FEDERAL RAILROAD SAFETY ACT OF 1970

GENERAL

This comprehensive law authorizes the Secretary of Transportation to prescribe regulations for all areas of railroad safety (supplementing existing rail safety statutes and regulations) and to conduct necessary research, development, testing, evaluation, and training. The Secretary's authority over safety is not to be construed to prevent management and labor from bargaining collectively under the Railway Labor Act, including agreements relating to qualifications of employees. The Secretary's authority with respect to establishing qualifications of employees is limited to those physical or medical disabilities which specifically relate to safety.

The provision for supplementing existing law was inserted in the legislation to make it clear that the grant of jurisdiction under the Act does not replace the existing rail safety statutes and regulations. It was the concern of the railroad unions that if the existing statutes were repealed and incorporated by regulations, the statutory standards might be relaxed by the Secretary.

The term "railroad" as used in this Act means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

HEARINGS AND ADMINISTRATIVE PROCEDURES:

On all rulemaking by the Secretary, an opportunity shall be provided for a hearing and the right to present oral testimony. Hearings shall be conducted in accordance with

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1/ Some of the Amendments to the FRSA are discussed in separate headings in this booklet. Also, separately discussed amendments are contained in the Swift Rail Development Act of 1994, which is summarized in this booklet.

2/ A major rulemaking will not become effective until 40 days after the rule is issued. This would give Congress an opportunity to prevent the regulation from going into effect. Also, all agencies are required to determine the impact of its rule on small business and consider alternatives.

3/ The same definition of "railroad" applies to all of the other federal railroad safety laws. Some of the regulations contain different definitions.
the Administrative Procedure Act. Any action taken by the Secretary is subject to judicial review.4/

WAIVERS:

This section authorizes the Secretary to grant waivers from compliance with a particular rule, regulation or standard if he finds that the said waiver would be in the public interest and consistent with railroad safety. The Secretary is required to publicize his reasons for granting each waiver.

EMERGENCY POWERS:

This section authorizes the Secretary to issue an order against a railroad requiring it to eliminate any unsafe condition or practice which creates an emergency involving a hazard of death or injury. Such emergency orders are not subject to the rulemaking provisions requiring a hearing prior to the issuance of the order. However, subsequent to the issuance of an order an opportunity for review must be provided in accordance with 5 U.S.C. §554.

NATIONAL UNIFORMITY AND STATE REGULATION:

It is the policy of Congress that rail safety regulations be nationally uniform to whatever extent practicable. However, a state is permitted to continue to regulate with respect to any rail safety matter until such time as the Secretary issues a rule covering the same subject matter. Also, a state is permitted to adopt additional or more stringent standards than the federal standards if the state rule does not create an undue burden on interstate commerce, is not incompatible with federal standards, and is necessary to eliminate or reduce local safety hazards.

STATE PARTICIPATION:

A state is permitted to carry out investigative and surveillance activities under this Act certifying to the FRA that the said state agency (1) has regulatory jurisdiction over the safety practices in the state; (2) has been furnished a copy of each federal safety rule, regulation, order and standard; and (3) is conducting the investigative and surveillance activities prescribed by the Secretary. Also, the Secretary may enter into an agreement with a state agency where it is unable or unwilling to submit a certificate for all safety laws under the jurisdiction of the Secretary. The agreement would authorize the state to provide all or any part of the inspection service necessary to obtain compliance with the federal rules.

4/ In 1990 Congress adopted the Negotiated Rulemaking Act of 1990. It allows an agency to establish a negotiated rulemaking committee to negotiate and develop a proposed rule. If created the FRA is required to use the consensus of the committee as the basis for the rule proposed by the agency for notice and comment. (P.L. 101-648, 5 U.S.C. §§ 581-590).
FUNDING FOR STATE INSPECTORS:

This authorizes the Secretary to pay up to 50% of the costs of a state program. The state is required to assure the Secretary that it will provide the remaining funds for the program and that the level of expenditures by the state for rail safety will not be reduced below the level of such expenditures for the two years preceding the date of enactment of this law.

