

business on such date as is in excess of \$6,000,000 shall be deemed to be part of the balance to the credit of such account. There will be a pooled credit ratio for the calendar year only if that balance is in excess of the greater of \$250,000,000 or of the amount that bears the same ratio to \$250,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (11).

(B) Step 2

If there is such an excess amount, divide that excess amount by the system compensation base as of the June 30 preceding the calendar year. The result is the pooled credit ratio for the calendar year.

(13) Pooled charge ratio

The pooled charge ratio, if any, for a calendar year shall be determined as follows:

(A) Step 1

With respect to each employer whose contribution rate for that calendar year as computed through step 6 under paragraph (1)(C) was greater than the maximum contribution limit computed under paragraph (20), multiply the employer's 1-year compensation base as of the preceding June 30, as computed in accordance with paragraph (5), by the difference between—

- (i) the percentage rate determined under subparagraph (B), (C), or (D) of paragraph (1) before the reduction to the maximum contribution limit; and
- (ii) the maximum contribution limit.

(B) Step 2

Add the amounts arrived at under step 1 so as to obtain an aggregate amount for all such employers.

(C) Step 3

For each employer whose contribution rate as computed through step 3 under paragraph (1)(C) was less than 0, the percentage rate by which such employer's rate was raised in order to bring that rate to 0 shall be multiplied by that employer's 1-year compensation base as of the preceding June 30. Subtract the total of the amounts computed under the preceding sentence for all employers from the amount arrived at in step 2.

(D) Step 4

Divide the aggregate amount arrived at under step 3 by the system compensation base as of the preceding June 30 as computed under paragraph (11) minus the one-year compensation base of those employers whose rates computed through step 6 of paragraph (1)(C) exceeded the maximum contribution rate computed under paragraph (20). The result is the pooled charge ratio for the calendar year.

(14) Surcharge rate

The surcharge rate for a calendar year, if any, shall be determined as follows:

(A) Step 1

Compute the balance to the credit of the account as of the close of business on the preceding June 30, including any amounts in the account attributable to loans made under section 360(d) of this title before October 1, 1985, but disregarding the obligation to repay such loans and interest thereon. In determining such balance as of June 30 of any year, so much of the balance to the credit of the railroad unemployment insurance administration fund as of the close of business on such date as is in excess of \$6,000,000 shall be deemed to be part of the balance to the credit of such account. There will be a surcharge rate for the calendar year only if that balance is less than the greater of \$100,000,000 or of the amount that bears the same ratio to \$100,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (11).

(B) Step 2

(i) If the balance to the credit of the account is less than the greater of the amounts referred to in the 2nd sentence of step 1 but is equal to or more than the greater of \$50,000,000 or of the amount that bears the same ratio to \$50,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, then the surcharge rate for the calendar year shall be 1.5 percent.

(ii) If the balance to the credit of the account is less than the greater of the amounts referred to in the clause (i), but greater than or equal to zero, then the surcharge rate for the calendar year shall be 2.5 percent.

(iii) If the balance to the credit of the account is less than zero, the surcharge rate for the calendar year shall be 3.5 percent.

(15) Chargeable benefits

(A) In general

Beginning January 1, 1990, all benefits paid to an employee for days of unemployment or days of sickness shall be charged to that employee's base year employer by adding amounts equal to the amounts of such benefits to the employer's cumulative benefit balance except that benefits paid by reason of strikes or work stoppages growing out of labor disputes shall not be added to the employer's cumulative benefit balance but instead shall be added to the system unallocated charge balance.

(B) Adjustments

A sum equal to each amount realized in recovery for overpayment, erroneous payment, or reimbursement of benefits and credited to the account pursuant to section 360(a)(v) or 360(a)(viii) of this title shall be subtracted from the cumulative benefit balances of the employers of the employees to whom such an amount was paid as a benefit in the proportion to the amount by which each such employer's cumulative benefit balance was increased as a result of the payment of the benefit.

(C) Multiple employers

(i) In general

All benefits paid to an employee who had more than 1 base-year employer shall be charged to the cumulative benefit balances of the employee's base year employers—

(I) in reverse chronological order of the employee's employment with each such employer in the base year if the employer at the time of the claim was the last base year employer, and the amount charged to each employer shall not exceed the compensation paid by that employer to the employee in the base year; and

(II) in all other cases, in the same ratio as the compensation paid to such employee by the employer bears to the total of such compensation paid to such employees by all such employers in the base year.

(ii) Special rule for employer with cancelled balances

All benefits chargeable under this subparagraph to an employer for which the Board has cancelled balances under paragraph (16) shall be added to the system unallocated charge balance.

(16) Defunct employer

Whenever the Board determines, pursuant to such regulations as the Board may prescribe, that an employer has permanently ceased to pay compensation with respect to which contributions are payable pursuant to this subsection, the Board shall, effective on the date of the Board's determination, transfer the employer's net cumulative contribution balance as a subtraction from, and cumulative benefit balance as an addition to, the system unallocated charge balance and cancel all other accumulations of the employer.

(17) Individual employer record

(A) In general

As of January 1, 1990, the Board shall commence maintaining an individual employer record with respect to each employer, and the records necessary to determine pooled charges, pooled credits and unallocated charge balances for the system. Whenever a new employer begins paying compensation with respect to which contributions are payable pursuant to this subsection, the Board shall establish and maintain an individual employer record for such employer.

(B) Definition

As used in this paragraph, the term "individual employer record" means a record of an individual employer's benefit ratio, reserve ratio, 1-year compensation base, 3-year compensation base, unallocated charge, reserve balance, net cumulative contribution balance, and cumulative benefit balance.

(18) Joint employer records

Pursuant to regulations prescribed by the Board, the Board may allow 2 or more employers, upon application, to establish and maintain, or to discontinue, a joint individual employer record for such employers as though such joint record constituted a single employer's individual employer record.

(19) Mergers, consolidations, or other changes in employer identity

(A) With other employers

In the event of a merger, consolidation, unification, or reorganization in which an employer combines with another employer and the combination entails no partitioning of the property of the employer, the individual employer records of the 2 employers shall be combined into a joint individual employer record if the parties request such joint treatment pursuant to paragraph (18) or if the Board otherwise determines, pursuant to regulations prescribed by the Board, that such joint treatment is desirable.

(B) With nonemployers

In the event of a merger, consolidation, unification, or reorganization in which an employer combines with another entity that is not an employer, the employer's individual employer record shall attach to the combined entity.

(C) Sale of assets

In the event property of an employer is sold or transferred to another employer or other entity, or is partitioned among 2 or more employers or entities, the cumulative benefit balance, net cumulative contribution balance, 1-year compensation base, and 3-year compensation base of the employer shall be prorated among the employers which receive the property, including any entities which become employers by virtue of such transfer or partition, in such equitable manner as the Board by regulation shall prescribe.

(D) Reincorporation

The cumulative benefit balance, net cumulative contribution balance, 1-year compensation base, and 3-year compensation base of an employer that reincorporates or otherwise alters its corporate identity in a transaction not involving a merger, consolidation, or unification shall attach to the reincorporated or altered entity.

(E) Abandonment

If an employer abandons property or discontinues service but continues to operate as an employer, the employer's individual employer record shall continue to be calculated as provided in this subsection without retroactive adjustment.

(20) Maximum contribution limit

The maximum contribution limit with respect to a calendar year is 12 percent, unless a 3.5 percent surcharge under paragraph (14) is in effect with respect to that calendar year. If such a surcharge is in effect the maximum contribution limit with respect to that calendar year is 12.5

percent.

(21) Special rules for certain computations under paragraph (1)(C)

(A) Any computation that is to be made under paragraph (1)(C) on the basis of a 12-quarter period ending on a given June 30 shall be made on the basis of a period—

(i) beginning on the later of—

(I) January 1, 1990;

(II) the first day of the first calendar quarter that begins after the date on which the employer first began to pay compensation subject to this chapter; or

(III) July 1 of the third calendar year preceding that June 30; and

(ii) ending on that June 30.

(B) The amount computed under subparagraph (A) shall be increased to an amount that bears the same ratio to the amount so computed as 12 bears to the number of calendar quarters on which the computation is based.

(b) Employee representative contribution

Each employee representative shall pay a contribution with respect to so much of the compensation paid to him for services performed as an employee representative as is not in excess of the monthly compensation base computed in accordance with section 351(i) of this title, at a rate which shall be determined under subsection (a) in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in this chapter.

(c) Board proclamation of balance

(1) In general

Not later than October 15, 1990, and October 15 of each year thereafter the Board shall proclaim—

(A) the balance to the credit of the account as of the preceding June 30 for purposes of paragraphs (12) and (14) of subsection (a);

(B) the balance of any advances to the account under section 360(d) of this title after September 30, 1985, that has not been repaid with interest as provided in such section as of September 30 of that year;

(C) the system compensation base as of that June 30 as computed in accordance with paragraph (11) of that subsection;

(D) the system unallocated charge balance as of that June 30, as computed in accordance with paragraph (10) of that subsection; and

(E) the pooled credit ratio, the pooled charge ratio, and the surcharge rate, if any, as determined under paragraph (12), (13), or (14) of that subsection and applicable in the following calendar year.

(2) Publication of notice

As soon as is practicable after such proclamation, the Board shall publish notice in the Federal Register of the amounts so determined and proclaimed.

(d) Notifications by Board

(1) Not later than the last day of any calendar quarter that begins after March 31, 1990, the Board shall notify each employer and employee representative of its net cumulative contribution balance and cumulative benefit balance as of the end of the preceding calendar quarter, as computed in accordance with paragraphs (7) and (8) of subsection (a) as of the last day of such preceding calendar quarter rather than as of a given June 30 if such last day is not a June 30.

(2) Not later than October 15, 1990, and October 15 of each year thereafter, the Board shall notify each employer and employee representative of its benefit ratio, reserve ratio, 1-year compensation base, 3-year compensation base, unallocated charge, and reserve balance as of the preceding June 30

as computed in accordance with paragraphs (2), (3), (4), (5), (6), and (9) of subsection (a), and of the contribution rate applicable to the employer or employee representative in the following calendar year as computed under paragraphs (1)(B), (C), or (D) of that subsection.

(e) Information to verify accuracy to be made available

Notwithstanding any other provision of law, upon request by an employer or employee representative, the Board shall make available to such employer or employee representative any information available to the Board which may be necessary to verify the accuracy of a contribution rate determined by the Board to be applicable to such employer or employee representative, or of any component of that contribution rate including the accuracy of the employer's individual employer record, upon payment by such employer or employee representative to the Board of the cost incurred by the Board in making such information available. The amounts so paid to the Board shall be credited to and deposited in the fund.

(f) Fractional parts of a cent

In the payment of any contribution under this chapter, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(g) Adjustments for improper payments

If more or less than the correct amount of the contribution required by this section is paid with respect to any compensation, then, under regulations prescribed under this chapter by the Board, proper adjustments with respect to the contribution shall be made, without interest, in connection with subsequent contribution payments made under this chapter by the same employer or employee representative.

(h) Refunding overpayment; collecting underpayment

If more or less than the correct amount of the contribution required by this section is paid with respect to any compensation and the overpayment or underpayment of the contribution cannot be adjusted under subsection (d) of this section, the amount of the overpayment shall be refunded from the account, or the amount of the underpayment shall be collected, in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations of the Board.

(i) Collection and deposit of contributions

The contributions required by this chapter shall be collected by the Board and shall be deposited by it with the Secretary of the Treasury of the United States, such part thereof as equals 0.65 per centum of the total compensation on which such contributions are based to be deposited to the credit of the fund and the balance to be deposited to the credit of the account.

(j) Time for payment; failure to pay promptly

The contributions required by this chapter shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this chapter as may be prescribed by regulations of the Board, and shall not be deducted, in whole or in part, from the compensation of employees in the employer's employ. If a contribution required by this chapter is not paid when due, there shall be added to the amount payable (except in the case of adjustments made in accordance with the provisions of this chapter) interest at the rate of 1 per centum per month or fraction of a month from the date the contribution became due until paid. Any interest collected pursuant to this subsection shall be credited to the account.

(k) Application of other laws; authority of Board

All provisions of law, including penalties, applicable with respect to any tax imposed by the provisions of the Railroad Retirement Tax Act [26 U.S.C. 3201 et seq.], insofar as applicable and not inconsistent with the provisions of this chapter, shall be applicable with respect to the contributions required by this chapter: *Provided*, That all authority and functions conferred by or pursuant to such provisions upon any officer or employee of the United States, except the authority to institute and

employer under this chapter shall be void, and it shall be unlawful for any employer, or officer or agent of an employer, to make, require, or permit any employee to bear all or any portion of such contribution. Any employer, or officer or agent of an employer, who violates any provision of this subsection shall be punished for each such violation by a fine of not more than \$10,000 or by imprisonment not exceeding one year, or both.

(c) Punishments not specifically provided

Any person who violates any provision of this chapter, the punishment for which is not otherwise provided, shall be punished for each such violation by a fine of not more than \$1,000 or by imprisonment not exceeding one year, or both.

(d) Payment and disposition of fines or penalties

All fines and penalties imposed by a court pursuant to this chapter shall be paid to the court and be remitted from time to time by order of the judge to the Treasury of the United States to be credited to the account.

(June 25, 1938, ch. 680, §9, 52 Stat. 1103.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 25, 1938, ch. 680, 52 Stat. 1094, which enacted this chapter and amended sections 503 and 1104 and former section 1107 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 367 of this title and Tables.

§360. Railroad unemployment insurance account

(a) Funds constituting account; availability for benefits or refunds

The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 1104 of title 42 an account to be known as the railroad unemployment insurance account. This account shall consist of (i) such part of all contributions collected pursuant to section 358 of this title as is in excess of 0.65 per centum of the total compensation on which such contributions are based, together with all interest collected pursuant to section 358(g) ¹ of this title; (ii) all amounts transferred or paid into the account pursuant to section 363 or section 364 of this title; (iii) all additional amounts appropriated to the account in accordance with any provision of this chapter or with any provision of law now or hereafter adopted; (iv) a proportionate part of the earnings of the unemployment trust fund, computed in accordance with the provisions of section 1104(e) of title 42; (v) all amounts realized in recoveries for overpayments or erroneous payments of benefits; (vi) all amounts transferred thereto pursuant to section 361 of this title; (vii) all fines or penalties collected pursuant to the provisions of this chapter; and (viii) all amounts credited thereto pursuant to section 352(f) or section 362(g) of this title. Notwithstanding any other provision of law, all moneys credited to the account shall be mingled and undivided, and are permanently appropriated to the Board to be continuously available to the Board without further appropriation, for the payment of benefits and refunds under this chapter, and no part thereof shall lapse at any time, or be carried to the surplus fund or any other fund.

(b) Payment of benefits or refunds

All moneys in the account shall be used solely for the payment of the benefits and refunds provided for by this chapter. The Board shall, from time to time, certify to the Secretary of the Treasury the name and address of each person or company entitled to receive benefits or a refund payment under this chapter, the amount of such payment, and the time at which it shall be made. Prior to audit or settlement by the Government Accountability Office, the Secretary of the Treasury, through the Fiscal Service of the Treasury Department, shall make payments from the account

directly to such person or company of the amount of benefits or refund so certified by the Board: *Provided, however,* That if the Board shall so request, the Secretary of the Treasury, through the Fiscal Service of the Treasury Department, shall transmit benefits payments to the Board for distribution by it through employment offices or in such other manner as the Board deems proper.

(c) Annual report to Congress

The Board shall include in its annual report to Congress a statement with respect to the status and operation of the account.

(d) Transfer and retransfer of funds; interest

Whenever the Board finds at any time that the balance in the railroad unemployment insurance account will be insufficient to pay the benefits and refunds which it estimates are due, or will become due, under this chapter, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the railroad unemployment insurance account such moneys as the Board estimates would be necessary for the payment of such benefits and refunds, and the Secretary shall make such transfer. Whenever the Board finds that the balance in the railroad unemployment insurance account, without regard to the amounts transferred pursuant to the next preceding sentence, is sufficient to pay such benefits and refunds, it shall request the Secretary of the Treasury to retransfer from the railroad unemployment insurance account to the credit of the Railroad Retirement Account such moneys as in its judgment are not needed for the payment of such benefits and refunds, plus interest at a rate for each fiscal year equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the nearest multiple of one-eighth of 1 per centum, and the Secretary shall make such retransfer. In determining the balance in the railroad unemployment insurance account as of September 30 of any year pursuant to section 358(a) of this title, any moneys transferred from the Railroad Retirement Account to the credit of the railroad unemployment insurance account which have not been retransferred as of such date from the latter account to the credit of the former, plus the interest accrued thereon to that date, shall be disregarded.

(June 25, 1938, ch. 680, §10 (less (e)–(g)), 52 Stat. 1104; June 20, 1939, ch. 227, §13, 53 Stat. 848; 1940 Reorg. Plan No. III, §1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; June 23, 1948, ch. 608, §7, 62 Stat. 578; Pub. L. 86–28, pt. III, §308(a), May 19, 1959, 73 Stat. 32; Pub. L. 88–133, title III, §305, Oct. 5, 1963, 77 Stat. 223; Pub. L. 89–700, title II, §205, Oct. 30, 1966, 80 Stat. 1087; Pub. L. 90–257, title II, §205, Feb. 15, 1968, 82 Stat. 24; Pub. L. 93–445, title IV, §403, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94–92, title I, §1(i), Aug. 9, 1975, 89 Stat. 464; Pub. L. 98–76, title III, §302, Aug. 12, 1983, 97 Stat. 432; Pub. L. 99–107, §4, Sept. 30, 1985, 99 Stat. 479; Pub. L. 99–155, §2(c), Nov. 14, 1985, 99 Stat. 814; Pub. L. 99–181, §3, Dec. 13, 1985, 99 Stat. 1172; Pub. L. 99–189, §3, Dec. 18, 1985, 99 Stat. 1184; Pub. L. 99–272, title XIII, §13302, Apr. 7, 1986, 100 Stat. 327; Pub. L. 100–647, title VII, §7103(b)(1), Nov. 10, 1988, 102 Stat. 3770; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 358(g) of this title, referred to in subsec. (a), was redesignated section 358(j) of this title by Pub. L. 100–647, title VII, §7102(d)(1), Nov. 10, 1988, 102 Stat. 3769.

This chapter, referred to in subsecs. (a), (b), and (d), was in the original "this Act", meaning act June 25, 1938, ch. 680, 52 Stat. 1094, which enacted this chapter and amended sections 503 and 1104 and former section 1107 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 367 of this title and Tables.

CODIFICATION

Section 10(e)–(g) of act June 25, 1938, amended section 1104 of Title 42, The Public Health and Welfare.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–271 substituted "Government Accountability Office" for "General

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

"Fiscal Service" substituted for "Division of Disbursements" in two places in subsec. (b) on authority of section 1(a)(1) of Reorg. Plan No. III of 1940, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees, which consolidated such division into Fiscal Service of Treasury Department. See section 306 of Title 31, Money and Finance.

