

<p>102 Stat. 632. 45:30(1st sentence 2(1st sentence Feb. 17, Apr. 22, 1940, 148. 670, § 939.</p>	<p>49 App.:1655(e)(1)(E), (F).</p>	<p>Mar. 4, 1915, ch. 169, § related to § 2 of Act of 1911), 38 Stat. 1192; ch. 124, § 2, 54 Stat. Oct. 15, 1966, Pub.L. 89- 6(e)(1)(E), (F), 80 Stat.</p>
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In this section, before clause (1), the words "locomotive or tender ... locomotive or tender and its parts and appurtenances" are substituted for "locomotive ... locomotive, its boiler, tender, and all parts and appurtenances thereof" in 45:23 and "the provision of sections 22 to 29 ... of this title as to the equipment of locomotives shall apply to and include the entire locomotive and tender and all their parts with the same force and effect as it applies to locomotive boilers and their appurtenances" in 45:30 for clarity and because of the restatement. In clause (1), the words "in the service to which the same are put" and "in the active service of such railroad" in 45:23 are omitted as surplus. The words "danger of personal injury" are substituted for "peril to life or limb" for clarity and consistency in this part. In clause (2), the words "from time to time" are omitted as surplus. The words "as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter" are substituted for "in accordance with the provisions of sections 22 to 29 and 31 to 34 of this title" for clarity and consistency. In clause (3), the words "prescribed by the Secretary under this chapter" are substituted for "prescribed in the rules and regulations hereinafter provided for" for clarity and because of the restatement. [House Report No. 103-180.](#)

Administrative Law

American Digest System

Regulation of train equipment and cars, see Railroads 339(.5) et seq.

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NOTES OF DECISIONS

Appurtenances of locomotives or tenders [3](#)**Dangerous or perilous conditions [4](#)****National uniformity of regulation [1](#)****Parts and appurtenances of locomotives or tenders [3](#)****Perilous conditions [4](#)****State regulation or control [1](#)****Unnecessary danger of personal injury [4](#)****Use of locomotive or tender on railroad line [2](#)**[1](#). State regulation or control

See, also, Notes of Decisions under section 20106 of this title.

Locomotive Inspection Act (LIA) did not provide a basis for federal jurisdiction under the complete preemption doctrine in action brought by injured train passengers and survivors of those killed in train collision against locomotive manufacturer; nothing in the LIA indicated that Congress clearly intended completely to replace state law with federal law and create a federal forum at the same time. *Adkins v. Illinois Cent. R. Co.*, C.A.7 ([Ill.](#)) [2003](#), [326 F.3d 828](#). Federal Courts 199; Federal Courts 241

The BIA, a comprehensive, national regime of locomotive regulation enforced by the FELA and threat of heavy civil penalties, preempts state common-law remedies against railroad manufacturers for injuries arising out of alleged design defects in their trains. *Law v. General Motors Corp.*, C.A.9 (Cal.) [1997](#), [114 F.3d 908](#). Products Liability 62; States 18.65

Ordinances prohibiting audible train warnings at certain railroad crossings were not preempted by federal regulations on locomotive safety equipment, since regulating use of equipment was distinct from regulating equipment. *Civil City of South Bend, Ind. v. Consolidated Rail Corp.*, [N.D.Ind.1995](#), [880 F.Supp. 595](#). Municipal Corporations 53; Railroads 233

Boiler Inspection Act preempted motorist's state common law and products liability causes of action against railroad and locomotive manufacturer arising from train-car collision at railway crossing; allowing state tort claims to stand would result in requirements of reflective material, and oscillating, strobe, or ditch lights on locomotives, which would be additional to federal requirements, comprising nationally uniform standard of regulating locomotive equipment. *ringston v. Consolidated Rail Corp.* ([N.D. Ohio 07-05-1994](#)) [863 F.Supp. 535](#), affirmed [130 F.3d 241](#), rehearing and suggestion for rehearing en banc denied, certiorari denied [118 S.Ct. 1560](#), [523 U.S. 1094](#), [140 L.Ed.2d 792](#). Products Liability 62; Railroads 312.1; States 18.21; States 18.65

