain such data, but the use of such data shall be subject to public notice and the opportunity for written comment.

(c) EFFECTIVE DATE.--This section shall apply only to the establishment or modification of a monetary damage threshold occurring after the date of enactment of this Act.

<< 49 App. USCA § 1804 NOTE >>

SEC. 16. REPORT ON THE SAFETY OF HAZARDOUS MATERIALS TRANSPORTATION BY RAIL.

Within one year after the date of enactment of this Act, the Secretary shall report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives regarding issues presented by the transportation by rail of hazardous materials. The report shall include the following information:

(1) For the years 1989, 1990, 1991, and, to the extent available, 1992, relevant data concerning each unintentional release of hazardous materials resulting from rail transportation accidents, including the location of each such release, the probable cause or causes of each such release, and the effects of each such release.

(2) For the years 1989, 1990, 1991, and, to the extent available, 1992, a summary of relevant data concerning unintentional releases of hazardous materials resulting from rail transportation incidents.

(3) A description of current regulations governing hazardous materials rail car placement (including buffer cars), and an evaluation of their adequacy in light of experience and emerging traffic and commodity patterns.

(4) An assessment of regulations, rules, orders, or standards that address rail operations or procedures associated with carrying hazardous materials on rights-of-way having significant grades or high degrees of curvature.

(5) An assessment of the effectiveness and associated costs of requiring deployment of wayside bearing failure detectors for trains carrying hazardous materials.

(6) An assessment of rail tank car rules, regulations, orders, or standards affecting hazardous materials transportation.

(7) The status of all planned or pending regulatory activities of the Secretary (including the status of all regulations required by statute) that seek to address the safe transportation of hazardous materials by rail, and the status of rail hazardous materials enforcement activities.

(8) Such other information as the Secretary determines relevant to the safe transportation of hazardous materials by rail.

<< 45 USCA § 431 NOTE >>

SEC. 17. REPORT ON TRAIN DISPATCHING OFFICES.

Not later than 18 months after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report concerning any action that has been taken by the Secretary and the railroad industry to rectify any continuing problems associated with unsatisfactory workplace environments in certain train dispatching offices identified in the National Train Dispatcher Safety Assessment for 1987-1988, published by the Federal Railroad Administration in July 1990. The report shall include recommendations for legislative or regulatory action to ameliorate any such problems that affect safety in train operations.

<< 45 USCA § 431 NOTE >>

## SEC. 18. NORTHEAST CORRIDOR SAFETY COMMITTEE.

(a) MEETINGS.--Section 11(c) of the Rail Safety Improvement Act of 1988 (45 U.S.C. 431 note) is amended to read as follows:

"(c) The Northeast Corridor Safety Committee shall meet at least once every 2 years to consider matters involving safety on the main line of the Northeast Corridor."

(b) REPORT.--Section 11(d) of the Rail Safety Improvement Act of 1988 (45 U.S.C. 431 note) is amended--

(1) by striking "Within one year after the date of enactment of this Act" and inserting in lieu thereof "At the beginning of the first session of the 103rd Congress, and biennially thereafter,"; and

(2) by adding at the end the following new sentence: "The report shall contain the safety recommendations of the Northeast Corridor Safety Committee and the comments of the Secretary on those recommendations."

(c) TERMINATION DATE.--Section 11 of the Rail Safety Improvement Act of 1988 (45 U.S.C. 431 note) is amended by adding at the end the following new subsection:

"(e) The Northeast Corridor Safety Committee shall cease to exist on January 1, 1999, or on such date as the Secretary determines to be appropriate. The Secretary shall notify the Congress in writing of any such determination."

## SEC. 19. AIRPORT LEASES.

<< 11 USCA § 365 NOTE >>

(a) FINDINGS.--Congress finds that--

(1) there are major airports served by an air carrier that has leased a substantial majority of the airport's gates;

(2) the commerce in the region served by such a major airport can be disrupted if the air carrier that leases most of its gates enters bankruptcy and either discontinues or materially reduces service; and

(3) it is important that such airports be empowered to continue service in the event of such a disruption.

<< 11 USCA § 365 >>

(b) BANKRUPTCY RULES REGARDING UNEXPIRED LEASES.--Section 365(d) of title 11, United States Code, is amended by adding at the end the following new paragraphs:

"(5) Notwithstanding paragraphs (1) and (4) of this subsection, in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate before the occurrence of a termination event, then (unless the court orders the trustee to assume such unexpired leases within 5 days after the termination event), at the option of the airport operator, such lease is deemed rejected 5 days after the occurrence of a termination event and the trustee shall immediately surrender possession of the premises to the airport operator; except that the lease shall not be deemed to be rejected unless the airport operator first waives the right to damages related to the rejection. In the event that the lease is deemed to be rejected under this paragraph, the airport operator shall provide the affected air carrier adequate opportunity after the surrender of the premises to remove the fixtures and equipment installed by the affected air carrier.