¹ [*See References in Text note below.*](#)

§361. Railroad unemployment insurance administration fund

(a) Maintenance of account; amounts constituting fund

The Secretary of the Treasury shall maintain in the unemployment trust fund established pursuant to section 904 of the Social Security Act [42 U.S.C. 1104] an account to be known as the railroad unemployment insurance administration fund. This unemployment insurance administration fund shall consist of (i) such part of all contributions collected pursuant to section 358 of this title as equals 0.65 per centum of the total compensation on which such contributions are based; (ii) all amounts advanced to the fund by the Secretary of the Treasury pursuant to this section; (iii) all amounts appropriated by subsection (b) of this section; and (iv) such additional amounts as Congress may appropriate for expenses necessary or incidental to administering this chapter. Such additional amounts are authorized to be appropriated.

(b) Authorization of appropriations; advance of sums; repayment

In addition to the other moneys herein provided for expenses necessary or incidental to administering this chapter, there is appropriated to the fund such amount as the Secretary of the Treasury and the Board shall jointly estimate to have been collected or to be collectible with respect to the calendar years 1936, 1937, 1938, and 1939, from employers subject to this chapter, under title IX of the Social Security Act, less such amount as the Secretary of the Treasury and the Board shall jointly estimate will be appropriated or has been appropriated to States or Territories pursuant to the Act of Congress approved August 24, 1937 (Public, Numbered 353, Seventy-fifth Congress), as proceeds of taxes paid by employers pursuant to title IX of the Social Security Act.

Until the amount appropriated by this subsection is credited to the fund, the Secretary of the Treasury is directed to advance to the credit of the fund such sums, but not more than \$2,000,000, as the Board requests for the purpose of financing the costs of administering this chapter. Such advance shall be repaid from the fund at such time after the amount appropriated by this subsection is credited to the fund as the Board by agreement with the Secretary of the Treasury may determine, but not later than January 1, 1940.

(c) Availability for administrative expenses

Notwithstanding any other provision of law, all moneys at any time credited to the fund are permanently appropriated to the Board to be continuously available to the Board without further appropriation for any expenses necessary or incidental to administering this chapter, including personal services in the District of Columbia and elsewhere; travel expenses, including expenses of attendance at meetings when authorized by the Board; actual transportation expenses and not to exceed \$10 per diem to cover subsistence and other expenses while in attendance at and en route to and from the place to which he is invited, to any person other than an employee of the Federal Government who may, from time to time, be invited to the city of Washington or elsewhere for conference or advisory purposes in furthering the work of the Board; when found by the Board to be in the interest of the Government, not exceeding 3 per centum, in any fiscal year, of the amounts credited during such year to the fund, for engaging persons or organizations, by contract or otherwise, for any special technical or professional services, determined necessary by the Board, including but not restricted to accounting, actuarial, statistical, and reporting services, without regard

to section 6101 of title 41 and the provisions of other laws applicable to the employment and compensation of officers and employees of the United States; services; advertising, postage, telephone, telegraph, teletype, and other communication services and tolls; supplies; reproducing, photographing, and all other equipment, office appliances, and labor-saving devices, including devices for internal communication and conveyance; purchase and exchange, operation, maintenance and repair of motor-propelled passenger-carrying vehicles to be used only for official purposes in the District of Columbia and in the field; printing and binding; purchase and exchange of law books, books of reference, and directories; periodicals, newspapers and press clippings, in such amounts as the Board deems necessary, without regard to the provisions of section 192 of the Revised Statutes; manuscripts and special reports; membership fees or dues in organizations which issue publications to members only, or to members at a lower price than to others, payment for which may be made in advance; rentals, including garages, in the District of Columbia or elsewhere; alterations and repairs; if found by the Board to be necessary to expedite the certification to the Board by the Director of the Office of Personnel Management of persons eligible to be employed by the Board, and to the extent that the Board finds such expedition necessary, meeting the expenses of the Director of the Office of Personnel Management in holding examinations for testing the fitness of applicants for admission to the classified service for employment by the Board pursuant to the second paragraph of section 362(l) of this title, but not to exceed the additional expenses found by the Board to have been incurred by reason of the holding of such examinations; and miscellaneous items, including those for public instruction and information deemed necessary by the Board: *Provided*, That section 6101 of title 41 shall not be construed to apply to any purchase or procurement of supplies or services by the Board from moneys in the fund when the aggregate amount involved does not exceed \$300. Determinations of the Board whether the fund or an appropriation for the administration of the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] is properly chargeable with the authorized expenses, or parts thereof, incurred in the administration of such Act, or of this chapter, shall be binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States and shall not be subject to review in any manner.

(d) Transfer of excess to insurance account

So much of the balance in the fund as of September 30 of each year as is in excess of \$6,000,000 shall as of such date be transferred from the fund and credited to the account.

(June 25, 1938, ch. 680, §11, 52 Stat. 1105; June 20, 1939, ch. 227, §§14, 15, 53 Stat. 848; Oct. 10, 1940, ch. 842, §22, 54 Stat. 1099; June 23, 1948, ch. 608, §8, 62 Stat. 578; Pub. L. 85–927, pt. II, §205, Sept. 6, 1958, 72 Stat. 1783; Pub. L. 89–700, title II, §205, Oct. 30, 1966, 80 Stat. 1087; Pub. L. 93–445, title IV, §404, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94–92, title I, §1(j), Aug. 9, 1975, 89 Stat. 464; Pub. L. 94–273, §2(22), Apr. 21, 1976, 90 Stat. 376; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 100–647, title VII, §7103(b)(2), Nov. 10, 1988, 102 Stat. 3770.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (c), was in the original "this Act", meaning act June 25, 1938, ch. 680, 52 Stat. 1094, which enacted this chapter and amended sections 503 and 1104 and former section 1107 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 367 of this title and Tables.

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title IX of the Social Security Act was formerly classified generally to subchapter IX (§1101 et seq.) of chapter 7 of Title 42, The Public Health and Welfare, and, except for section 1104 of Title 42, was omitted from the Code pursuant to section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1. For further details, see Prior Provisions note preceding section 1101 of Title 42. For complete classification of the Social Security Act to the Code, see section 1305 of Title 42 and Tables.

Act of Congress approved August 24, 1937, referred to in subsec. (b), is act Aug. 24, 1937, ch. 755, 50 Stat.

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec. (c), pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§362. Duties and powers of Board

(a) Witnesses; subpoenas, service, fees, etc.

For the purpose of any investigation or other proceeding relative to the determination of any right to benefits, or relative to any other matter within its jurisdiction under this chapter, the Board shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, documentary or otherwise, that relates to any matter under investigation or in question, before the Board or any member, employee, or representative thereof. Any member of the Board or any of its employees or representatives designated by it may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and production of evidence may be required from any place in the United States or any Territory or possession thereof at any designated place of hearing. All subpoenas may be served and returned by anyone authorized by the Board in the same manner as is now provided by law for the service and return by United States marshals of subpoenas in suits in equity. Such service may also be made by registered mail or by certified mail and in such case the return post-office receipt shall be proof of service. Witnesses summoned in accordance with this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(b) Enforcement of subpoenas by courts; contempts; service of orders, writs, or processes

In case of contumacy by, or refusal to obey a subpoena lawfully issued to, any person, the Board may invoke the aid of the district court of the United States or the United States courts of any Territory or possession, where such person is found or resides or is otherwise subject to service of process, or the United States District Court for the District of Columbia if the investigation or proceeding is being carried on in the District of Columbia, or the United States District Court for the Northern District of Illinois, if the investigation or proceeding is being carried on in the Northern District of Illinois, in requiring the attendance and testimony of witnesses and the production of evidence. Any such court shall issue an order requiring such person to appear before the Board or its specified employee or representative at the place specified in the subpoena of the Board, whether within or without the judicial district of the court, there to produce evidence, if so ordered, or there to give testimony concerning the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. All orders, writs, and processes in any such proceeding may be served in the judicial district of the district court issuing such order, writ, or process, except that the orders, writs, and processes of the United States District Court for the District of Columbia or of the United States District Court for the Northern District of Illinois in such proceedings may run and be served anywhere in the United States.

(c) Repealed. Pub. L. 91-452, title II, §239, Oct. 15, 1970, 84 Stat. 930

(d) Information as confidential

Information obtained by the Board in connection with the administration of this chapter shall not be revealed or open to inspection nor be published in any manner revealing an employee's identity: *Provided, however,* That (i) the Board may arrange for the exchange of any information with governmental agencies engaged in functions related to the administration of this chapter; (ii) the Board may disclose such information in cases in which the Board finds that such disclosure is clearly in furtherance of the interest of the employee or his estate; (iii) any claimant of benefits under this chapter shall, upon his request, be supplied with information from the Board's records pertaining to

his claim; and (iv) the Board shall disclose to any base-year employer of a claimant for benefits any information, including information as to the claimant's identity, that is necessary or appropriate to notify such employer of the claim for benefits or to full and fair participation by such employer in an appeal, hearing, or other proceeding relative to the claim pursuant to section 355 of this title. Subject to the provisions of this section, the Board may furnish such information to any person or organization upon payment by such person or organization to the Board of the cost incurred by the Board by reason thereof; and the amounts so paid to the Board shall be credited to the railroad unemployment insurance administration fund established pursuant to section 361(a) of this title;

(e) Certification of claims; authorization of employee to make payments; bond

The Board shall provide for the certification of claims for benefits and refunds and may arrange total or partial settlements at such times and in such manner as may appear to the Board to be expedient. The Board shall designate and authorize one or more of its employees to sign vouchers for the payment of benefits and refunds under this chapter. Each such employee shall give bond, in form and amount fixed by the Board, conditioned upon the faithful performance of his duties. The premiums due on such bonds shall be paid from the fund and deemed to be a part of the expenses of administering this chapter.

(f) Cooperation with other agencies administering unemployment or sickness compensation laws; agreements

The Board may cooperate with or enter into agreement with the appropriate agencies charged with the administration of State, Territorial, Federal, or foreign unemployment-compensation or sickness laws or employment offices, with respect to investigations, the exchange of information and services, the establishment, maintenance, and use of free employment service facilities, and such other matters as the Board deems expedient in connection with the administration of this chapter, and may compensate any such agency for services or facilities supplied to the Board in connection with the administration of this chapter. The Board may enter also into agreements with any such agency, pursuant to which any unemployment or sickness benefits provided for by this chapter or any other unemployment-compensation or sickness law, may be paid through a single agency to persons who have, during the period on the basis of which eligibility for and duration of benefits is determined under the law administered by such agency or under this chapter, or both, performed services covered by one or more of such laws, or performed services which constitute employment as defined in this chapter: *Provided*, That the Board finds that any such agreement is fair and reasonable as to all affected interests.

(g) Benefits also subject to a State law; mutual reimbursement

In determining whether an employee has qualified for benefits in accordance with section 353 of this title, and in determining the amount of benefits to be paid to such employee in accordance with section 352(a) and (c) of this title, the Board is authorized to consider as employment (and compensation therefor) services for hire other than employment (and remuneration therefor) if such services for hire are subject to an unemployment or sickness compensation law of any State, provided that such State has agreed to reimburse the United States such portion of the benefits to be paid upon such basis to such employee as the Board deems equitable. Any amounts collected pursuant to this paragraph shall be credited to the account.

If a State, in determining whether an employee is eligible for unemployment or sickness benefits under an unemployment or sickness compensation law of such State, and in determining the amount of unemployment or sickness benefits to be paid to such employee pursuant to such unemployment or sickness compensation law, considers as services for hire (and remuneration therefor) included within the provisions of such unemployment or sickness compensation law, employment (and compensation therefor), the Board is authorized to reimburse such State such portion of such unemployment or sickness benefits as the Board deems equitable; such reimbursements shall be paid from the account, and are included within the meaning of the word "benefits" as used in this chapter.

(h) Assistance from employers and labor organizations; compensation

The Board may enter into agreements or arrangements with employers, organizations of

employers, and railway-labor organizations which are duly organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], for securing the performance of services or the use of facilities in connection with the administration of this chapter, and may compensate any such employer or organization therefor upon such reasonable basis as the Board shall prescribe, but not to exceed the additional expense incurred by such employer or organization by reason of the performance of such services or making available the use of such facilities pursuant to such agreements or arrangements. Such employers and organizations, and persons employed by either of them, shall not be subject to section 209 of title 18.

(i) Free employment offices; registration of unemployed; statements of sickness; reemployment

The Board may establish, maintain, and operate free employment offices, and may designate as free employment offices facilities maintained by (i) a railway labor organization which is duly authorized and designated to represent employees in accordance with the Railway Labor Act [45 U.S.C. 151 et seq.], or (ii) any other labor organization which has been or may be organized in accordance with the provisions of the Railway Labor Act, or (iii) one or more employers, or (iv) an organization of employers, or (v) a group of such employers and labor organizations, or (vi) a State, Territorial, foreign, or the Federal Government. The Board may also enter into agreements or arrangements with one or more employers or railway labor organizations organized in accordance with the provisions of the Railway Labor Act, pursuant to which notice of the availability of work and the rights of employees with respect to such work under agreements between such employers and railway labor organizations may be filed with employment offices and pursuant to which employees registered with employment offices may be referred to such work.

The Board shall prescribe a procedure for registration of unemployed employees at employment offices. Such procedure for registration shall be prescribed with a view to such registration affording substantial evidence of the days of unemployment of the employees who register. The Board may, when such registration is made personally by an employee, accept such registration as initial proof of unemployment sufficient to certify for payment a claim for benefits.

The Board shall provide a form or forms for statements of sickness and a procedure for the execution and filing thereof. Such forms and procedure shall be designated with a view to having such statements provide substantial evidence of the days of sickness of the employee. Such statements may be executed by any doctor (authorized to practice in the State or foreign jurisdiction in which he practices his profession) or any officer or supervisory employee of a hospital, clinic, group health association, or other similar organization, who is qualified under such regulations as the Board may prescribe to execute such statements. The Board shall issue regulations for the qualification of such persons to execute such statements. When so executed by any such person, or, in the discretion of the Board, by others designated by the Board individually or by groups, they may be accepted as initial proof of days of sickness sufficient to certify for payment a claim for benefits.

The regulations of the Board concerning registration at employment offices by unemployed persons may provide for group registration and reporting, through employers, and need not be uniform with respect to different classes of employees.

The operation of any employment facility operated by the Board shall be directed primarily toward the reemployment of employees who have theretofore been substantially employed by employers.

(j) Advisory councils; members' remuneration

The Board may appoint national or local advisory councils composed of equal numbers of representatives of employers, representatives of employees, and persons representing the general public, for the purpose of discussing problems in connection with the administration of this chapter and aiding the Board in formulating policies. The members of such councils shall serve without remuneration, but shall be reimbursed for any necessary traveling and subsistence expenses or on a per diem basis in lieu of subsistence expenses.

(k) Reduction of unemployment; training and reemployment of unemployed employees, etc.

The Board, with the advice and aid of any advisory council appointed by it, shall take appropriate

steps to reduce and prevent unemployment and loss of earnings; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to promote the reemployment of unemployed employees; and to these ends to carry on and publish the results of investigations and research studies.

(l) Necessary and incidental powers; employees of Board, employment, remuneration, civil-service laws, registration of unemployed, and detail

In addition to the powers and duties expressly provided, the Board shall have and exercise all the powers and duties necessary to administer or incidental to administering this chapter, and in connection therewith shall have such of the powers, duties, and remedies provided in subdivisions (5), (6), and (9) of section 7(b) of the Railroad Retirement Act of 1974 [45 U.S.C. 231f(b)] with respect to the administration of the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], as are not inconsistent with the express provisions of this chapter. A person in the employ of the Board under section 205 of the Act of Congress approved June 24, 1937 (50 Stat. 307), shall acquire a competitive classified civil-service status if, after recommendation by the Board to the Director of the Office of Personnel Management, he shall pass such noncompetitive tests of fitness as the Director of the Office of Personnel Management may prescribe. A person in the employ of the Board on June 30, 1939, and on June 30, 1940, and who has had experience in railroad service, shall acquire a competitive classified civil-service status if, after recommendation by the Board to the Director of the Office of Personnel Management, he shall pass such noncompetitive tests of fitness for the position for which the Board recommends him as the Director of the Office of Personnel Management may prescribe.

The Board may employ such persons and provide for their remuneration and expenses, as may be necessary for the proper administration of this chapter. Such persons shall be employed and their remuneration prescribed in accordance with the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5: *Provided*, That all positions to which such persons are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed or excepted therefrom: *Provided*, That in the employment of such persons the Board shall give preference, as between applicants attaining the same grades, to persons who have had experience in railroad service, and notwithstanding any other provisions of law, rules, or regulations, no other preference shall be given or recognized: *And provided further*, That certification by the Director of the Office of Personnel Management of persons for appointment to any positions at minimum salaries of \$4,600 per annum, or less, shall, if the Board so requests, be upon the basis of competitive examinations, written, oral, or both, as the Board may request: *And provided further*, That, for the purpose of registering unemployed employees who reside in areas in which no employer facilities are located, or in which no employer will make facilities available for the registration of such employees, the Board may, without regard to civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5, appoint persons to accept, in such areas, registration of such employees and perform services incidental thereto and may compensate such persons on a piece-rate basis to be determined by the Board. Notwithstanding any other provision of law, the Board may detail employees from stations outside the District of Columbia to other stations outside the District of Columbia or to service in the District of Columbia, and may detail employees in the District of Columbia to service outside the District of Columbia: *Provided*, That all details hereunder shall be made by specific order and in no case for a period of time exceeding one hundred and twenty days. Details so made may, on expiration, be renewed from time to time by order of the Board, in each particular case, for periods not exceeding one hundred and twenty days.

(m) Delegation of powers

The Board is authorized to delegate to any member, officer, or employee of the Board any of the powers conferred upon the Board by this chapter, excluding only the power to prescribe rules and regulations.

(n) Sickness benefits; examinations; information and reports; contracts and expenses for examinations

Any employee claiming, entitled to, or receiving sickness benefits under this chapter may be required to take such examination, physical, medical, mental, or otherwise, in such manner and at such times and by such qualified individuals, including medical officers or employees of the United States or a State, as the Board may prescribe. The place or places of examination shall be reasonably convenient for the employee. No sickness benefits shall be payable under this chapter with respect to any period during which the employee unreasonably refuses to take or willfully obstructs an examination as prescribed by the Board.

Any doctor who renders any attendance, treatment, attention, or care, or performs any examination with respect to a sickness of an employee, upon which a claim or right to benefits under this chapter is based, shall furnish the Board, in such manner and form and at such times as the Board by regulations may prescribe, information and reports relative thereto and to the condition of the employee. An application for sickness benefits under this chapter shall contain a waiver of any doctor-patient privilege that the employee may have with respect to any sickness period upon which such application is based: *Provided*, That such information shall not be disclosed by the Board except in a proceeding relating to any claim for benefits by the employee under this chapter.

The Board may enter into agreements or arrangements with doctors, hospitals, clinics, or other persons for securing the examination, physical, medical, mental, or otherwise, of employees claiming, entitled to, or receiving sickness benefits under this chapter and the performance of services or the use of facilities in connection with the execution of statements of sickness. The Board may compensate any such doctors, hospitals, clinics, or other persons upon such reasonable basis as the Board shall prescribe. Such doctors, hospitals, clinics, or other persons and persons employed by any of them shall not be subject to section 209 of title 18. In the event that the Board pays for the physical or mental examination of an employee or for the execution of a statement of sickness and such employee's claim for benefits is based upon such examination or statement, the Board shall deduct from any sickness benefits payable to the employee pursuant to such claim such amount as, in the judgment of the Board, is a fair and reasonable charge for such examination or execution of such statement.