STATE ENFORCEMENT:

The Secretary is given the primary authority to enforce all provisions under the Act. However, if the Secretary has not acted to assess a civil penalty within 60 days of a violation or seek injunctive relief within 15 days, a state agency participating in investigative and surveillance activities may apply to the U.S. district court where the violation occurred for enforcement.

GENERAL POWERS:

The Secretary is given the necessary administrative powers to carry out his duties under the Act, including, but not limited to, conducting investigations, making reports, issuing subpoenas, requiring production of documents, taking depositions, prescribing record keeping and reporting requirements, conducting research, development, testing, evaluation and training.

The National Transportation Safety Board is authorized to determine the cause or probable cause of accidents and to develop reports concerning such accidents.

EFFECT ON FELA:

This section provides that the regulations of the Secretary under the Act shall have the force and effect of law for purposes of the Federal Employers' Liability Act.

ENFORCEMENT:

The Secretary is authorized to issue orders directing compliance with all safety statutes or with any railroad safety rule, regulation, order, or standard. The district courts of the United States have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means. The Attorney General is authorized to require immediate compliance with any order or subpoena of the Secretary issued pursuant to the Act.

PENALTIES:

This directs the Secretary to assess civil penalties. The fines range between a minimum of $250 up to $10,000. However, where there is a grossly negligent violation or a pattern of repeated violations which have created imminent hazard of, or caused
death and injury, a fine up to $20,000 may be imposed for each offense.\footnote{Penalties are similarly increased for the other railroad safety statutes, such as the Safety Appliance Acts, the Locomotive Inspection Act, the Accident Reports Act, and the Signal Inspection Act. However, the penalties under the Hours of Service Act is $1,000 per violation. The FRA has issued penalty schedules for particular types of violations.}

Each day a violation exists constitutes a separate offense.

There is personal liability for any individual who violates any of the laws or regulations. Provided, however, the individual will be liable only if he or she commits a willful violation.\footnote{The procedures to be followed where an employee is charged with a willful violation is discussed under a separate heading.}

It shall not be considered a willful violation if the individual acted pursuant to a direct order of a railroad official or supervisor, and he or she protested such violation to the supervisor.

**INJUNCTIVE RELIEF:**

This gives the U.S. district courts jurisdiction to issue an injunction or a restraining order upon request of the Secretary and a petition filed by the Attorney General. The Secretary has authority to restrain violations or enforce rules, regulations, order, or standards under all safety statutes.

**EMPLOYEE UNFIT FOR SAFETY SENSITIVE WORK:**

If the Secretary determines that an employee is "unfit for safety sensitive functions," the Secretary may after notice and hearing issue a notice prohibiting the employee from working in a safety sensitive function for a specific period of time or until the employee is fit to resume his or her normal duties. (The hearing will not necessarily be an oral hearing). The Secretary, under the emergency order provisions of the Act, could use those powers, as well, to prevent an employee from working.

**ANNUAL REPORT:**

This section directs the Secretary to submit a comprehensive annual report to Congress. The report shall include a thorough statistical compilation of accidents and casualties by cause during the preceding year, a list of federal railroad safety regulations issued during the year, a summary of the reasons for each waiver which has been granted under the Act, an evaluation of the degree of observance of applicable railroad safety regulations, a summary of outstanding problems involved in the administration of the Act, an analysis and evaluation of research and related activity during the year, a list of judicial actions completed during the year, a list of technical information disseminated to the public, compilation of certifications filed by the states during the year, a list of
certifications rejected during the year with a summary of the reasons for their rejection, and a list of agreements entered into with the states along with a list of any agreement terminated with a summary of the reasons for such termination.

49 U.S.C. §§ 20101-20144; 21301-21304