"(6) For the purposes of paragraph (5) of this subsection and paragraph (f)(1) of this section, the occurrence of a termination event means, with respect to a debtor which is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate--

"(A) the entry under section 301 or 302 of this title of an order for relief under chapter 7 of this title;

"(B) the conversion of a case under any chapter of this title to a case under chapter 7 of this title; or

"(C) the granting of relief from the stay provided under section 362(a) of this title with respect to aircraft, aircraft engines, propellers, appliances, or spare parts, as defined in section 101 of the Federal Aviation Act of 1958 (49 App.U.S.C. 1301), except for property of the debtor found by the court not to be necessary to an effective reorganization.

"(7) Any order entered by the court pursuant to paragraph (4) extending the period within which the trustee of an affected air carrier must assume or reject an unexpired lease of nonresidential real property shall be without prejudice to--

"(A) the right of the trustee to seek further extensions within such additional time period granted by the court pursuant to paragraph (4); and

"(B) the right of any lessor or any other party in interest to request, at any time, a shortening or termination of the period within which the trustee must assume or reject an unexpired lease of nonresidential real property.

"(8) The burden of proof for establishing cause for an extension by an affected air carrier under paragraph (4) or the maintenance of a previously granted extension under paragraph (7)(A) and (B) shall at all times remain with the trustee.

"(9) For purposes of determining cause under paragraph (7) with respect to an unexpired lease of nonresidential real property between the debtor that is an affected air carrier and an airport operator under which such debtor is the lessee of an airport terminal or an airport gate, the court shall consider, among other relevant factors, whether substantial harm will result to the airport operator or airline passengers as a result of the extension or the maintenance of a previously granted extension. In making the determination of substantial harm, the court shall consider, among other relevant factors, the level of actual use of the terminals or gates which are the subject of the lease, the public interest in actual use of such terminals or gates, the existence of competing demands for the use of such terminals or gates, the effect of the court's extension or termination of the period of time to assume or reject the lease on such debtor's ability to successfully reorganize under chapter 11 of this title, and whether the trustee of the affected air carrier is capable of continuing to comply with its obligations under section 365(d)(3) of this title."

(c) PARTIAL ASSIGNMENTS OR ASSUMPTIONS OF LEASES.--Section 365(c) of title 11, United States Code, is amended--

(1) by striking "or" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting in lieu thereof "; or"; and

(3) by adding at the end the following new paragraph:

"(4) such lease is of nonresidential real property under which the debtor is the lessee of an aircraft terminal or aircraft gate at an airport at which the debtor is the lessee under one or more additional nonresidential leases of an aircraft terminal or aircraft gate and the trustee, in connection with such assumption or assignment, does not assume all such leases or does not assume and assign all of such leases to the same person, except that the trustee may assume or assign less than all of such leases with the airport operator's written consent."

(d) PROHIBITION OF LEASE ASSIGNMENTS AFTER TERMINATION EVENT.--Section 365(f)(1) of title 11, United States Code, is amended by striking the period at the end and inserting in lieu thereof the following: "; except that the trustee may not assign an unexpired lease of nonresidential real property under which the debtor is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate if there has occurred a termination event."

(e) AFFECTED AIR CARRIER DEFINED.--Section 365 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(p) In this section, 'affected air carrier' means an air carrier, as defined in section 101(3) of the Federal Aviation Act of 1958, that holds 65 percent or more in number of the aircraft gates at an airport--

"(1) which is a Large Air Traffic Hub as defined by the Federal Aviation Administration in Report FAA-AP 92-1, February 1992; and

"(2) all of whose remaining aircraft gates are leased or under contract on the date of enactment of this subsection."

<< 11 USCA § 365 NOTE >>

(f) APPLICABILITY.--The amendments made by this section shall be in effect for the 12-month period that begins on the date of enactment of this Act and shall apply in all proceedings involving an affected air carrier (as defined in section 365(p) of title 11, United States Code, as amended by this section) that are pending during such 12-month period. Not later than 9 months after the date of enactment, the Administrator of the Federal Aviation Administration shall report to the Committee on Commerce, Science, and Transportation and Committee on the Judiciary of the Senate and the Committee on the Judiciary and Committee on Public Works and Transportation of the House of Representatives on whether this section shall apply to proceedings that are commenced after such 12-month period.

Approved September 3, 1992.

PL 102-365, 1992 HR 2607

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