(o) Liability of third party for sickness; reimbursement of Board

Benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suit, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under a health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.

(p) Disqualification to execute statements of sickness or receive fees

The Board may, after hearing, disqualify any person from executing statements of sickness who, the Board finds, (i) will have solicited, or will have employed another to solicit, for himself or for another the execution of any such statement, or (ii) will have made false or misleading statements to the Board, to any employer, or to any employee, in connection with the awarding of any benefits under this chapter, or (iii) will have failed to submit medical reports and records required by the Board under this chapter, or will have failed to submit any other reports, records, or information required by the Board in connection with the administration of this chapter or any other Act heretofore or hereafter administered by the Board, or (iv) will have engaged in any malpractice or other professional misconduct. No fees or charges of any kind shall accrue to any such person from the Board after his disqualification.

(q) Investigations and research with respect to accidents and disabilities

The Board shall engage in and conduct research projects, investigations, and studies with respect

to the cause, care, and prevention of, and benefits for, accidents and disabilities and other subjects deemed by the Board to be related thereto, and shall recommend legislation deemed advisable in the light of such research projects, investigations, and studies.

(r) Duty of Board to make certain computations

(1) Compensation base

On or before December 1, 1988, and on or before December 1 of each year thereafter, the Board shall compute—

(A) in accordance with section 351(i) of this title, the monthly compensation base which shall be applicable with respect to months in the next succeeding calendar year; and

(B) the amounts described in section 351(k) of this title, section 352(c) of this title, section 353 of this title, and section 354(a–2)(i)(A) of this title that are related to changes in the monthly compensation base.

(2) Maximum daily benefit rate

On or before June 1, 1989, and on or before June 1 of each year thereafter, the Board shall compute in accordance with section 352(a)(3) of this title the maximum daily benefit rate which shall be applicable with respect to days of unemployment and days of sickness in registration periods beginning after June 30 of that year.

(3) Notice in Federal Register and to employers

Not later than 10 days after each computation made under this subsection, the Board shall publish notice in the Federal Register and shall notify each employer and employee representative of the amount so computed.

(June 25, 1938, ch. 680, §12, 52 Stat. 1107; June 20, 1939, ch. 227, §16, 53 Stat. 848; Oct. 10, 1940, ch. 842, §§23, 24, 54 Stat. 1099; July 31, 1946, ch. 709, §§319–323, 60 Stat. 739, 740; June 25, 1948, ch. 646, §§1, 32(b), 62 Stat. 878, 895, 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Oct. 28, 1949, ch. 782, title II, §202(29), title XI, §1106(a), 63 Stat. 956, 972; Aug. 12, 1955, ch. 869, §6, 69 Stat. 716; Pub. L. 85–927, pt. II, §206, Sept. 6, 1958, 72 Stat. 1783; Pub. L. 86–507, §1(37), June 11, 1960, 74 Stat. 202; Pub. L. 89–700, title II, §206, Oct. 30, 1966, 80 Stat. 1087; Pub. L. 90–257, title II, §206, Feb. 15, 1968, 82 Stat. 25; Pub. L. 91–452, title II, §239, Oct. 15, 1970, 84 Stat. 930; Pub. L. 93–445, title IV, §405, Oct. 16, 1974, 88 Stat. 1359; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 100–647, title VII, §§7101(e), 7104(d), (e), Nov. 10, 1988, 102 Stat. 3758, 3772.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 25, 1938, ch. 680, 52 Stat. 1094, which enacted this chapter and amended sections 503 and 1104 and former section 1107 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 367 of this title and Tables.

The Railway Labor Act, referred to in subsecs. (h) and (i), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (l), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

Section 205 of the Act of Congress approved June 24, 1937 (50 Stat. 307), referred to in subsec. (l), is section 205 of act June 24, 1937, ch. 382, 50 Stat. 307, which is not classified to the Code.

CODIFICATION

In subsecs. (h) and (n), "section 209 of title 18" substituted for reference to the Act of March 3, 1917, 39

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Subsec. (b) of this section was amended by act June 25, 1948, §32(b), eff. Sept. 1, 1948, as amended by act May 24, 1949, which substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia".

"United States District Court for the Northern District of Illinois" substituted for "District Court of the United States for the Northern District of Illinois" in view of act June 25, 1948, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and that "Illinois is divided into three judicial districts to be known as the Northern, Southern, and Eastern Districts of Illinois." See sections 88 and 132 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 7104(d), (e) of Pub. L. 100–647, effective Jan. 1, 1990, see section 7104(f) of Pub. L. 100–647, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–257 effective July 1, 1968, see section 208 of Pub. L. 90–257, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–927 effective Sept. 6, 1958, except as otherwise indicated, see section 207(c) of Pub. L. 85–927, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 31, 1946, see section 401 of act July 31, 1946.

EFFECTIVE DATE OF 1940 AMENDMENT

For effective date of amendment by act Oct. 10, 1940, see section 1 of act Oct. 10, 1940, set out as a note under section 351 of this title.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

RAILROAD UNEMPLOYMENT COMPENSATION COMMITTEE

Pub. L. 98-76, title V, §504, Aug. 12, 1983, 97 Stat. 441, provided that:

"(a) Representatives of railroad labor and railroad management shall jointly establish (and jointly appoint the members of) a committee to be known as the 'Railroad Unemployment Compensation Committee' (hereinafter in this section referred to as the 'Committee').

"(b) The Committee shall consist of five members—

"(1) two of whom shall be representatives of railroad labor,

"(2) two of whom shall be representatives of railroad management, and

"(3) one of whom shall be an individual who shall not be in the employment of or pecuniarily or otherwise interested in any employer (as defined in section 1 of the Railroad Retirement Act of 1974 [45 U.S.C. 231]) or any organization of employees (as defined in section 1 of such Act).

"(c) The Committee shall review all aspects of the unemployment and sickness insurance systems provided by the Railroad Unemployment Insurance Act [this chapter] including (but not limited to) a review of—

"(1) benefit levels,

"(2) experience rating,

"(3) debt repayment and interest on debt,

"(4) waiting period for unemployment benefits and qualifying requirements, and

"(5) alternatives to the railroad unemployment insurance system such as covering railroad employees under the Federal-State unemployment compensation system.

"(d) Not later than April 1, 1984, the Committee shall submit a report to the Congress containing recommendations—

"(1) with respect to the review conducted under subsection (c), and

"(2) with respect to the repayment of funds which the railroad unemployment insurance system has borrowed from the Railroad Retirement Account.

Any recommendation submitted under paragraph (2) shall contain adjustments in contributions and benefits which will enable the railroad unemployment compensation system to repay all loans from the Railroad Retirement Account before December 31, 2000.

"(e) The Railroad Retirement Board (and any other department, agency, or instrumentality of the Federal Government) is authorized to cooperate with, and assist, the Committee (at its request) in carrying out its duties by furnishing services, information, data, or other material which the Committee determines will be helpful in carrying out its duties."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec. (l), pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (l) of this section delegated to Chairman of the Railroad Retirement Board by Memorandum of President of the United States, Feb. 9, 2005, 70 F.R. 7631, set out as a note under section 231f of this title.

§363. Exclusiveness of provisions; transfers from State unemployment compensation accounts to railroad unemployment insurance account

(a) Omitted

(b) Effect on State unemployment compensation laws

By enactment of this chapter the Congress makes exclusive provision for the payment of unemployment benefits for unemployment occurring after June 30, 1939, and for the payment of sickness benefits for sickness periods after June 30, 1947, based upon employment (as defined in this chapter). No employee shall have or assert any right to unemployment benefits under an

unemployment compensation law of any State with respect to unemployment occurring after June 30, 1939, or to sickness benefits under a sickness law of any State with respect to sickness periods occurring after June 30, 1947, based upon employment (as defined in this chapter). The Congress finds and declares that by virtue of the enactment of this chapter, the application of State unemployment compensation laws after June 30, 1939 or of State sickness laws after June 30, 1947, to such employment, except pursuant to section 362(g) of this title, would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce. In furtherance of such determination, after June 30, 1939, the term "person" as used in section 1106 of title 42 shall not be construed to include any employer (as defined in this chapter) or any person in its employ: *Provided*, That no provision of this chapter shall be construed to affect the payment of unemployment benefits with respect to any period prior to July 1, 1939, under an unemployment compensation law of any State based upon employment performed prior to July 1, 1939, and prior to such date employment as defined in this chapter shall not constitute "Service with respect to which unemployment compensation is payable under an [or "service under any"] unemployment compensation system [or "plan"] established by an Act of Congress" [or "a law of the United States"] or "employment in interstate commerce, of an individual who is covered by an unemployment compensation system established directly by an Act of Congress," or any term of similar import, used in any unemployment compensation law of any State.

(c) Determination of "preliminary amount" for States

The Social Security Board is directed to determine for each State, after agreement with the Railroad Retirement Board, and after consultation with such State; the total (hereinafter referred to as the "preliminary amount") of (i) the amount remaining as the balances of reserve accounts of employers as of June 30, 1939, if the unemployment compensation law of such State provides for a type of fund known as "Reserve Accounts," plus (ii) if the unemployment compensation law of such State provides for a type of fund known as "Pooled Fund" or "Pooled Account," that proportion of the balance of such fund or account of such State as of June 30, 1939, as the amount of taxes or contributions collected from employers and their employees prior to July 1, 1939, pursuant to its unemployment compensation law and credited to such fund or account bears to all such taxes or contributions theretofore collected from all persons subject to its unemployment compensation law and credited to such fund or account; and the additional amounts (hereinafter referred to as the "liquidating amount") of taxes or contributions collected from employers and their employees from July 1, 1939 to December 31, 1939, pursuant to its unemployment compensation law.

(d) Withholding amounts from certification to States; transfers to railroad unemployment compensation account

The Social Security Board shall withhold from certification to the Secretary of the Treasury for payment the amounts determined by it pursuant to section 502(a) of title 42 to be necessary for the proper administration of each State's unemployment-compensation law, until an amount equal to its "preliminary amount" plus interest from July 1, 1939, at 2½ per centum per annum on such portion thereof as has not been used as the measure for withholding certification for payment, has been so withheld from certification pursuant to this paragraph: *Provided, however*, That if a State shall, prior to whichever is the later of (i) thirty days after the close of the first regular session of its legislature which begins after the approval of this chapter, and (ii) July 1, 1939, authorize and direct the Secretary of the Treasury to transfer from its account in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund an amount equal to its "preliminary amount", no amount shall be withheld from certification for payment to such State pursuant to this paragraph.

The Social Security Board shall withhold from certification to the Secretary of the Treasury for payment the amounts determined by it pursuant to section 502(a) of title 42 to be necessary for the proper administration of each State's unemployment compensation law, until an amount equal to its "liquidating amount" plus interest from January 1, 1940, at 2½ per centum per annum on such portion thereof as has not been used as the measure for withholding certification for payment has been so withheld from certification pursuant to this paragraph: *Provided, however*, That if a State

shall, prior to whichever is the later of (i) thirty days after the close of the first regular session of its legislature which begins after the approval of this chapter, and (ii) January 1, 1940, authorize and direct the Secretary of the Treasury to transfer from its account in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund an amount equal to its "liquidating amount", no amount shall be withheld from certification for payment to such State pursuant to this paragraph.

The withholdings from certification directed in each of the foregoing paragraphs of this subsection shall begin with respect to each State when the Social Security Board finds that such State is unable to avail itself of the condition set forth in the proviso contained in such paragraph: *Provided, however,* That if the Social Security Board finds with respect to any State that such State (1) is unable to avail itself of such conditions solely by reason of prohibitions contained in the constitution of such State, as determined by a decision of the highest court of such State declaring invalid in whole or in part the action of the legislature of the State purporting to provide for transfers from the State's account in the Unemployment Trust Fund to the railroad unemployment insurance account, and (2) for similar reasons is unable to use amounts withdrawn from its account in the Unemployment Trust Fund for the payment of expenses incurred in the administration of its State unemployment compensation law, the Social Security Board shall not begin to withhold from certification to the Secretary of the Treasury for payment to such State the amounts determined by it pursuant to section 502 of title 42 and to certify to the Secretary of the Treasury for payment into the railroad unemployment insurance account the amount so withheld from such State until July 1, 1944, or until a date one hundred and eighty days after the adjournment of the first session of the legislature of such State beginning after July 1, 1942, whichever date is the earlier, and then only if the Social Security Board finds that such State had not prior thereto effectively authorized and directed the Secretary of the Treasury to transfer from such State's account in the Unemployment Trust Fund to the railroad unemployment insurance account amounts equal to such State's "preliminary amount" and "liquidating amount" less such parts thereof, if any, as the State may have, within the periods set forth in the provisos contained in the first two paragraphs of this subsection, effectively authorized and directed the Secretary of the Treasury so to transfer, plus interest on such difference, if any, with respect to each amount, at 2½ per centum per annum from the date the State's "preliminary amount" or "liquidating amount", as the case may be, is determined by the Social Security Board; and with respect to any such State the amount withheld shall equal the State's "preliminary amount" and "liquidating amount" less such parts thereof, if any, as the State may have, within the periods set forth in the provisos contained in the first two paragraphs of this subsection effectively authorized and directed the Secretary of the Treasury to transfer, plus interest from July 1, 1939, at 2½ per centum per annum on so much of the "preliminary amount" and "liquidating amount", as the case may be, as has not been so transferred or has not been used as the measure for withholding. An enactment of any State legislature providing for the transfer (from the State's account in the Unemployment Trust Fund to the railroad unemployment insurance account) of all interest earned upon contributions which are collected with respect to employment occurring after such enactment by such State pursuant to its unemployment compensation law and credited to its account in the Unemployment Trust Fund (until the total of such transfers equals the amounts which otherwise would be required to be withheld from certification under this subsection), shall be deemed an effective authorization and direction to the Secretary of the Treasury as required by this subsection; and for purposes of computing the interest to be so transferred, amounts withdrawn by such State from its account in the Unemployment Trust Fund after the date of such State enactment shall be considered to be first charged against the amounts credited to such State's account prior to the date of such State enactment: *Provided, however,* That if at any time after such enactment the provision for transfer therein contained for any reason fails to be operative to effect the transfers of interest as therein prescribed, and such State has not otherwise made an effective authorization and direction to the Secretary of the Treasury as required by this subsection, the Social Security Board shall immediately after such failure or, on the date otherwise provided in this subsection for the beginning of withholdings from certification, whichever is later, begin to make the withholdings from certification provided for in this subsection in the same manner and to the same extent as if

such enactment by such State had not been enacted, except that the amounts of the certifications withheld shall be reduced by the total amount, if any, which has been transferred from interest pursuant to such enactment.

(e) Transfers and withdrawals, effect upon social security provisions

The transfers described in the provisos contained in the several paragraphs of subsection (d) of this section shall not be deemed to constitute a breach of the conditions set forth in sections 503(a)(5) and 1103(a)(4) of title 42; nor shall the withdrawal by a State from its account in the unemployment trust fund of amounts, but not to exceed the total amount the Social Security Board shall have withheld from certification with respect to such State pursuant to subsection (d) of this section, be deemed to constitute a breach of the conditions set forth in sections 503(a)(5) and 1103(a)(4) of title 42, provided the moneys so withdrawn are expended solely for expenses which the Social Security Board determines to be necessary for the proper administration of such State's unemployment compensation law.

(f) Payments to railroad unemployment insurance account; transfers from unemployment trust fund of States

The Social Security Board is authorized and directed to certify to the Secretary of the Treasury for payment, and the Secretary shall pay, into the railroad unemployment insurance account, such amounts as the Social Security Board withholds from certification pursuant to subsection (d) of this section and the appropriations authorized in section 501 of title 42 shall be available for payments authorized by this subsection. The Secretary shall transfer from the account of a State in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund such amounts as the State authorizes and directs him so to transfer pursuant to subsection (d) of this section.

(June 25, 1938, ch. 680, §13(b)–(f), 52 Stat. 1110; June 20, 1939, ch. 227, §17, 53 Stat. 848; July 2, 1940, ch. 530, 54 Stat. 741; June 30, 1942, ch. 463, 56 Stat. 465; July 31, 1946, ch. 709, §324, 60 Stat. 741; Pub. L. 90–257, title II, §207, Feb. 15, 1968, 82 Stat. 25.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (d), was in the original "this Act", meaning act June 25, 1938, ch. 680, 52 Stat. 1094, which enacted this chapter and amended sections 503 and 1104 and former section 1107 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 367 of this title and Tables.

Sections 1106 and 1103(a)(4) of title 42, referred to in subsecs. (b) and (e), respectively, which were in the original references to sections 906 and 903(a)(4), respectively, of the Social Security Act, as in existence prior to February 10, 1939, were omitted from the Code pursuant to section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1, which provided that all laws and parts of laws codified into the Internal Revenue Code of 1939, to the extent that they related exclusively to internal revenue laws, were repealed. For further details, see Prior Provisions note preceding section 1101 of Title 42, The Public Health and Welfare. For provisions similar to sections 1106 and 1103(a)(4), see sections 3305 and 3304, respectively, of Title 26, Internal Revenue Code.

CODIFICATION

Section 13(a) of act June 25, 1938, amended former section 1107 of Title 42, The Public Health and Welfare. Section 13(g) of act June 25, 1938, amended section 503 of Title 42.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–257 struck out all references to maternity benefits.

1946—Subsec. (b). Act July 31, 1946, inserted phrases extending provisions of that subsection to State sickness and maternity laws and benefits after June 30, 1947.

1942—Subsec. (d). Act June 30, 1942, affected provisos in third par.

1940—Subsec. (d). Act July 2, 1940, affected provisos in third par.

1939—Subsec. (d). Act June 20, 1939, substituted references to unemployment insurance account for references to unemployment compensation account wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–257 effective as of July 1, 1968, see section 208 of Pub. L. 90–257, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 31, 1946, see section 401 of act July 31, 1946.

EFFECT OF SOCIAL SECURITY ACT AMENDMENTS

Act Aug. 10, 1939, ch. 666, title IX, §901, 53 Stat. 1399, provided that: "Except as provided in section 906, no provision of this act shall be construed as amending or altering the effect of section 13(b), (c), (d), (e), or (f) of the Railroad Unemployment Insurance Act [this section]."