2. Use of locomotive or tender on railroad line

Locomotive upon which employee was working when she was injured was not in use at time of accident for purposes of Boiler Inspection Act (BIA), thus, employee was not entitled to jury instruction under BIA where train was inactive in yard for eight hours awaiting cleaning, train was not idling even though its lights were on, employee was only person working on train and train was only undergoing light maintenance. [Crockett v. Long Island R.R., C.A.2 \(N.Y.\) 1995, 65 F.3d 274](#). Employers' Liability 46

Stalled locomotive from which railroad employee fell and was injured was not in use at the time of the incident as required to subject the railroad to absolute liability under the Locomotive Act, where the employee, an electrician, was called to the locomotive to determine why it stopped running, locomotive's engine was not idling, the train's crew was not due for two hours, and, although the locomotive was set out on a regular track and was not in a repair facility, the electrician blue-flagged the track so that other locomotives would not enter the area. [Carder v. Indiana Harbor Belt Railroad, N.D.Ind.2002, 205 F.Supp.2d 981](#). Employers' Liability 46

Injuries suffered by "shifter" or "short run" engineer when he entered cab of locomotive in order to take controls for operation, were suffered while locomotive was "in use," as required for coverage under Boiler Act. [McGrath v. Consolidated Rail Corp., D.Mass.1996, 943 F.Supp. 95](#), vacated in part [136 F.3d 838](#). Employers' Liability 46

Locomotive was in use, for purposes of Boiler Inspection Act provision prohibiting railroad from using unsafe locomotive, when machinist was injured while pushing misaligned drawbar; machinist testified that he had completed his inspection of locomotive in inspection "pit" and that couplers had been split, track upon which locomotive was located was not locked out as it would have been if machinist had determined it was necessary to work on locomotive, and, since it would be difficult for machinist to prove that locomotive had yet to be fueled and sanded, burden shifted to railroad to prove that machinist's testimony that locomotive was ready for crew was incorrect, and it failed to do so. [Edwards v. Alton & Southern Ry. Co., Ill.App. 5 Dist.1995, 656 N.E.2d 208, 212 Ill.Dec. 55, 275 Ill.App.3d 529](#), appeal denied [662 N.E.2d 423, 214 Ill.Dec. 857, 165 Ill.2d 549](#), certiorari denied [116 S.Ct. 1851, 517 U.S. 1221, 134 L.Ed.2d 952](#). Employers' Liability 46

3. Parts and appurtenances of locomotives or tenders

Locomotive Inspection Act applied to locomotive crane used by non-common carrier in industrial scrapyards even though such cranes were excluded from inspection requirements of the Locomotive Safety Standards enacted by the Federal Railroad Administration (FRA); although FRA did not exercise its regulatory authority to the full extent, it treated locomotive cranes as subject to regulation under the Act. [Forrester v. American Dieselelectric, Inc., C.A.9 \(Wash.\)](#)

[2001, 255 F.3d 1205](#). Railroads 229(.5)

When locomotive radio was detached by engineer from its casing and carried to another locomotive, it was no longer a part or appurtenance of locomotive for purposes of liability under the Boiler Inspection Act. [Varney v. Norfolk and Western Ry. Co., S.D.W.Va.1995, 899 F.Supp. 280](#). Employers' Liability 46

4. Unnecessary danger of personal injury

Jury's answer to interrogatory indicating that oil on locomotive walkway caused railroad employee's injury did not amount to finding that oil on walkway was a peril in violation of BIA regulation, where jury was erroneously instructed that presence of oil violated BIA; jury was in no way asked to decide whether oil constituted a peril under the BIA or through the regulation. [Gregory v. Missouri Pacific R. Co., C.A.5 \(Tex.\) 1994, 32 F.3d 160](#), rehearing and suggestion for rehearing en banc denied [48 F.3d 533](#). Employers' Liability 277

Broken strap on locomotive radio did not constitute a violation of Boiler Inspection Act and did not impose strict liability on railroad for injuries suffered by engineer when he dropped radio as he was carrying it from one locomotive to another; even assuming that radio, when removed by engineer and transported to second locomotive, continued to constitute a part or appurtenance of a locomotive within meaning of the Act, broken strap did not create an unnecessary peril of life or limb as a matter of law. [Varney v. Norfolk and Western Ry. Co., S.D.W.Va.1995, 899 F.Supp. 280](#). Employers' Liability 46

49 U.S.C.A. § 20701, 49 USCA § 20701

Current through P.L. 108-144 (excluding P.L. 108-136, 108-137) approved 12-02-03

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