Act Aug. 10, 1939, ch. 666, title IX, §906, 53 Stat. 1401, provided that: "If the Social Security Board finds with respect to any State that the first regular session of such State's legislature which began after June 25, 1938, and adjourned prior to thirty days after the enactment of this act [Aug. 10, 1939] (1) had not made provision to authorize and direct the Secretary of the Treasury, prior to thirty days after the close of such session or July 1, 1939, whichever date is later, to transfer from its account in the Unemployment Trust Fund to the railroad unemployment insurance account in the Unemployment Trust Fund an amount equal to such State's 'preliminary amount,' or to authorize and direct the Secretary of the Treasury, prior to thirty days after the close of such session or January 1, 1940, whichever date is later, to transfer from its account in the Unemployment Trust Fund to the railroad unemployment insurance account in the Unemployment Trust Fund an amount equal to such State's 'liquidating amount,' or both; and (2) had not made provision for financing the administration of its unemployment-compensation law during the period with respect to which grants therefor under section 302 of the Social Security Act [section 502 of Title 42, The Public Health and Welfare] are required under section 13 of the Railroad Unemployment Insurance Act [this section] to be withheld by the Social Security Board, notwithstanding the provisions of section 13(d) of the Railroad Unemployment Insurance Act, the Social Security Board shall not begin to withhold from certification to the Secretary of the Treasury for payment to such State the amounts determined by it pursuant to section 302 of the Social Security Act [section 502 of Title 42] and to certify to the Secretary of the Treasury for payment into the railroad unemployment-insurance account the amount so withheld from such State, as provided in section 13 of the Railroad Unemployment Insurance Act [this section], until after the thirtieth day after the close of such State's first regular or special session of its legislature which begins after the date of enactment of this act and after the Social Security Board finds that such State had not, by the thirtieth day after the close of such legislative session, authorized and directed the Secretary of the Treasury to transfer from such State's account in the Unemployment Trust Fund to the railroad unemployment insurance account in the Unemployment Trust Fund such State's 'preliminary amount' plus interest thereon at 2½ per centum per annum from the date the amount thereof is determined by the Social Security Board, and such State's 'liquidating amount' plus interest thereon at 2½ per centum per annum from the date the amount thereof is determined by the Social Security Board. Notwithstanding the provisions of section 13(e) of the Railroad Unemployment Insurance Act [this section], any withdrawal by such State from its account in the Unemployment Trust Fund for purposes other than the payment of compensation of the whole or any part of amounts so withheld from certification with respect to such State pursuant to this act shall be deemed to constitute a breach of the conditions set forth in sections 303(a)(5) of the Social Security Act [section 503 of Title 42] and 1603(a)(4) of the Internal Revenue Code [section 1603 of former Title 26, Internal Revenue Code of 1939]. The terms 'preliminary amount' and 'liquidating amount', as used herein, shall have the meanings defined in section 13 of the Railroad Unemployment Insurance Act [this section]."

KENTUCKY

Act Oct. 26, 1945, ch. 434, 59 Stat. 550, as amended by Reorg. Plan No. 2 of 1946, §4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, provided that \$1,260,000 should constitute the total amount withheld by the Federal Security Administrator under subsec. (d) of this section for payment for the administration of Kentucky's Unemployment Compensation Law, KRS 341.010–341.990.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Labor and functions of all agencies and employees of Department, with exception of functions vested by Administrative Procedure Act (sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any officers, agencies, and employees of Department of Labor, by Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

Functions of Federal Security Administrator with respect to unemployment compensation transferred to Secretary of Labor by Reorg. Plan No. 2 of 1949, §1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, set out in the Appendix to Title 5. Section 1 of Reorg. Plan No. 2 of 1949, also provided that functions transferred by this section shall be performed by Secretary of Labor, or subject to his direction and control, by officers, agencies, and employees of Department of Labor as he shall designate.

Social Security Board abolished and its functions and those of its chairman transferred to Federal Security Administrator to be performed by him or under his direction and control by such officers and employees of Federal Security Agency as designated, by Reorg. Plan No. 2 of 1946, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, set out in the Appendix to Title 5. For transfer of personnel, property, records, and funds, see section 12 of the Reorganization Plan.

§363a. Refunds of State unemployment contributions by employees; amount; application period; definitions

(a) Notwithstanding any other provision of law, in any case where an employee amount (as hereinafter defined) was paid from a State unemployment fund to the Unemployment Trust Fund, an aggregate amount equal thereto shall be paid from the Unemployment Trust Fund, as refunds, to employees who paid into the State fund the contributions upon which such payment into the Unemployment Trust Fund was based, except that in case any such employee is deceased, payment shall be made to his estate; and the payment so made in the case of any employee shall be in proportion to the contributions paid by such employee into the State fund: *Provided*, That payment in any such case shall be made only if application therefor is made to the Railroad Retirement Board within two years after August 2, 1946.

(b) As used in this section—

(1) The term "employee amount" means any amount paid from a State unemployment fund to the Unemployment Trust Fund which would not have been required to be paid, under the provisions of section 363(c) of this title, if said section had not required payment of amounts based on contributions collected from employees.

(2) The term "Unemployment Trust Fund" means the fund established by section 1104 of title 42.

(3) The term "employees" has the same meaning as in the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

(Aug. 2, 1946, ch. 743, 60 Stat. 806; Aug. 6, 1947, ch. 509, 61 Stat. 793.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(3), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 367 of this title and Tables.

CODIFICATION

Section was not enacted as a part of the Railroad Unemployment Insurance Act which comprises this chapter.

AMENDMENTS

1947—Subsec. (a). Act Aug. 6, 1947, extended time for application for refund from twelve months to two years after Aug. 2, 1946.

§364. District of Columbia account, transfer of funds to railroad unemployment insurance account

The Secretary of the Treasury is authorized and directed to transfer from the account of the District of Columbia in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund, an amount equal to the "preliminary amount" and an amount equal to the "liquidating amount", whenever such amounts, respectively, have been determined, with respect to the District of Columbia, pursuant to section 363 of this title.

(June 25, 1938, ch. 680, §14(b), 52 Stat. 1113.)

§365. Omitted

EDITORIAL NOTES

CODIFICATION

Section, acts June 25, 1938, ch. 680, §15, 52 Stat. 1113; June 20, 1939, ch. 227, §19, 53 Stat. 844, related to transitional provisions occurring before July 1, 1939.

§366. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter shall not be affected thereby.

(June 25, 1938, ch. 680, §16, 52 Stat. 1113.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 25, 1938, ch. 680, 52 Stat. 1094, which enacted this chapter and amended sections 503 and 1104 and former section 1107 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 367 of this title and Tables.

§366a. Effect of Internal Revenue Code

The provisions of the Railroad Unemployment Insurance Act, as herein amended, shall be in full force and effect notwithstanding the enactment of the Internal Revenue Code.

(June 20, 1939, ch. 227, §22, 53 Stat. 848.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in text, is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 367 of this title and Tables.

The Internal Revenue Code, referred to in text, probably means the Internal Revenue Code of 1939, which was generally repealed by section 7851 of the Internal Revenue Code of 1954, Title 26. The Internal Revenue Code of 1954 was redesignated the Internal Revenue Code of 1986 by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of Title 26, Internal Revenue Code. See also section 7852(b) of Title 26 for provision that references in any other

law to a provision of the 1939 Code, unless expressly incompatible with the intent thereof, shall be deemed a reference to the corresponding provision of the 1986 Code.

CODIFICATION

Section was not enacted as a part of the Railroad Unemployment Insurance Act which comprises this chapter.

§367. Short title

This chapter may be cited as the "Railroad Unemployment Insurance Act".
(June 25, 1938, ch. 680, §17, 52 Stat. 1113.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act June 25, 1938, ch. 680, 52 Stat. 1094, which enacted this chapter and amended sections 503 and 1104 and former section 1107 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Another section 17 of Act June 25, 1938, was classified to section 368 of this title prior to repeal by Pub. L. 104–251, §5(c), Oct. 9, 1996, 110 Stat. 3165.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2020 AMENDMENT

Pub. L. 116–260, div. N, title II, §231, Dec. 27, 2020, 134 Stat. 1957, provided that: "This subchapter [subchapter III (§§231–235) of title II of div. N of Pub. L. 116–260, amending section 352 of this title, section 906 of Title 2, The Congress, and section 9030 of Title 15, Commerce and Trade, and enacting provisions set out as notes under section 352 of this title, section 906 of Title 2, and section 9030 of Title 15] may be cited as the 'Continued Assistance to Rail Workers Act of 2020'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–251, §1, Oct. 9, 1996, 110 Stat. 3161, provided that: "This Act [amending section 352 of this title, repealing section 368 of this title, and enacting provisions set out as a note under section 352 of this title] may be cited as the 'Railroad Unemployment Insurance Amendments Act of 1996'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–647, title VII, §7001, Nov. 10, 1988, 102 Stat. 3757, provided that: "This title [enacting section 369 of this title, amending sections 231, 231a, 231e, 351 to 355, 358, 360, 361, and 362 of this title and sections 3321, 3322, 6157, 6201, 6317, 6513, and 6601 of Title 26, Internal Revenue Code, omitting section 3323 of Title 26, enacting provisions set out as notes under sections 231, 231a, 351 to 353, 355, and 358 of this title and section 3321 of Title 26, and amending provisions set out as notes under section 231n of this title] may be cited as the 'Railroad Unemployment Insurance and Retirement Improvement Act of 1988'."

§368. Repealed. Pub. L. 104–251, §5(c), Oct. 9, 1996, 110 Stat. 3165

Section, act June 25, 1938, ch. 680, §17, as added Mar. 24, 1983, Pub. L. 98–8, title I, §102(a), 97 Stat. 32; amended Nov. 30, 1983, Pub. L. 98–181, title II, §2005(a), 97 Stat. 1298, related to payment of supplemental employment benefits.

Another section 17 of act June 25, 1938, is classified to section 367 of this title.

§369. Annual report

On or before July 1 of 1989, and of each calendar year thereafter, the Railroad Retirement Board

shall submit to the Congress a report on the financial status of the railroad unemployment insurance system under various economic and employment assumptions. Such report shall include any recommendation for financing changes which might be advisable, including any adjustment the Railroad Retirement Board recommends regarding the rates of employer contributions.
(Pub. L. 100-647, title VII, §7105, Nov. 10, 1988, 102 Stat. 3772.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 and also as part of the Technical and Miscellaneous Revenue Act of 1988, and not as part of the Railroad Unemployment Insurance Act which comprises this chapter.

CHAPTER 12—TEMPORARY RAILROAD UNEMPLOYMENT INSURANCE PROGRAM

Sec.

- 401. Payment of compensation; eligibility; duration; maximum aggregate amount payable; duplication of benefits; application of railroad unemployment insurance provisions.
- 402. Exchange of information between Secretary of Labor and Railroad Retirement Board.
- 403. Appropriation to railroad unemployment insurance account; transfer and repayment of funds; interest.
- 404. Temporary increase in employers' contribution rate.

§401. Payment of compensation; eligibility; duration; maximum aggregate amount payable; duplication of benefits; application of railroad unemployment insurance provisions

An employee as defined in the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] who has, after June 30, 1960, and before April 1, 1962, exhausted (within the meaning prescribed by the Railroad Retirement Board by regulation) his right to unemployment benefits under the Railroad Unemployment Insurance Act, shall be paid unemployment benefits in accordance otherwise with the provisions of such Act for days of unemployment, not exceeding sixty-five, and not exceeding in the aggregate, an amount equal to 50 per centum of the total amount of unemployment benefits which were payable to him in the benefit year in which he last exhausted his rights before making his first claim under this chapter, which occur in registration periods, as defined in the Railroad Unemployment Insurance Act, beginning on or after the fifteenth day after the date of enactment of the Temporary Extended Unemployment Compensation Act of 1961 [March 24, 1961], and before April 1, 1962, and which would not be days with respect to which he would be held entitled otherwise to receive unemployment benefits under the Railroad Unemployment Insurance Act: *Provided*, That an employee entitled under this section to benefits for a day before April 1, 1962, may receive such benefits for days in registration periods which begin before July 1, 1962: *Provided further*, That payment of benefits otherwise provided for in this chapter shall not be made with respect to any individual for any day of unemployment to the extent that such payment, when added to the sum of the benefits under the Railroad Unemployment Insurance Act and under this chapter paid such individual with respect to prior days in the benefit year, would exceed one hundred and ninety-five times such individual's daily benefit rate for such benefit year. An employee who has filed, and established, a first claim for benefits under the provisions of the Temporary Extended Unemployment Compensation Act of 1961, may not thereafter establish a claim under this section, and an employee who has registered for, and established, a claim under this section may not

thereafter establish a claim under the provisions of the Temporary Extended Unemployment Compensation Act of 1961. Except to the extent inconsistent with this section, the provisions of the Railroad Unemployment Insurance Act shall be applicable in the administration of this section. (Pub. L. 87-7, §2, Mar. 24, 1961, 75 Stat. 16.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in text, is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

The Temporary Extended Unemployment Compensation Act of 1961, referred to in text, is Pub. L. 87-6, Mar. 24, 1961, 75 Stat. 8, which enacted sections 1105 and 1400l to 1400v of Title 42, The Public Health and Welfare, amended sections 3301 and 3302 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under sections 1101 and 1400l of Title 42. For complete classification of this Act to the Code, see Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 87-7, §1, Mar. 24, 1961, 75 Stat. 16, provided: "That this Act [enacting this chapter] may be cited as the 'Temporary Extended Railroad Unemployment Insurance Benefits Act of 1961'."

§402. Exchange of information between Secretary of Labor and Railroad Retirement Board

The Secretary of Labor, upon request, shall furnish the Railroad Retirement Board information deemed necessary by such Board for the administration of section 401 of this title, and such Board, upon request, shall furnish the Secretary of Labor information deemed necessary by the Secretary for the administration of the Temporary Extended Unemployment Compensation Act of 1961.

(Pub. L. 87-7, §3, Mar. 24, 1961, 75 Stat. 17.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Temporary Extended Unemployment Compensation Act of 1961, referred to in text, is Pub. L. 87-6, Mar. 24, 1961, 75 Stat. 8, which enacted sections 1105 and 1400l to 1400v of Title 42, The Public Health and Welfare, amended sections 3301 and 3302 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under sections 1101 and 1400l of Title 42. For complete classification of this Act to the Code, see Tables.

§403. Appropriation to railroad unemployment insurance account; transfer and repayment of funds; interest

There are authorized to be appropriated to the railroad unemployment insurance account, without fiscal year limitation, such amounts as may be necessary to carry out the provisions of this chapter. The amounts so appropriated shall be transferred from time to time to the railroad unemployment insurance account on the basis of estimates by the Secretary of the Treasury after consultation with the Railroad Retirement Board of the amounts required from time to time to carry out the provisions of this chapter. Amounts so transferred shall be repayable advances without interest.

(Pub. L. 87-7, §4, Mar. 24, 1961, 75 Stat. 17; Pub. L. 88-133, title III, §303(c), Oct. 5, 1963, 77 Stat. 222.)

EDITORIAL NOTES

AMENDMENTS

1963—Pub. L. 88–133 repealed provision for repayment of advances by transfers from account to general fund of Treasury when funds of account derived from increase in employers' contribution rate are adequate for such purpose, which is now covered by section 303(b) of Pub. L. 88–133, set out as a note below.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1963 AMENDMENT

Pub. L. 88–133, title III, §303(c), Oct. 5, 1963, 77 Stat. 222, provided that the amendment made by such section 303(c) is effective with respect to contributions collected on compensation paid after Dec. 31, 1963.

REPAYMENT BY ACCOUNT OF ADVANCES FROM GENERAL FUND OF TREASURY FROM CONTRIBUTIONS COLLECTED ON COMPENSATION PAID AFTER DECEMBER 31, 1963

Pub. L. 88–133, title III, §303(b), Oct. 5, 1963, 77 Stat. 222, provided that: "Effective with respect to contributions collected by the Railroad Retirement Board pursuant to section 8(f) of the Railroad Unemployment Insurance Act [section 358(f) of this title] on compensation paid after December 31, 1963, that part of such contributions equal to one-fourth of 1 per centum of the compensation on which such contributions are based shall, notwithstanding the provisions of section 10(b) of such Act [section 360(b) of this title], be applied by the Board exclusively for transfers from the railroad unemployment insurance account to the general fund of the Treasury until the full amount advanced from the general fund of the Treasury to the railroad unemployment insurance account pursuant to section 4 of the Temporary Extended Railroad Unemployment Insurance Benefits Act of 1961 [this section] has been repaid."

§404. Temporary increase in employers' contribution rate

Notwithstanding the provisions of section 358(a)² ¹ of this title, the rate of contribution required to be paid under the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] by every employer as defined in such Act shall be 4 per centum with respect to compensation as defined in such Act, paid after December 31, 1961, and before January 1, 1964.

(Pub. L. 87–7, §5, Mar. 24, 1961, 75 Stat. 17.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 358(a) of this title, referred to in text, was amended generally by Pub. L. 100–647, title VII, §7102(a), Nov. 10, 1988, 102 Stat. 3759, and, as so amended, does not contain a cl. "2".

The Railroad Unemployment Insurance Act, referred to in text, is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

¹ *See References in Text note below.*

CHAPTER 13—RAILROAD SAFETY

SUBCHAPTER I—GENERAL PROVISIONS

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 501(a) of Pub. L. 96–73.

§§642 to 644. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 642, Pub. L. 91–518, title VIII, §802, Oct. 30, 1970, 84 Stat. 1340, prohibited discontinuance of intercity rail passenger service other than in accordance with provisions of this chapter. See section 24705 of Title 49, Transportation.

Section 643, Pub. L. 91–518, title VIII, §803, Oct. 30, 1970, 84 Stat. 1340, related to separability of provisions of this chapter.

Section 644, Pub. L. 91–518, title VIII, §805, Oct. 30, 1970, 84 Stat. 1340; Pub. L. 92–316, §11, June 22, 1972, 86 Stat. 233; Pub. L. 93–496, §11, Oct. 28, 1974, 88 Stat. 1531; Pub. L. 99–272, title IV, §4007(a), Apr. 7, 1986, 100 Stat. 108, related to records and audit of National Railroad Passenger Corporation and certain railroads. See section 24315 of Title 49, Transportation.

§645. Repealed. Pub. L. 99–272, title IV, §4007(b), Apr. 7, 1986, 100 Stat. 108

Section, Pub. L. 91–518, title VIII, §806, as added Pub. L. 92–316, §12, June 22, 1972, 86 Stat. 233, provided for a report by Secretary of Transportation to Congress evaluating intercity rail passenger service operations.

§§646 to 650c. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 646, Pub. L. 91–518, title VIII, §807, as added Pub. L. 95–421, §13, Oct. 5, 1978, 92 Stat. 929, related to development and implementation of a Railroad Safety System Program. See section 24313 of Title 49, Transportation.

Section 647, Pub. L. 91–518, title VIII, §808, as added Pub. L. 96–73, title I, §123, Sept. 29, 1979, 93 Stat. 551, related to composition and duties of Employee Compensation and Incentive Commission.

Section 648, Pub. L. 91–518, title VIII, §809, as added Pub. L. 96–73, title I, §124, Sept. 29, 1979, 93 Stat. 551, related to development of Model Job Placement Program to accommodate employees displaced by route restructuring.

Section 649, Pub. L. 91–518, title VIII, §810, as added Pub. L. 101–322, §3, July 6, 1990, 104 Stat. 295, related to incentives for passenger service operating agreements. See section 26102 of Title 49, Transportation.

A prior section 649, Pub. L. 91–518, title VIII, §810, as added Pub. L. 96–73, title I, §125, Sept. 29, 1979, 93 Stat. 552, provided for a study of payment of taxes by Corporation to State and local governments, prior to repeal by Pub. L. 99–272, title IV, §4007(b), Apr. 7, 1986, 100 Stat. 108.

Section 650, Pub. L. 91–518, title VIII, §811, as added Pub. L. 102–533, §2, Oct. 27, 1992, 106 Stat. 3515, related to elimination of all highway at-grade crossings on main line of the Northeast Corridor, except where elimination deemed impracticable or unnecessary. See section 24906 of Title 49, Transportation.

A prior section 650, Pub. L. 91–518, title VIII, §811, as added Pub. L. 96–73, title I, §126, Sept. 29, 1979, 93 Stat. 552, provided for a report to Congress on the ratio of revenue to expenses, prior to repeal by Pub. L. 99–272, title IV, §4007(b), Apr. 7, 1986, 100 Stat. 108.

Section 650a, Pub. L. 100–342, §18(g), June 22, 1988, 102 Stat. 637, related to petitions by National Railroad Passenger Corporation seeking relocation or other remedial assistance for dangerous conditions, and recommendations by Secretary to Congress to fund such measures.

Section 650b, Pub. L. 91–518, title VIII, §812, as added Pub. L. 102–533, §3, Oct. 27, 1992, 106 Stat. 3515, directed National Railroad Passenger Corporation to develop and report to Congress its plans for experimentation with new technologies. See section 24314 of Title 49, Transportation.

Section 650c, Pub. L. 91–518, title VIII, §813, as added Pub. L. 102–533, §9, Oct. 27, 1992, 106 Stat. 3520, directed National Railroad Passenger Corporation to assist in and report to Congress on high-speed rail corridor development outside the Northeast Corridor.

opportunity for oral presentation), and give consideration to the relevant matter presented. The Secretary for good cause shown and upon a finding that extraordinary circumstances warrant doing so may waive the requirements of the preceding sentence. Notwithstanding any other provision of this section, the Secretary, in guaranteeing certificates under this section, is authorized to waive the findings required by paragraphs (1), (5), and (6) of this subsection.

(b) Conditions to guarantee

As a condition to a guarantee, the Secretary, after consultation with the Board, shall require that:

(1) the proceeds of the sale of certificates guaranteed under this chapter, will be used solely for meeting payroll and other expenses which, if not met, would preclude continued provision of essential transportation services by the railroad;

(2) other revenues of the railroad will be used, to the fullest extent possible, for such expenses;

(3) proceeds from the sale of assets will be devoted to the fullest extent possible to the provision of essential transportation services by the railroad; and

(4) in the event of actual or threatened cessation of essential transportation services by the railroad, the Secretary shall have the option to procure by purchase or lease trackage rights over the lines of the railroad and such equipment as may be necessary to provide such services by the Secretary or his assignee, and, in the event of a default in the payment of principal or interest as provided by the certificates, the money paid or expenses incurred by the United States as a result thereof shall be deemed to have been applied to the purchase or lease price. The terms of purchase or lease shall be subject to the approval of the reorganization court and the operation over the lines shall be subject to the approval of the Board pursuant to subchapter II of chapter 113 of title 49, but in no event shall the rendition of services by the Secretary or his assignee await the outcome of proceedings before the reorganization court or the Board.

(c) Certificate as administrative expense; priority of certificate

The Secretary shall not guarantee any certificate under this section unless such certificate is treated as an expense of administration and receives the highest lien on the railroad's property and priority in payment under the Bankruptcy Act, except that this subsection shall not apply to certificates guaranteed for a railroad that is actively engaged in restructuring, as defined by the Secretary. For purposes of this subsection, the term "restructuring" includes an employee ownership plan or an employee-shipper ownership plan.

(d) Interest rate; date of maturity; other terms and conditions

A certificate under this chapter shall bear interest at such per annum rate as the Secretary deems reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Federal Government; nor may its maturity date, including all extensions and renewals thereof, be later than fifteen years from the date of original issuance. The Secretary may prescribe such other terms and conditions as he deems appropriate. In each case, the Secretary shall consider the feasibility of requiring the railroad to dispose of nonrailroad assets as a condition to a guarantee.

(e) Maximum aggregate principal amount outstanding

At any one time the outstanding aggregate principal amount of all certificates guaranteed under this chapter shall not exceed \$200,000,000.

(f) Rules and regulations

The Secretary shall issue such rules and regulations as are appropriate to carry out the authority granted by this chapter.

(Pub. L. 91-663, §3, Jan. 8, 1971, 84 Stat. 1975; Pub. L. 95-598, title III, §333, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 95-611, §3(b), Nov. 8, 1978, 92 Stat. 3089; Pub. L. 96-86, §115(a), Oct. 12, 1979, 93 Stat. 662; Pub. L. 96-101, §7(a)-(c), Nov. 4, 1979, 93 Stat. 739, 740; Pub. L. 104-88, title III, §325(2), Dec. 29, 1995, 109 Stat. 951.)

(a) Forms and denominations; maturity dates; terms and conditions; interest rate; purchase and sale of obligations by Secretary of the Treasury; authorization of appropriations

To enable the Secretary to carry out his rights and responsibilities under section 662 of this title, he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. There are authorized to be appropriated to the Secretary such sums as may be necessary to pay the principal and interest on the notes or obligations issued by him to the Secretary of the Treasury.

(b) Revocation of guarantee; legal effect of guarantee; validity and incontestability of guaranteed certificate

Any guarantee made by the Secretary under this chapter shall not be terminated, canceled, or otherwise revoked, except as provided by the terms and conditions prescribed by the Secretary under section 662(d) of this title; shall be conclusive evidence that such guarantee complies fully with the provisions of this chapter, and of the approval and legality of the principal amount, interest rate, and all other terms of the certificates and the guarantee; and shall be valid and incontestable in the hands of a holder of a guaranteed certificate except for fraud or material misrepresentation on the part of such holder.

(c) Enforcement by Attorney General of rights accruing to United States because of guarantee

The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States by reason of its having paid money or incurred expenses as a result of making such guarantees.

(Pub. L. 91-663, §5, Jan. 8, 1971, 84 Stat. 1976.)

EDITORIAL NOTES

CODIFICATION

In subsec. (a), "chapter 31 of title 31" and "that chapter" substituted for "the Second Liberty Bond Act, as amended" and "that Act, as amended," respectively, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§665. Utilization of services and facilities of Federal departments and agencies; reimbursement; consultation with Board; coordination of activities with Federal departments and agencies

(a) In carrying out the provisions of this chapter the Secretary may use available services and facilities of other departments, agencies, and instrumentalities of the Federal Government with their consent and on a reimbursable basis, and shall consult with the Board in carrying out the provisions of this chapter.

(b) Departments, agencies, and instrumentalities of the Federal Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the provisions of this chapter.

(Pub. L. 91–663, §6, Jan. 8, 1971, 84 Stat. 1977; Pub. L. 104–88, title III, §325(3), Dec. 29, 1995, 109 Stat. 951.)

EDITORIAL NOTES

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–88 substituted "Board" for "Interstate Commerce Commission".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

§666. Court supervision of expenditures; findings; report to Secretary

In addition to other duties prescribed by section 77 of the Bankruptcy Act, the court shall maintain supervision of the expenditure of funds obtained pursuant to section 662 of this title for the purpose of assuring that such funds are used solely for purposes set forth in subsection (b) of such section, shall make periodic findings regarding such expenditures, and shall report those findings to the Secretary.

(Pub. L. 91–663, §7, Jan. 8, 1971, 84 Stat. 1977.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in text, was classified to section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

§667. Audit by Comptroller General; report to Congress

The Comptroller General of the United States, or any of his duly authorized representatives, shall have access to such information, books, records, and documents as he determines necessary effectively to audit financial transactions and operations carried out by the Secretary in the administration of this chapter. The Comptroller General shall make such reports to the Congress on the results of any such audits as are appropriate.

(Pub. L. 91–663, §8, Jan. 8, 1971, 84 Stat. 1977.)

§668. Guarantee fees; amount; deposit

The Secretary shall prescribe a guarantee fee in connection with each loan guaranteed under this chapter which shall be collected from the railroad upon repayment of the loan guaranteed. Such fee shall be in an amount that the Secretary estimates to be necessary to cover the administrative costs of carrying out the provisions of this chapter with respect to such loan. Sums realized from such fees shall be deposited in the Treasury as miscellaneous receipts.

(Pub. L. 91–663, §9, Jan. 8, 1971, 84 Stat. 1978.)

§669. Repealed. Pub. L. 97–375, title I, §111(e), Dec. 21, 1982, 96 Stat. 1821

Section, Pub. L. 91–663, §10, Jan. 8, 1971, 84 Stat. 1978; Pub. L. 96–470, title I, §112(h), Oct. 19, 1980, 94 Stat. 2240, directed the Secretary to make a report to the President and Congress on financial condition of each railroad except Central Railroad Company of New Jersey and Penn Central Transportation Company, having a loan guaranteed under this chapter ninety days after the making of such guarantee and annually thereafter throughout existence of such loan.

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SUBCHAPTER I—GENERAL PROVISIONS

§701. Congressional declaration of policy

(a) Findings

The Congress finds and declares that—

(1) Essential rail service in the midwest and northeast region of the United States is provided by railroads which are today insolvent and attempting to undergo reorganization under the Bankruptcy Act.

(2) This essential rail service is threatened with cessation or significant curtailment because of the inability of the trustees of such railroads to formulate acceptable plans for reorganization. This rail service is operated over rail properties which were acquired for a public use, but which have been permitted to deteriorate and now require extensive rehabilitation and modernization.

(3) The public convenience and necessity require adequate and efficient rail service in this region and throughout the Nation to meet the needs of commerce, the national defense, the environment, and the service requirements of passengers, United States mail, shippers, States and their political subdivisions, and consumers.

(4) Continuation and improvement of essential rail service in this region is also necessary to preserve and maintain adequate national rail services and an efficient national rail transportation system.

(5) Rail service and rail transportation offer economic and environmental advantages with respect to land use, air pollution, noise levels, energy efficiency and conservation, resource allocation, safety, and cost per ton-mile of movement to such extent that the preservation and maintenance of adequate and efficient rail service is in the national interest.

(6) These needs cannot be met without substantial action by the Federal Government.

(b) Purposes

It is therefore declared to be the purpose of Congress in this chapter to provide for—

(1) the identification of a rail service system in the midwest and northeast region which is adequate to meet the needs and service requirements of this region and of the national rail transportation system;

(2) the reorganization of railroads in this region into an economically viable system capable of providing adequate and efficient rail service to the region;

(3) the establishment of the United States Railway Association, with enumerated powers and responsibilities;

(4) the establishment of the Consolidated Rail Corporation, with enumerated powers and

responsibilities;

(5) assistance to States and local and regional transportation authorities for continuation of local rail services threatened with cessation; and

(6) necessary Federal financial assistance at the lowest possible cost to the general taxpayer.

(Pub. L. 93–236, title I, §101, Jan. 2, 1974, 87 Stat. 986.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsec. (a)(1), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–565, §1, Nov. 1, 1978, 92 Stat. 2397, provided: "That this Act [amending sections 726, 747, and 825 of this title and section 975 of Title 43, Public Lands, and enacting provision set out as a note under section 975 of Title 43] may be cited as the 'United States Railway Association Amendments Act of 1978'."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–555, title II, §201, Oct. 19, 1976, 90 Stat. 2616, provided that: "This title [amending sections 702, 711, 716, 720, 721, 743, 744, 771, 774, 775, 779, 823, 824, 825, 826, 829, 831, and 854 of this title, section 960 of Title 20, Education, sections 1a, 5, 5c, 13, 15, 17, 22, 26c, and 1653 of former Title 49, Transportation, and enacting provisions set out as notes under section 80a–3 of Title 15, Commerce and Trade, and sections 1a and 1654 of former Title 49] may be cited as the 'Rail Amendments of 1976'."

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94–5, §1, Feb. 28, 1975, 89 Stat. 7, provided: "That this Act [enacting section 794 of this title and amending sections 712, 715, 716, 717, 721, 723, 725, and 743 of this title] may be cited as the 'Regional Rail Reorganization Act Amendments of 1975'."

SHORT TITLE

Pub. L. 93–236, §1, Jan. 2, 1974, 87 Stat. 985, provided in part that this Act [enacting this chapter and amending section 856 of former Title 31, Money and Finance, and section 1(16) of former Title 49, Transportation], may be cited as the "Regional Rail Reorganization Act of 1973".

SEPARABILITY

Pub. L. 93–236, title VI, §604, Jan. 2, 1974, 87 Stat. 1023, provided that: "If any provision of this Act [enacting this chapter and amending section 856 of former Title 31, Money and Finance, and section 1(16) of former Title 49, Transportation] or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby."

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

§702. Definitions

As used in this chapter, unless the context otherwise requires—

(1) "Association" means the United States Railway Association, established under section 711 of this title;

(2) "Commission" means the Interstate Commerce Commission;

(3) "Commuter authority" means any State, local, or regional authority, corporation, or other entity established for purposes of providing commuter service, and includes the Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, any successor agencies, and any entity created by one or more such agencies for the purpose of operating, or contracting for the operation of, commuter service;

(4) "Commuter service" means short-haul rail passenger service operated in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, usually characterized by reduced fare, multiple-ride, and commutation tickets, and by morning and evening peak period operations;

(5) "Corporation" means the Consolidated Rail Corporation required to be established under section 741 of this title or its successor by merger, consolidation or other form of succession carried out under applicable law for the purpose of changing the State of its incorporation;

(6) "effective date of the final system plan" means the date on which the final system plan or any revised final system plan is deemed approved by Congress, in accordance with section 718 of this title;

(7) "employee stock ownership plan" means a technique of corporate finance that uses a stock bonus trust or a company stock money purchase pension trust which qualifies under section 401(a) of title 26 in connection with the financing of corporate improvements, transfers in the ownership of corporate assets, and other capital requirements of a corporation and which is designed to build beneficial equity ownership of shares in the employer corporation into its employees substantially in proportion to their relative incomes, without requiring any cash outlay, any reduction in pay or other employee benefits, or the surrender of any other rights on the part of such employees;

(8) "final system plan" means the plan of reorganization for the restructure, rehabilitation, and modernization of railroads in reorganization prepared pursuant to section 716 of this title and approved pursuant to section 718 of this title;

(9) "Finance Committee" means the Finance Committee of the Board of Directors of the Association established under section 711(i) ¹ of this title;

(10) "includes" and variants thereof should be read as if the phrase "but is not limited to" were also set forth;

(11) "local or regional transportation authority" includes a political subdivision of a State. ²

(12) "Office" means the Rail Services Planning Office established under section 10361 ¹ of title 49;

(13) "profitable railroad" means a railroad which is not a railroad in reorganization. The term does not include the Corporation, the National Railroad Passenger Corporation, or a railroad leased, operated, or controlled by a railroad in reorganization in the region;

(14) "rail properties" means assets or rights owned, leased, or otherwise controlled by a railroad (or a person owned, leased, or otherwise controlled by a railroad) which are used or useful in rail transportation service; except that the term, when used in conjunction with the phrase "railroads leased, operated, or controlled by a railroad in reorganization", shall not include assets or rights owned, leased, or otherwise controlled by a Class I railroad which is not wholly owned, operated, or leased by a railroad in reorganization but is controlled by a railroad in reorganization;

(15) "railroad" means a rail carrier subject to part A of subtitle IV of title 49. The term includes the Corporation and the National Railroad Passenger Corporation;

(16) "railroad in reorganization" means a railroad which is subject to a bankruptcy proceeding and which has not been determined by a court to be reorganizable or not subject to reorganization pursuant to this chapter as prescribed in section 717(b) of this title. A "bankruptcy proceeding" includes a proceeding pursuant to section 77 of the Bankruptcy Act and an equity receivership or equivalent proceeding;

(17) "Region" means the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan, and Illinois; the District of Columbia; and those portions

of contiguous States in which are located rail properties owned or operated by railroads doing business primarily in the aforementioned jurisdictions (as determined by the Commission by order);

(17A) "sale date" means the date on which the initial public offering of the securities of the Corporation is closed under the Conrail Privatization Act [45 U.S.C. 1301 et seq.];

(18) "Secretary" means the Secretary of Transportation or the designated representative of the Secretary;

(19) "State" means any State or the District of Columbia;

(20) "subsidiary" means any corporation 100 percent of whose total combined voting shares are, directly or indirectly, owned or controlled by the Corporation; and

(21) "supplemental transaction" means any transaction set forth in a proposal under section 745 of this title under which the Corporation or a subsidiary thereof would (A) acquire rail properties not designated for transfer or conveyance to it under the final system plan, (B) convey rail properties to a profitable railroad, a subsidiary of the Corporation or, other than as designated in the final system plan, to the National Railroad Passenger Corporation or to a State or a local or regional transportation authority, or to any other responsible person for use in providing rail service, or (C) enter into contractual or other arrangements with any person for the joint use of rail properties or the coordination or separation of rail operations or services.

(Pub. L. 93–236, title I, §102, Jan. 2, 1974, 87 Stat. 986; Pub. L. 94–210, title VI, §§601(f), (g), 603(c), 607(t), 610(a), Feb. 5, 1976, 90 Stat. 86, 88, 98, 100; Pub. L. 94–248, §1, Mar. 25, 1976, 90 Stat. 286; Pub. L. 94–555, title II, §211(a), Oct. 19, 1976, 90 Stat. 2624; Pub. L. 96–448, title V, §508(b), title VI, §601(b), Oct. 14, 1980, 94 Stat. 1957, 1958; Pub. L. 97–35, title XI, §1135(b), Aug. 13, 1981, 95 Stat. 646; Pub. L. 99–509, title IV, §4033(b)(1), Oct. 21, 1986, 100 Stat. 1908; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–88, title III, §327(1), Dec. 29, 1995, 109 Stat. 951.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 711(i) of this title, referred to in par. (9), which related to the Finance Committee of the Board of Directors of the Association, was repealed by Pub. L. 97–35, title XI, §1147, Aug. 13, 1981, 95 Stat. 673.

Section 10361 of title 49, referred to in par. (12), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804. Previously, in par. (12) "section 10361 of title 49" was substituted for "section 205 of this Act", meaning section 205 of Pub. L. 93–236, on authority of Pub. L. 95–473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§10101 et seq.) of Title 49.

Section 77 of the Bankruptcy Act, referred to in par. (16), was classified to section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

The Conrail Privatization Act, referred to in par. (17A), is subtitle A (§§4001–4052) of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1892, which is classified principally to chapter 22 (§1301 et seq.) of this title. For complete classification of this Act to the Code see Short Title note set out under section 1301 of this title and Tables. The date on which the initial public offering of the securities of the corporation is closed under this Act was Apr. 2, 1987.

CODIFICATION

In par. (21), formerly (19), "under section 743(b) of this title," was struck out as the probable intent of Congress, in view of the amendment to par. (19) by section 601(b) of Pub. L. 96–448, which struck out the 6 year limitation within which the special court orders conveyances of rail properties to the Corporation, which conveyances were to be made under section 743(b) of this title. See 1980 Amendment note set out below.

AMENDMENTS

1995—Par. (15). Pub. L. 104–88 substituted "rail carrier subject to part A of subtitle IV of title 49" for

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94–210, see section 619 of Pub. L. 94–210, set out as a note under section 791 of this title.

¹ [*See References in Text note below.*](#)

² [*So in original. The period probably should be a semicolon.*](#)

SUBCHAPTER II—UNITED STATES RAILWAY ASSOCIATION

§711. Formation and structure

(a) Establishment

There is established, in accordance with the provisions of this section, an incorporated nonprofit association to be known as the United States Railway Association.

(b) Administration

The Association shall be directed by a Board of Directors. The individuals designated, pursuant to subsection (d)(2) of this section, as the Government members of such Board shall be deemed the incorporators of the Association and shall take whatever steps are necessary to establish the Association, including filing of articles of incorporation, and serving as an acting Board of Directors for a period of not more than 45 days after the date of incorporation of the Association.

(c) Status

The Association shall be a government corporation of the District of Columbia subject, to the extent not inconsistent with this subchapter, to the District of Columbia Nonprofit Corporation Act. Except as otherwise provided, employees of the Association shall not be deemed employees of the Federal Government. The Association shall have succession until dissolved by Act of Congress, shall maintain its principal office in the District of Columbia, and shall be deemed to be a resident of the District of Columbia with respect to venue in any legal proceeding.

(d) Board of Directors

(1) The Board of Directors of the Association shall consist of five individuals, as follows:

(A) The Chairman, who shall be the individual serving as Chairman on August 13, 1981, until the expiration of his term of office or his resignation, or his replacement, who shall be selected by the outgoing Chairman and the other members of the Board.

(B) The Secretary of Transportation.

(C) The Comptroller General of the United States.

(D) The Chairman of the Commission.

(E) The Chairman of the Board of Directors of the Corporation.

(2) The Chairman may not have any employment or other direct financial relationship with any

freight railroad. The Chairman shall receive \$300 per diem when engaged in the actual performance of his duties plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(e) Term of office

The term of office of the Chairman of the Board of Directors of the Association shall expire on December 31, 1987. The Chairman may be reappointed and the term of the Chairman shall be 3 years.

(f) Quorum

Three members of the Board of Directors, or their representatives, shall constitute a quorum for the transaction of any function of the Association.

(g) Assumption of Finance Committee functions

The Board of Directors shall, on August 13, 1981, assume the functions previously performed by the Finance Committee.

(h) Representation at meetings

The members of the Board of Directors may send representatives to meetings of such Board, and such representatives may exercise full powers of the members.

(i) Miscellaneous ¹

(1) The Association shall have a seal which shall be judicially recognized.

(2) The Administrator of General Services shall furnish the Association with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(3) The Secretary is authorized to transfer to the Association or the Corporation rights in intellectual property which are directly related to the conduct of the functions of the Association or the Corporation, to the extent that the Federal Government has such rights and to the extent that transfer is necessary to carry out the purposes of this chapter.

(4) Any reference in this chapter to the Chairman of the Commission is to the Chairman of the Commission or the person who is at the time performing the duties of the Chairman of the Commission in accordance with law.

(j) Use of names ¹

No person, except the Association, shall hereafter use the words "United States Railway Association" as a name for any business purpose. Violations of this provision may be enjoined by any court of general jurisdiction in an action commenced by the Association. In any such action, the Association may recover any actual damages flowing from such violation, and, in addition, shall be entitled to punitive damages (regardless of the existence or nonexistence of actual damage) in an amount not to exceed \$100 for each day during which such violation was committed. The district courts of the United States shall have jurisdiction over actions brought under this subsection, without regard to the amount in controversy or the citizenship of the parties.

(Pub. L. 93-236, title II, §201, Jan. 2, 1974, 87 Stat. 988; Pub. L. 94-210, title VI, §§603(a), (b), 607(a), 612(j)(2), Feb. 5, 1976, 90 Stat. 88, 96, 109; Pub. L. 94-555, title II, §211(b)-(e), Oct. 19, 1976, 90 Stat. 2624; Pub. L. 95-611, §2, Nov. 8, 1978, 92 Stat. 3089; Pub. L. 96-448, title V, §508(c), Oct. 14, 1980, 94 Stat. 1957; Pub. L. 97-35, title XI, §1147, Aug. 13, 1981, 95 Stat. 673; Pub. L. 98-181, title II, §2003(c)(1), Nov. 30, 1983, 97 Stat. 1297; Pub. L. 99-190, §101(e) [title III, §332], Dec. 19, 1985, 99 Stat. 1267, 1290.)

EDITORIAL NOTES

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (c), is Pub. L. 87-569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

representatives of either of them" after "Treasury in accordance with law".

Subsec. (k). Pub. L. 94–210, §§603(a), 612(j)(2), redesignated former subsec. (j) as (k), substituted "this provision" for "these provisions", and struck out "or the Corporation" after "Association" in two places and provisions relating to use of "Consolidated Rail Corporation" as a name for any business purpose.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as an Effective Date note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 1, 1980, see section 710(a) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–555 effective Oct. 1, 1976, see section 303 of Pub. L. 94–555, set out as a note under section 702 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94–210, see section 619 of Pub. L. 94–210, set out as a note under section 791 of this title.

[¹ See Codification note below.](#)

§712. Functions of Association

(a) General

The Association is authorized to—

- (1) monitor the financial performance of the Corporation;
- (2) review whether the goals and requirements of this chapter are met;
- (3) purchase or otherwise acquire or receive, and hold and dispose of securities (whether debt or equity) of the Corporation under sections 726 and 727 of this title and exercise all of the rights, privileges, and powers of a holder of any such securities;
- (4) purchase accounts receivable of the Corporation in accordance with section 727 of this title;
- (5) appoint and fix the compensation of such personnel as the Association considers necessary and appropriate; and
- (11) ¹ determine the value of the Alaska Railroad, as required by section 1204 of this title.

(b) Investment of funds

Uncommitted funds of the Association shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed thereby, or in obligations, participations, or other investments which are lawful investments for fiduciary, trust, or public funds.

(c) Exemption from taxation

The Association, including its franchise, capital reserves, surplus, security holdings, and income shall be exempt from all taxation now or hereafter imposed by the United States, any commonwealth, territory, dependency, or possession thereof, or by any State or political subdivision thereof, except that any real property of the Association shall be subject to taxation to the same extent according to its value as other real property is taxed.

(d) Reports

(1) ² The Association shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Association during the preceding fiscal year. Each such report shall include (A) the Association's statement of specific and detailed objectives for the activities and programs conducted and assisted under this chapter; (B) statements of the Association's conclusions as to the effectiveness of such activities and programs in meeting the stated objectives and the purposes of this chapter, measured through the end of the preceding fiscal year; (C) recommendations with respect to any legislation or administrative action which the Association deems necessary or desirable; (D) a statistical compilation of the obligations issued, certificates of value issued, securities purchased, and loans made under this chapter; (E) a summary of outstanding problems confronting the Association, in order of priority; (F) all other information required to be submitted to the Congress pursuant to any other provision of this chapter; and (G) the Association's projections and plans for its activities and programs during the next fiscal year.

(2) For the fiscal year beginning October 1, 1977, and ending September 30, 1978, the Association shall transmit to the Congress and the President, not later than 30 days after the end of each quarter of such fiscal year, a comprehensive and detailed report on all expenditures and use of funds during the preceding fiscal quarter, including an assessment of the status of projects for such preceding fiscal quarter and a projection of activities proposed for the next fiscal quarter.

(3) The Association shall transmit to the Congress, no later than 30 days after the end of each fiscal quarter, a report with respect to the proceedings before the special court to determine the valuation of rail properties conveyed to the Corporation under section 743 of this title. Each such report shall include—

(A) a detailed accounting of the Federal funds expended during such quarter in connection with such proceedings, and the purposes for which such funds were expended;

(B) an explanation of the status of such proceedings, including the prospects for settlement or conclusion; and

(C) an identification of which responsibilities in connection with such proceedings are being carried out directly by the Association, and which are being carried out by contract with private organizations.

(e) Budget

The receipts and disbursements of the Association (other than administrative expenses referred to in subsection (g) ³ of this section and receipts and disbursements under section 726 of this title and section 746 of this title) in the discharge of its functions shall not be included in the totals of the budget of the United States Government, and shall be exempt from any annual expenditure and net lending (budget outlays) limitations imposed on a budget of the United States Government. The Chairman of the Association shall transmit annually to the Congress a budget for program activities and for administrative expenses of the Association. The Chairman shall report annually to the Congress the amount of net lending of the Association, which would be included in the totals of the budgets of the United States Government, if the Association's activities were not excluded from those totals as a result of this section.

(f) Accountability

The Chairman of the Association shall transmit annually to the Office of Management and Budget a budget for administrative expenses of the Association. Whenever the Association submits any budget estimate or request to the Office of Management and Budget, it shall concurrently transmit a

copy of the estimate or request to the Congress. Within budgetary constraints of the Congress, the maximum feasible and prudent budgetary flexibility shall be provided to the Association to permit effective operations.

(g) Transfer of litigation

No later than March 1, 1980, the Association and the Attorney General of the United States shall develop and submit to the Congress a feasibility study for the transfer, to the appropriate department or agency of the Federal Government, of all responsibility for representing the United States in the proceedings before the special court to determine the valuation of rail properties conveyed to the Corporation under section 743 of this title.

(h) Transfer of other functions

No later than March 1, 1980, the Association and the Secretary of Transportation shall develop and submit to the Congress a feasibility study for the transfer of all functions of the Association, other than those referred to in subsection (h) ⁴ of this section, to the appropriate department or agency of the Federal Government, including the abolition of those functions which will no longer be necessary.

(i) Monitoring of contractors

The Board of Directors of the Association shall adopt procedures to insure (1) that contractors, including law firms, provide reports containing written verification of tasks assigned, work performed, time worked, and costs incurred, including periodic status reports on work performed, (2) that such reports are audited by the Association, (3) that no funds are paid to contractors without written reports complying with the requirements of this subsection, and (4) that the Association applies such procedures uniformly to all contractors.

(Pub. L. 93–236, title II, §202, Jan. 2, 1974, 87 Stat. 990; Pub. L. 94–5, §2(a), Feb. 28, 1975, 89 Stat. 7; Pub. L. 94–210, title VI, §§601(c), 607(b), (c), Feb. 5, 1976, 90 Stat. 84, 96; Pub. L. 95–199, §2, Nov. 23, 1977, 91 Stat. 1423; Pub. L. 96–73, title II, §§202, 203, Sept. 29, 1979, 93 Stat. 555; Pub. L. 97–35, title XI, §1148(a), (b), Aug. 13, 1981, 95 Stat. 674; Pub. L. 97–468, title VI, §605(e), Jan. 14, 1983, 96 Stat. 2564.)

EDITORIAL NOTES

CODIFICATION

Subsec. (f), formerly (g), of this section as originally enacted consisted of pars. (1) and (2). Par. (1), which amended section 856 of former Title 31, Money and Finance, was repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068, the first section of which enacted Title 31.

AMENDMENTS

1983—Subsec. (a)(11). Pub. L. 97–468 added par. (11).

1981—Subsec. (a). Pub. L. 97–35, §1148(a)(1), substituted provisions respecting financial performance monitoring, goal review, etc., for provisions respecting plan preparation and implementation, issuance of obligations, etc.

Subsecs. (b) to (j). Pub. L. 97–35, §1148(a), struck out subsec. (b) which related to additional duties of the Association, and redesignated subsecs. (c) to (j) as (b) to (i), respectively.

1979—Subsec. (e)(3). Pub. L. 96–73, §202, added par. (3).

Subsecs. (h) to (j). Pub. L. 96–73, §203, added subsecs. (h) to (j).

1977—Subsec. (e). Pub. L. 95–199 substituted "Reports" for "Annual report" in heading, redesignated cls. (1) through (7) as cls. (A) through (G) in first par., and added par. (2).

1976—Subsec. (a)(2). Pub. L. 94–210, §601(c), inserted provisions relating to securities under section 726 of this title and certificates of value under section 746 of this title.

Subsec. (e). Pub. L. 94–210, §607(b), in cl. (4) inserted ", certificates of value issued, securities purchased," after "obligations issued".

Subsec. (f). Pub. L. 94–210, §607(c), inserted provisions relating to receipts and disbursements under sections 726 and 746 of this title.

1975—Subsec. (b)(2). Pub. L. 94–5, §2(a)(1), inserted "and express" after "rail" wherever appearing.

Subsec. (b)(7). Pub. L. 94–5, §2(a)(2), substituted "; and" for a period at end of par. (7).

Subsec. (b)(8). Pub. L. 94–5, §2(a)(3), added par. (8).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as an Effective Date note under section 1101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–73 effective Oct. 1, 1979, see section 501(a) of Pub. L. 96–73.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsecs. (d)(1), (3), (e), and (f) of this section are listed as the 3rd through 6th items on page 195), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, §1402(1)] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND TRANSFER OF FUNCTIONS

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94–210, see section 619 of Pub. L. 94–210, set out as a note under section 791 of this title.

¹ *So in original. Probably should be "(6)".*

² *Par. "(1)" designation supplied editorially.*

³ *So in original. Subsec. (g) redesignated (f) by Pub. L. 97–35.*

⁴ *So in original. Subsec. (h) redesignated (g) by Pub. L. 97–35.*

§713. Access to information

The Corporation shall make available to the Association such information as the Association determines necessary for the Association to carry out its functions under this chapter. The Association shall request from other parties which are affected by this chapter information which will enable the Association to fulfill its functions under this chapter.

(Pub. L. 93–236, title II, §203, Jan. 2, 1974, 87 Stat. 992; Pub. L. 94–210, title VI, §607(d), Feb. 5, 1976, 90 Stat. 96; Pub. L. 97–35, title XI, §1149, Aug. 13, 1981, 95 Stat. 675.)

EDITORIAL NOTES

AMENDMENTS

1981—Pub. L. 97–35 substituted provisions relating to the Corporation making available to the Association all necessary information for provisions set out as subsecs. (a) to (d) respecting planning and other information availability, and enforcement procedures.

1976—Subsec. (a). Pub. L. 94–210 struck out provisions prohibiting requests for information under this subsection after effective date of the final system plan.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as an Effective Date note under section 1101 of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94–210, see section 619 of Pub. L. 94–210, set out as a note under section 791 of this title.

§714. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 93–236, title II, §204, Jan. 2, 1974, 87 Stat. 993, directed the Secretary, within 30 days after Jan. 2, 1974, to prepare a report, with recommendations, with respect to the geographic zones within the region in which said service should be provided, to submit the report to the Office, the Association, the Governor, and the public utilities commission of each State studied in the report and to local governments, consumer organizations, environmental groups, the public, and to Congress, and to publish the report in the Federal Register.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DELAWARE-MARYLAND-VIRGINIA PENINSULA RAIL STUDY; REPORT TO CONGRESS

Pub. L. 94–555, title III, §302, Oct. 19, 1976, 90 Stat. 2631, directed Interstate Commerce Commission to submit a report to Congress, within six months of Oct. 19, 1976, regarding problems of and need for rail transportation services on Delaware-Maryland-Virginia peninsula.

§715. Repealed. Pub. L. 95–473, §4(b), Oct. 17, 1978, 92 Stat. 1466

Section, Pub. L. 93–236, title II, §205, Jan. 2, 1974, 87 Stat. 993, Pub. L. 94–5, §3, Feb. 28, 1975, 89 Stat. 7; Pub. L. 94–210, title III, §309, Feb. 5, 1976, 90 Stat. 57, established Rail Services Planning Office.

§716. Final system plan

(a) Goals

The final system plan shall be formulated in such a way as to effectuate the following goals:

(1) the creation, through a process of reorganization, of a financially self-sustaining rail and express service system in the region;

(2) the establishment and maintenance of a rail service system adequate to meet the rail transportation needs and service requirements of the region;

(3) the establishment of improved high-speed rail passenger service, consonant with the recommendations of the Secretary in his report of September 1971, entitled "Recommendations for Northeast Corridor Transportation";

(4) the preservation, to the extent consistent with other goals, of existing patterns of service by railroads (including short-line and terminal railroads), and of existing railroad trackage in areas in which fossil fuel natural resources are located, and the utilization of those modes of transportation in the region which require the smallest amount of scarce energy resources and which can most efficiently transport energy resources;

(5) the retention and promotion of competition in the provision of rail and other transportation services in the region;

(6) the attainment and maintenance of any environmental standards, particularly the applicable national ambient air quality standards and plans established under the Clean Air Act Amendments of 1970, taking into consideration the environmental impact of alternative choices of action;

(7) the movement of passengers and freight in rail transportation in the region in the most efficient manner consistent with safe operation, including the requirements of commuter and intercity rail passenger service; the extent to which there should be coordination with the National Railroad Passenger Corporation and similar entities; and the identification of all short-to-medium distance corridors in densely populated areas in which the major upgrading of rail lines for high-speed passenger operation would return substantial public benefits; and

(8) the minimization of job losses and associated increases in unemployment and community benefit costs in areas in the region presently served by rail service.

(b) Factors

The final system plan shall be based upon due consideration of all factors relevant to the realization of the goals set forth in subsection (a) of this section. Such factors include the need for and the cost of rehabilitation and modernization of track, equipment, and other facilities; methods of achieving economies in the cost of rail operations in the region; means of achieving rationalization of rail services and the rail service system in the region; marketing studies; the impact on railroad employees; consumer needs; traffic analyses; financial studies; and any other factors identified by the Association under section 712(b) ¹ of this title or in the report of the Secretary required under section 714(a) of this title.

(c) Designations

The final system plan shall designate—

(1) which rail properties of railroads in reorganization in the region or of railroads leased, operated, or controlled by any railroad in reorganization in the region—

(A) shall be transferred to the Corporation: *Provided*, That the Corporation shall, within 95 days after the effective date of the final system plan, give notice to the Association of which such rail properties, if any, are to be transferred to a subsidiary of the Corporation in the event that the Board of Directors of the Association finds that such transfer would be consistent with the final system plan;

(B) shall be offered for sale to a profitable railroad operating in the region and, if such offer is accepted, operated by such railroad; the plan shall designate what additions shall be made to the designation under subparagraph (A) of this paragraph and what alternative designations shall be made under this paragraph in the event such profitable railroad fails to accept such offer;

(C) shall be purchased, leased, or otherwise acquired from the Corporation by the National Railroad Passenger Corporation in accordance with the exercise of its option under section 791(d) of this title for improvement to achieve the goal set forth in subsection (a)(3) of this section;

(D) may be purchased or leased from the Corporation by (i) a State or a local or regional transportation authority to meet the needs of commuter and intercity rail passenger service, or (ii) the National Railroad Passenger Corporation to meet the needs of improved rail passenger service over intercity routes, other than properties designated pursuant to subparagraph (C) of this paragraph; and

(E) if not otherwise required to be operated by the Corporation, a government entity, or a responsible person, are suitable for use for other public purposes, including highways, other forms of transportation, conservation, energy transmission, education or health care facilities, or

recreation. In carrying out this subparagraph, the Association shall solicit the views and recommendations of the Secretary, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and other agencies of the Federal Government and of the States and political subdivisions thereof within the region, and the general public; and

(2) which rail properties of profitable railroads operating in the region may be offered for sale to the Corporation or to other profitable railroads operating in the region subject to paragraphs (3) and (4) of subsection (d) of this section. Any rail properties designated to be offered for sale to the Corporation may be sold instead to a subsidiary of the Corporation.

(d) Transfers

All transfers or conveyances pursuant to the final system plan shall be made in accordance with, and subject to, the following principles:

(1) All rail properties to be transferred to the Corporation or any subsidiary thereof by a profitable railroad, by trustees of a railroad in reorganization, or by any railroad leased, operated, or controlled by a railroad in reorganization in the region, shall be transferred in exchange for stock and other securities of the Corporation or any subsidiary thereof (including obligations of the Association) and the other benefits accruing to such railroad by reason of such transfer.

(2) All rail properties to be conveyed to a profitable railroad operating in the region by trustees of a railroad in reorganization, or by any railroad leased, operated, or controlled by a railroad in reorganization in the region, shall be conveyed in exchange for compensation from the profitable railroad.

(3) Notwithstanding any other provision of this chapter, no acquisition under this chapter shall be made by any profitable railroad operating in the region without a determination with respect to each such transaction and all such transactions cumulatively (A) by the Association, upon adoption and release of the preliminary system plan, that such acquisition or acquisitions will not materially impair the profitability of any other profitable railroad operating in the region or of the Corporation, and (B) by the Commission, which shall be made within 90 days after adoption and release by the Association of the preliminary system plan, that such acquisition or acquisitions will be in full accord and comply with the provisions and standards of subchapter III ¹ of chapter 113 of title 49. All determinations made by the Association in the correction to the preliminary system plan published on April 11, 1975 (40 Fed. Reg. 16377), shall be treated for all purposes as if they had been made upon adoption and release by the Association of the preliminary system plan. All determinations made by the Commission with respect to such correction shall be treated for all purposes as if they had been made within 90 days after adoption and release by the Association of the preliminary system plan. All determinations made by the Commission with respect to acquisitions by profitable railroads referred to in any supplement to the preliminary system plan published under section 717(b)(2) of this title shall be deemed to be timely if made prior to the adoption of the final system plan under section 717(c) of this title. The determination by the Association shall not be reviewable in any court. The determination by the Commission shall not be reviewable in any court.

(4) Where the final system plan designates specified rail properties of a railroad in reorganization in the region, or of a railroad leased, operated, or controlled by a railroad in reorganization in the region, to be offered for sale to and operated by a profitable railroad operating in the region, such designation shall terminate 7 days after February 5, 1976, unless, prior to such date, such profitable railroad has notified the Association in writing of its acceptance of such offer. Any such offer may be modified until the date of acceptance thereof, unless such modification results in an offer for the sale of rail properties at less than the net liquidation value thereof. Where the final system plan designates specified rail properties of a profitable railroad operating in the region as authorized to be offered for sale or lease to the Corporation or to other profitable railroads operating in the region, such designation and authorization shall terminate 95 days after the effective date of the final system plan unless, prior to such date, a binding agreement with respect to such properties has been entered into and concluded.

(5) All properties—

(A) transferred by the Corporation pursuant to subsection (c)(1)(C) of this section and section 791(d) of this title;

(B) transferred by the Corporation to any State (or local or regional transportation authority), pursuant to subsection (c)(1)(D) of this section, or

(C) transferred by the Corporation to any State, local or regional transportation authority, or the National Railroad Passenger Corporation, within 3 years after the date of conveyance, pursuant to section 743(b)(1) of this title, to meet the needs of commuter or intercity rail passenger service,

shall be transferred at a value related to the value received from the Corporation pursuant to the final system plan for the transfer to such Corporation of such properties. The value of any such properties, which are transferred pursuant to subparagraph (B) or (C) of this paragraph, shall be adjusted to reflect the value attributable to any applicable maintenance and improvement provided by the Corporation (to the extent the Corporation has not been released from the obligation to pay for such improvements) and the cost to the Corporation of transferring such properties. The Corporation, its Board of Directors, and its individual directors shall not be liable to any party, for money damages or in any other manner, solely by reason of the fact that the Corporation transferred property pursuant to section 743 of this title to meet the needs of commuter or intercity rail passenger service or for purposes of providing rail marine freight floating service, except as otherwise provided with respect to the Corporation pursuant to section 743(c)(2) of this title.

(6) Notwithstanding any statement to the contrary in the final system plan, a State (or a local or regional transportation authority) shall not be required to deliver to the Corporation a firm commitment to acquire rail properties designated to such State or authority prior to 7 days after February 5, 1976.

(7) Notwithstanding any contrary provision in the options conveyed to the Corporation by railroads in reorganization, or railroads leased, operated, or controlled by a railroad in reorganization, with respect to the acquisition by the Corporation pursuant to the final system plan, on behalf of a State (or a local or regional transportation authority) of rail properties designated under subsection (c)(1)(D) of this section, such options shall not be deemed to have expired prior to 7 days after September 30, 1976. The exercise by the Corporation of any such option shall be effective if it is made, prior to the expiration of such 7-day period, in the manner prescribed in such options.

(e) Corporation features

The final system plan shall set forth—

(1) pro forma earnings for the Corporation, as reasonably projected and considering the additions or changes in the designation of rail properties to be operated by the Corporation which may be made under subsection (d)(4) of this section;

(2) the capital structure of the Corporation, based on the pro forma earnings of the Corporation as set forth, including such debt capitalization as shall be reasonably deemed to conform to the requirements of the public interest with respect to railroad debt securities, including the adequacy of coverage of fixed charges; and

(3) the manner in which employee stock ownership plans may, to the extent practicable, be utilized for meeting the capitalization requirements of the Corporation, taking into account (A) the relative cost savings compared to conventional methods of corporate finance; (B) the labor cost savings; (C) the potential for minimizing strikes and producing more harmonious relations between labor organizations and railway management; (D) the projected employee dividend incomes; (E) the impact on quality of service and prices to railway users; and (F) the promotion of the objectives of this chapter of creating a financially self-sustaining railway system in the region which also meets the service needs of the region and the Nation.

(f) Value

The final system plan shall designate the value of all rail properties to be transferred under the

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94–210, see section 619 of Pub. L. 94–210, set out as a note under section 791 of this title.

¹ See References in Text note below.

§717. Adoption of final system plan

(a) Preliminary system plan

(1) Within 420 days after January 2, 1974, the Association shall adopt and release a preliminary system plan prepared by it on the basis of reports and other information submitted to it by the Secretary, the Office, and interested persons in accordance with this chapter and on the basis of its own investigations, consultations, research, evaluation, and analysis pursuant to this chapter. Copies of the preliminary system plan shall be transmitted by the Association to the Secretary, the Office, the Governor and public utility commission of each State in the region, the Congress, each court having jurisdiction over a railroad in reorganization in the region, the special court, and interested persons, and a copy shall be published in the Federal Register. The Association shall invite and afford interested persons an opportunity to submit comments on the preliminary system plan to the Association within 60 days after the date of its release.

(2) The Office is authorized and directed to hold public hearings on the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the preliminary system plan, not later than 60 days after the date of release of such plan. The Office is authorized to hold public hearings on any supplement to the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of such supplement, not later than 30 days after the release of such supplement.

(b) Approval

(1) Within 120 days after January 2, 1974, each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act and that the public interest would be better served by continuing the present reorganization proceedings than by a reorganization under this chapter. Within 60 days after the submission of the report by the Office, under section 715(d)(1) of this title, on the Secretary's report on rail services in the region, each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether or not such railroad shall be reorganized by means of transferring some of its rail properties to the Corporation pursuant to the provisions of this chapter. Because of the strong public interest in the continuance of rail transportation in the region pursuant to a system plan devised under the provisions of this chapter, each such court shall order that the reorganization be proceeded with pursuant to this chapter unless it (1) has found that the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act and that the public interest would be better served by such a reorganization than by a reorganization under this chapter, or (2) finds that this chapter does not provide a process which would be fair and equitable to the estate of the railroad in reorganization in which case it shall dismiss the reorganization proceeding. If a court does not enter an order or make a finding as required by this subsection, the reorganization shall be proceeded with pursuant to this chapter. An appeal from an order made under this section may be made only to the special court. Appeal to the special court shall be taken within 10 days following entry of an order pursuant to this subsection, and the special court shall complete its review and render its

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND TRANSFER OF FUNCTIONS

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

§718. Review by Congress

(a) General

The Board of Directors of the Association shall deliver the final system plan adopted by the Association to both Houses of Congress and to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. The final system plan shall be deemed approved at the end of the first period of 60 calendar days of continuous session of Congress after such date of transmittal unless either the House of Representatives or the Senate passes a resolution during such period stating that it does not favor the final system plan.

(b) Revised plan

If either the House or the Senate passes a resolution of disapproval under subsection (a) of this section, the Association, with the cooperation and assistance of the Secretary and the Office, shall prepare, determine, and adopt a revised final system plan. Each such revised plan shall be submitted to Congress for review pursuant to subsection (a) of this section.

(c) Computation

For purposes of this section—

- (1) continuity of session of Congress is broken only by an adjournment sine die; and
- (2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(d) Additions

(1) The supplemental report, dated September 18, 1975, to the final system plan, and the provisions of the Association's official errata supplement to the final system plan, dated December 1, 1975, including all designations made therein, shall be treated for all purposes as if they had been part of and included in the final system plan adopted by the Association and reviewed by the Congress. The final system plan shall, for all purposes, be deemed to be approved as modified and amended by such supplemental report and such supplement.

(2) The Association may, upon petition of any State, modify the final system plan to make further designations with respect to rail properties of railroads in reorganization in the region designated for transfer to the Corporation under such plan, if such designations (A) are likely to result in improved rail service on such rail properties and connecting rail properties, and (B) would not materially impair the profitability of the Corporation. Such designations, including designations of such rail

properties to a State, a profitable railroad, or a responsible person, may be made at any time prior to delivery of the final system plan to the special court under section 719(c) of this title. Such further designations shall be treated for all purposes as if they had been included in the final system plan adopted by the Association and reviewed by the Congress, and the final system plan shall for all purposes be deemed to be approved as modified by such designations. Any action of the Association with respect to any such petition shall not be subject to review by any court.

(3)(A) Within 20 days after February 5, 1976, the Association may, by notice to the Congress and by publication in the Federal Register, modify, supplement, or add to the designations of rail properties in the final system plan if the Association finds such actions are necessary to—

- (i) achieve the efficient implementation of the final system plan, or
- (ii) provide for the offer to profitable railroads of rail properties designated in the final system plan to the Corporation, if such properties are not essential in the operation of other rail properties of the Corporation but are or would be integrally related to the operation of rail properties of (or which are offered pursuant to the final system plan to) such profitable railroad, or
- (iii) provide for the designation of additional rail properties to the Corporation or to a subsidiary thereof to enable the Corporation to serve efficiently a line of railroad designated to the Corporation in the final system plan if such line does not connect with any other line of railroad so designated to the Corporation or if such line would be served more efficiently as a consequence of such designation.

Any designation to a profitable railroad pursuant to this paragraph shall comply with the second sentence of section 716(d)(4) of this title, and shall only be made upon a finding by the Association that such designation is integrally related to an offer of rail properties to a profitable railroad in the final system plan, that the goals of the final system plan require that the rail properties be operated as a part of the rail properties included in such offer, and that the implementation of such designation will not materially and adversely affect the impact of such offer on the profitability of the Corporation or any profitable railroad operating in the region. Any designation to a profitable railroad pursuant to this subsection, which amends any prior offer, shall terminate 30 days after February 5, 1976, unless, prior to such date, such profitable railroad has notified the Association in writing of its acceptance of such amendment to the prior offer.

(B) If a line of railroad or any segment thereof is designated for rail service in the final system plan, no designation may be made by the Association pursuant to this paragraph which would result in such line or segment not being so designated. Any designations made pursuant to this paragraph shall be treated for all purposes as if they had been included in the final system plan adopted by the Association and reviewed by the Congress. The final system plan shall for all purposes be deemed to be approved as amended by such designations.

(C) Any designations made pursuant to this paragraph shall not be subject to review by any court.

(D) Any labor agreements entered into under section 778 ¹ of this title shall be subject to further negotiations for any modifications which may be necessary to implement designations made pursuant to this paragraph.

(Pub. L. 93–236, title II, §208, Jan. 2, 1974, 87 Stat. 999; Pub. L. 94–210, title VI, §601(e), Feb. 5, 1976, 90 Stat. 84; S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 778 of this title, referred to in subsec. (d)(3)(D), was repealed by Pub. L. 97–35, title XI, §1144(a)(1), Aug. 13, 1981, 95 Stat. 669.

AMENDMENTS

1976—Subsec. (d). Pub. L. 94–210 added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives, in case of provisions of law relating to railroads, railway labor, or railroad retirement and unemployment, by section 1(c)(1) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Committee on Commerce of the Senate abolished and replaced by Committee on Commerce, Science, and Transportation of the Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of the Senate, as amended by Senate Resolution No. 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND TRANSFER OF FUNCTIONS

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

¹ See References in Text note below.

§719. Judicial review

(a) General

Notwithstanding any other provision of law, the final system plan which is adopted by the Association and which becomes effective after review by the Congress is not subject to review by any court except in accordance with this section. After the final system plan becomes effective under section 718 of this title, it may be reviewed with respect to matters concerning the value of the rail properties to be conveyed under the plan and the value of the consideration to be received for such properties.

(b) Special court

(1) Within 30 days after January 2, 1974, the Association shall make application to the judicial panel on multi-district litigation authorized by section 1407 of title 28 for the consolidation in a single, three-judge district court of the United States of all judicial proceedings with respect to the final system plan. Within 30 days after such application is received, the panel shall make the consolidation in a district court (cited herein as the "special court") which the panel determines to be convenient to the parties and the one most likely to be able to conduct any proceedings under this section with the least delay and the greatest possible fairness and ability. Such proceedings shall be conducted by the special court which shall be composed of three Federal judges who shall be selected by the panel, except that none of the judges selected may be a judge assigned to a proceeding involving any railroad in reorganization in the region under section 77 of the Bankruptcy Act. The special court is authorized to exercise the powers of a district judge in any judicial district with respect to such proceedings and such powers shall include those of a reorganization court. The special court shall have the power to order the conveyance of rail properties of railroads leased, operated, or controlled by a railroad in reorganization in the region. The special court may issue rules for the conduct of any proceedings under this section and under section 745 of this title, including rules with respect to the time within which motions may be filed, and with respect to appropriate

representation of interests not otherwise represented (including the Secretary with respect to a petition by the Association in the case of a proposal developed by the Secretary, under such section 745 of this title). No determination by the panel under this subsection may be reviewed in any court.

(2) The special court referred to in paragraph (1) of this subsection is abolished effective 90 days after October 19, 1996. On such effective date, all jurisdiction and other functions of the special court shall be assumed by the United States District Court for the District of Columbia. With respect to any proceedings that arise or continue after the date on which the special court is abolished, the references in the following provisions to the special court established under this subsection shall be deemed to refer to the United States District Court for the District of Columbia:

(A) Subsections (c), (e)(1), (e)(2), (f) and (g) of this section.

(B) Sections 712(d)(3), (g), 717(a)(1), (b)(1), (b)(2), 718(d)(2), 741(e)(2), (g), (k)(3), (k)(15), 743(a)(1), (a)(2), (b)(1), (b)(6)(A), (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), 744(a)(1)(B), (i)(3), 745(c), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(8), (e), (f)(1), (f)(2)(B), (f)(2)(D), (f)(2)(E), (f)(3), 746(a), (b), (c)(4), and 791(b)(3), (c) of this title.

(C) Sections 1105(a) and 1115 of this title.

(D) Sections 1323(2)(A)(iii), (2)(B), (2)(C), (3)(C), (3)(E), (4)(A) and 1324(b) of this title.

(E) Section 24907(b) of title 49.

(F) Any other Federal law (other than this subsection and section 605 of the Federal Courts Improvement Act of 1996), Executive order, rule, regulation, delegation of authority, or document of or relating to the special court as previously established under paragraph (1) of this subsection.

(c) Delivery of plan to special court

Within 90 days after its effective date, the Association shall deliver a certified copy of the final system plan to the special court and shall certify to the special court—

(1) which rail properties of the respective railroads in reorganization in the region and of any person leased, operated, or controlled by such railroads in reorganization are to be transferred to the Corporation, or any subsidiary thereof, in accordance with the final system plan;

(2) which rail properties of the respective railroads in reorganization in the region or person leased,¹ operated, or controlled by such railroads in reorganization are to be conveyed to profitable railroads, in accordance with the final system plan;

(3) the amount, terms, and value of the securities of the Corporation or any subsidiary thereof (including any certificates of value of the Association) to be exchanged for those rail properties to be transferred to the Corporation or any subsidiary thereof pursuant to the final system plan, and as indicated in paragraph (1) of this subsection; and

(4) that the transfer of rail properties in exchange for securities of the Corporation or any subsidiary thereof (including any certificates of value of the Association) and other benefits is fair and equitable and in the public interest.

Notwithstanding any other provisions of this subsection and subsection (d) of this section, the time for the delivery of a certified copy of the final system plan shall be March 12, 1976, and may be extended to a date not more than 30 days thereafter, prescribed in a notice filed by the Association not later than February 17, 1976, with the special court, the Congress, and each court referred to in such subsection (d). Such notice shall contain the certification of the Association that an orderly conveyance of rail properties cannot reasonably be effected before the date for conveyance determined with respect to such notice. The time prescribed in section 743(a) of this title shall be determined with respect to the date prescribed in such notice.

(d) Bankruptcy courts

Within 90 days after its effective date, the Association shall deliver a certified copy of the final system plan to each district court of the United States or any other court having jurisdiction over a railroad in reorganization in the region and shall certify to each such court—

(1) which rail properties of that railroad in reorganization are to be transferred to the Corporation or any subsidiary thereof under the final system plan; and

(2) which rail properties of that railroad in reorganization, if any, are to be conveyed to

profitable railroads operating in the region, under the final system plan.

(e) Original and exclusive jurisdiction

(1) Notwithstanding any other provision of law, any civil action—

(A) for injunctive or other relief against the Association from the enforcement, operation, or execution of this chapter or any provision thereof, or from any action taken by the Association pursuant to authority conferred or purportedly conferred under this chapter;

(B) challenging the constitutionality of this chapter or any provision thereof;

(C) challenging the legality of any action of the Association, or any failure of the Association to take any action, pursuant to authority conferred or purportedly conferred under this chapter;

(D) to obtain, inspect, copy, or review any document in the possession or control of the Association that would be discoverable in litigation pursuant to section 743(c) of this title;

(E) brought after a conveyance, pursuant to section 743(b) of this title, to set aside or annul such conveyance or to secure in any way the reconveyance of any rail properties so conveyed; or

(F) with respect to continuing reorganization and supplemental transactions, in accordance with section 745 of this title;

shall be within the original and exclusive jurisdiction of the special court. The special court shall not hear or determine any such action prior to the date of conveyance, pursuant to section 743(b)(1) of this title, except as the Constitution may require. Relief shall not be granted in any action referred to in subparagraph (A), (C), or (E) unless the person seeking such relief establishes that the Association acted in reckless or deliberate disregard of applicable law.

(2) The original and exclusive jurisdiction of the special court shall include any action, whether filed by any interested person or initiated by the special court itself, to interpret, alter, amend, modify, or implement any of the orders entered by such court pursuant to section 743(b) of this title in order to effect the purposes of this chapter or the goals of the final system plan. During the pendency of any proceeding described in this paragraph, the special court may enter such orders as it determines to be appropriate, including orders enjoining, restraining, conditioning, or limiting any conveyance, transfer, or use of any asset or right which is subject to such an order or which is at issue in such a proceeding, or which involves the enforcement of any liens or encumbrances upon such assets or rights. Any orders pursuant to this paragraph which interpret, alter, amend, modify, or implement orders entered by the special court shall be final and shall not be restrained or enjoined by any court.

(3) An order or judgment of the United States District Court for the District of Columbia in any action referred to in this section shall be reviewable in accordance with sections 1291, 1292, and 1294 of title 28.

(f) Disposition of cash deposits

Whenever the compensation which is deposited with the special court under section 743(a) of this title is in the form of cash, such cash shall be invested and reinvested upon such terms and conditions as the special court shall determine, pending the making of the findings referred to in paragraphs (1), (2), and (3) of section 743(c) of this title. Notwithstanding section 743(c)(4) of this title, the special court may order (1) the income from such investments, (2) the dividends or interest, if any, received on any securities or obligations deposited with the special court under such section 743(a) of this title, and (3) the income, if any, received with respect to any other form of compensation so deposited, to be distributed to the trustee of each railroad in reorganization and to any person leased, operated or controlled by such a railroad which conveyed the right, title, and interest in the rail properties with respect to which such cash, securities, obligations, or other compensation have been so deposited with the special court. Notwithstanding section 743(c)(4) of this title, the special court may, within 90 days after the date of conveyance of rail properties pursuant to section 743(b) of this title, order up to 25 percent of any cash (including investments made with cash) and other compensation deposited with the special court to be distributed to such trustee or person. On petition

shall be redeemable at the option of the Association prior to maturity in the manner stipulated in each such obligation, and may be purchased by the Association in the open market at a price which is reasonable.

(b) Maximum obligational authority

The aggregate principal amount (exclusive of interest or additions to principal on account of accrual of interest) of obligations issued by the Association under this section which may be outstanding at any one time shall not exceed \$395,000,000. No obligations or proceeds thereof shall be issued or made available after February 5, 1976, except—

(1) to meet existing or potential commitments for loans under section 721 of this title made or applied for prior to January 1, 1976; and

(2) for the purpose of providing loans pursuant to subsections (g) and (h) of section 721 of this title.

(c) Guarantees

The Secretary shall guarantee the payment of principal and interest on all obligations issued by the Association in accordance with this chapter and which the Association requests be guaranteed. All guarantees entered into by the Secretary under this section shall constitute general obligations of the United States for the payment of which its full faith and credit are pledged.

(d) Validity

No obligation issued by the Association under this section shall be terminated, canceled, or otherwise revoked, except in accordance with lawful terms and conditions prescribed by the Association. Such an obligation shall be conclusive evidence that it is in compliance with this section, has been approved, and is legal as to principal, interest, and other terms. An obligation of the Association shall be valid and incontestable in the hands of a holder, except as to fraud, duress, mutual mistake of fact, or material misrepresentation by or involving such holder.

(e) The Secretary of the Treasury

If at any time the moneys available to the Secretary are insufficient to enable him to discharge his responsibilities under subsection (c) of this section or under subsection (a) of section 746 of this title, he shall issue notes or other obligations to the Secretary of the Treasury in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such obligations shall bear interest at a rate to be determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such obligations. The Secretary of the Treasury is authorized and directed to purchase any such obligations and for such purposes is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31. The purposes for which securities may be issued under such chapter are extended to include any purchase of notes or other obligations issued under this subsection. At any time, the Secretary of the Treasury may sell any such obligations, and all sales, purchases, and redemptions of such obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States.

(f) Authorization for appropriations

There are hereby authorized to be appropriated to the Secretary such amounts as are necessary to discharge the obligations of the United States arising under this section.

(g) Lawful investments

All obligations issued by the Association shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority and control of the United States or any officer or officers thereof. All such obligations issued pursuant to this section shall be exempt securities within the meaning of laws administered by the Securities and Exchange Commission.

(Pub. L. 93–236, title II, §210, Jan. 2, 1974, 87 Stat. 1000; Pub. L. 94–210, title VI, §§604, 607(k),

Feb. 5, 1976, 90 Stat. 88, 97; Pub. L. 94-555, title II, §203(e), Oct. 19, 1976, 90 Stat. 2620; Pub. L. 96-448, title VII, §703(f)(3), Oct. 14, 1980, 94 Stat. 1965.)

EDITORIAL NOTES

CODIFICATION

In subsec. (e), "chapter 31 of title 31" and "such chapter" substituted for "the Second Liberty Bond Act, as amended" and "such Act", respectively, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1980—Subsec. (e). Pub. L. 96-448 inserted "or under subsection (a) of section 746 of this title" after "subsection (c) of this section".

1976—Subsec. (b). Pub. L. 94-555 inserted "(exclusive of interest or additions to principal on account of accrual of interest)" after "aggregate principal amount", and raised maximum amount allowed for outstanding obligations issued by Association to \$395,000,000.

Pub. L. 94-210, §604, substituted provisions authorizing \$275,000,000 as maximum of aggregate amount of obligations outstanding at any one time and provisions relating to availability or issuance after Feb. 5, 1976, for provisions authorizing \$1,500,000,000 as maximum of aggregate amount of obligations outstanding at any one time and provisions relating to limitations on amounts issued to Corporation and available for rehabilitation and modernization of rail properties.

Subsec. (c). Pub. L. 94-210, §607(k), inserted provisions relating to guarantees as general obligations of the United States and pledge of full faith and credit for payment.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-448 effective Oct. 1, 1980, see section 710(a) of Pub. L. 96-448, set out as a note under section 1170 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective Oct. 1, 1976, see section 303 of Pub. L. 94-555, set out as a note under section 702 of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

§721. Loans

(a) General

The Association is authorized, in accordance with the provisions of this section and such rules and regulations as it shall prescribe, to make loans to the Corporation, the National Railroad Passenger Corporation, and other railroads (including a railroad in reorganization which has been found to be reorganizable under section 77 of the Bankruptcy Act pursuant to section 717(b) of this title) in the region, for purposes of achieving the goals of this chapter; to a State or local or regional transportation authority pursuant to section 763 ¹ of this title; and to provide assistance in the form of loans to any railroad which (A) connects with a railroad in reorganization, and (B) is in need of financial assistance to avoid reorganization proceedings under section 77 of the Bankruptcy Act. No

such loan shall be made by the Association to a railroad unless such loans shall, where applicable, be treated as an expense of administration. The rights referred to in the last sentence of section 77(j) of the Bankruptcy Act shall in no way be affected by this chapter.

(b) Applications

Each application for such a loan shall be made in writing to the Association in such form and with such content and other submissions as the Association shall prescribe to protect reasonably the interests of the United States. The Association shall publish a notice of the receipt of each such application in the Federal Register and shall afford interested persons an opportunity to comment thereon.

(c) Terms and conditions

Each loan shall be extended in such form, under such terms and conditions, and pursuant to such regulations as the Association deems appropriate. Such loan shall bear interest at a rate not less than the greater of a rate determined by the Secretary of the Treasury taking into consideration (1) the rate prevailing in the private market for similar loans as determined by the Secretary of the Treasury, or (2) the current average yield on outstanding marketable obligations of the Association with remaining periods of maturity comparable to the average maturities of such loans, plus such additional charge, if any, toward covering costs of the Association as the Association may determine to be consistent with the purposes of this chapter.

(d) Modifications

The Association is authorized to approve any modification of any provision of a loan under this section, including the rate of interest, time of payment of interest or principal, security, or any other term or condition, upon agreement of the recipient of the loan and upon a finding by the Association that such modification is equitable and necessary or appropriate to achieve the policy declared in subsection (f) of this section. Notwithstanding any other provision of this section, in the case of a loan made under subsection (a) of this section to a railroad in the region, the Association is not required to make the findings with respect to subsections (e)(3) and (f) and may, upon the request of such railroad—

(1) continue to make advances to such railroad pursuant to such loan, up to the total principal provided, as of November 8, 1978, under the agreement between such railroad and the Association under this section, upon finding only that (A) a good faith effort has been commenced by such railroad toward the establishment of an employee stock ownership plan, and (B) such continued advances will permit the continuation of rail service determined by the Association, in the Final System Plan or under the goals of this chapter, to be desirable; and

(2) increase the principal amount of such loan to such railroad, in an amount not to exceed \$7,500,000, only if the Association makes the finding referred to in paragraph (1)(B) of this subsection and determines that such railroad is making a good faith effort to establish an employee stock ownership plan for review and approval by the Association. Any such approval shall be conditioned upon a written commitment that by December 31, 1980, the railroad will adopt an employee stock ownership plan which will acquire qualifying employer securities with a fair market value of \$250,000.

The Association may not take any action pursuant to the preceding sentence of this subsection after December 31, 1981.

(e) Prerequisites

The Association shall make a finding in writing, before making a loan to any applicant under this section, that—

(1) the loan is necessary to achieve the goals of this chapter or to prevent insolvency;

(2) it is satisfied that the business affairs of the applicant will be conducted in a reasonable and prudent manner; and

(3) the applicant has offered such security as the Association deems necessary to protect reasonably the interests of the United States.

(f) Policy

It is the intent of Congress that loans made under this section shall be made on terms and conditions which furnish reasonable assurance that the Corporation or the railroads to which such loans are granted will be able to repay them within the time fixed and that the goals of this chapter are reasonably likely to be achieved.

(g) Pre-conveyance loans to Corporation

During the period between the effective date of the final system plan and the date of the conveyance of rail properties pursuant to section 743(b) of this title, the Association may make such loans in such amounts to the Corporation as the Association deems essential to provide for the purchase by the Corporation of material, supplies, equipment, and services necessary to permit the orderly and efficient implementation of the final system plan. Notwithstanding any inability of the Association during such period to make the finding required by subsection (e)(3) of this section because of any existing contingencies, the Association may make any such loans to the Corporation, subject to—

(1) the most favorable terms and conditions for assuring timely repayment and security as may then be reasonably available, and

(2) the requirement that any loan to the Corporation under this subsection be refinanced immediately out of the proceeds of the first sale by the issuance of debentures under section 726 of this title.

In order to assure that necessary funds are available to the Corporation for implementation of the final system plan, the Corporation is authorized to accept such loans as may be approved by the Association under this subsection, and any such acceptance shall be deemed for all purposes to constitute a reasonable and prudent business judgment in compliance with any fiduciary obligations imposed on the Corporation or its directors. For purposes of this subsection, the term "Corporation" includes a subsidiary of the Corporation.

(h) Loans for payment of obligations

(1)(A) The Association is authorized, subject to the limitations set forth in section 720(b) of this title, to enter into loan agreements, in amounts not to exceed, at any given time, \$350,000,000 in the aggregate principal amount, with the Corporation, the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to section 743(b)(1) of this title, under which the Corporation, the National Railroad Passenger Corporation, and any profitable railroad entering into such agreement will agree to meet existing or prospective obligations of the railroads in reorganization in the region which the Association, in accordance with procedures established by the Association, determines should be paid by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, on behalf of such railroads in reorganization, in order to avoid disruptions in ordinary business relationships. Such obligations shall be limited to—

(i) amounts claimed by suppliers (including private car lines) of materials or services utilized or purchased in current rail operations;

(ii) claims by shippers arising from current rail services;

(iii) payments to railroads for settlement of current interline accounts and all other current accounts and obligations;

(iv) claims of employees arising under the collective-bargaining agreements of the railroads in reorganization in the region and subject to section 153 of this title (including claims for accrued vacation and wages and similar claims arising in connection with labor and services performed);

(v) claims of all employees or their personal representatives for personal injuries or death and subject to the provisions of Employers' Liability Act (45 U.S.C. 51–60);

(vi) amounts required for adequate funding of accrued pension benefits existing at the time of a conveyance or discontinuance of service under employee pension benefit plans described in section 775(a) ² of this title;

(vii) amounts required to provide adequate funding for payment, when due, of claims deriving

from membership in any employee voluntary relief plan which provides benefits to its members and their beneficiaries in the event of sickness, accident, disability, or death, and to which both a railroad in reorganization and employee members have made contributions;

(viii) amounts required to provide adequate funding for continuation, by the Corporation, of medical and life insurance coverage and benefits for retired employees of railroads in reorganization as required and limited by section 743(b)(6)(B) of this title.³

(ix) amounts required to discharge the obligations of each such railroad in reorganization to nonemployee claimants for personal injuries suffered during the period such railroad has been in reorganization; and

(x) amounts required to discharge any obligation of a railroad in reorganization in the region to the National Railroad Passenger Corporation, arising out of a contract between such railroad in reorganization and such Corporation under which such railroad in reorganization is required to provide a suitable rail passenger station, in any case in which such railroad in reorganization sold a rail passenger station pursuant to a judicial order of condemnation prior to April 1, 1976.

(B) The Association shall make a loan pursuant to subparagraph (A) of this paragraph if, notwithstanding any other requirement of this subsection, it finds that the Corporation,⁴ the National Railroad Passenger Corporation, or a profitable railroad is entitled to a loan pursuant to section 743(b)(6), 774(e), or 774(g)² of this title, or if, with respect to an obligation referred to in subparagraph (A) of this paragraph, it finds that—

(i) provision for the payment of such obligation was not included in the financial projections of the final system plan;

(ii) such obligation arose from rail operations prior to the date of conveyance of rail properties pursuant to section 743(b)(1) of this title and is, under other applicable law, the responsibility of a railroad in reorganization in the region, and a claim is presented to a railroad in reorganization in the region, or the Corporation within 2 years after October 19, 1976;

(iii) the Corporation, the National Railroad Passenger Corporation, or a profitable railroad has advised the Association that the direct payment of such obligation by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad is for services or materials, the furnishing of which served to avoid disruptions in ordinary business relationships prior to the date of conveyance of rail properties pursuant to section 743(b)(1) of this title, or is necessary to avoid postconveyance disruptions in ordinary business relationships;

(iv) the transferor is unable to pay such obligation within a reasonable period of time; and

(v) with respect to loans made to the Corporation, the procedures to be followed by the Corporation, in seeking reimbursement from a railroad in reorganization in the region for an obligation paid on its behalf under this subsection, have been jointly agreed to by the Finance Committee and the Corporation, and the joint agreement—

(I) provides for the Corporation to receive reimbursement from the Association for any expenses incurred in seeking reimbursement from any railroad in reorganization in the region for an obligation paid on its behalf under this subsection; and

(II) includes a stipulation of the exact procedures the Corporation shall undertake to avoid the finding, referred to in paragraph (6)(A)(i) of this subsection, that it has not exercised due diligence.

(2) The trustees of each railroad in reorganization in the region shall attempt to negotiate agency agreements with the Corporation, the National Railroad Passenger Corporation, or a profitable railroad for the processing of all accounts receivable and accounts payable attributable to operations prior to the conveyance of property pursuant to section 743(b)(1) of this title and for the payment of only those accounts payable which relate to obligations of the estates identified in paragraph (1) of this subsection. If any railroad in reorganization in the region fails to conclude such an agreement within a reasonable time prior to such conveyance, the applicable reorganization courts, after giving all parties an opportunity to be heard, shall prescribe the terms of such an agency arrangement by order, giving due consideration to the need, wherever possible, to make such agreements uniform

among the various estates. Nothing in this subsection shall be construed as permitting any district court of the United States having jurisdiction over the reorganization of a railroad in reorganization in the region to enjoin, restrain, or limit the Corporation, the National Railroad Passenger Corporation, or a profitable railroad from applying, to payment of the obligations of the estates identified in paragraph (1) of this subsection, amounts collected as (A) accounts receivable pursuant to this paragraph, (B) cash or other current assets identified pursuant to paragraph (3) of this subsection, or (C) proceeds of loans pursuant to paragraph (1) of this subsection. Any agency agreement executed prior to October 19, 1976, shall be deemed amended to the extent necessary to conform such agreement or order to the provisions of this paragraph. Nothing in this paragraph shall be construed to affect any payment made prior to October 19, 1976, with respect to obligations other than those identified in paragraph (1) of this subsection.

(3) The Association may, not less than 30 days prior to the date of conveyance pursuant to section 743(b)(1) of this title, petition each district court of the United States having jurisdiction over the reorganization of a railroad in reorganization in the region for an order, which shall be entered prior to such conveyance, and which—

(A) identifies that cash and other current assets of the estate of such railroad which shall be utilized to satisfy obligations of the estates identified in paragraph (1) of this subsection; and

(B) provides for the application by the trustees of such railroads and their agents, consistent with the principles of reorganization under section 77 of the Bankruptcy Act and with the agency agreement specified in paragraph (2) of this subsection, of all such current assets, including cash available as of or subsequent to such date of conveyance, to the payment in the postconveyance period of the obligations of the estates identified in paragraph (1) of this subsection.

(4)(A) Each obligation of a railroad in reorganization in the region which is paid with financial assistance under paragraph (1) of this subsection shall be processed, on behalf of such railroad, by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, whichever is appropriate. An obligation of a railroad in reorganization in the region shall be paid, on behalf of such railroad, by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, whichever is appropriate, if—

(i) such obligation is deemed by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, whichever is appropriate, to have been, on the date of conveyance of rail properties pursuant to section 743(b)(1) of this title, the obligation of a railroad in reorganization in the region;

(ii) such obligation accrues after such date of conveyance but as a result of rail operations conducted prior to such date, and the trustees of such railroad in reorganization acknowledge that it is an obligation of such railroad; or

(iii) the district court of the United States having jurisdiction over such railroad in reorganization in the region approves such obligation as a valid administrative claim against such railroad;

to the extent that payment is required under a loan agreement with the Association under such paragraph (1).

(B) The Association shall resolve any disputes among the Corporation, the National Railroad Passenger Corporation, and a profitable railroad concerning which of them shall process and pay any particular obligation on behalf of a particular railroad in reorganization.

(C) The Corporation, the National Railroad Passenger Corporation, or a profitable railroad shall have a direct claim, as a current expense of administration, for reimbursement from the estate of a railroad in reorganization in the region for all obligations of such estate (plus interest thereon) which are paid by the Corporation, the National Railroad Passenger Corporation, or a profitable railroad, as the case may be. The right of the Corporation or the National Railroad Passenger Corporation to receive reimbursement under this subparagraph from the estate of a railroad in reorganization in the region shall be reduced by the amount, if any, of loans, plus interest forgiven under paragraph (5) of this subsection.

(D)(i) Except as provided in clause (ii) of this subparagraph, any funds held in an escrow account by a railroad in reorganization on October 19, 1976, which are thereafter determined to be cash and other current assets of the estate of such railroad in reorganization, for purposes of paragraph (3) of this subsection, shall be applied as follows—

(I) first, to the reduction of any outstanding loans to the Corporation by the Association, pursuant to paragraph (1) of this subsection, the proceeds of which were used to discharge obligations of such railroad in reorganization;

(II) second, to the Association to the extent of any such loans which have been forgiven pursuant to paragraph (5) of this subsection; and

(III) third, to the payment of any remaining obligations of such railroad in reorganization, in accordance with the provision of the agency agreement entered into pursuant to paragraph (2) of this subsection.

(ii) The manner of disposition set forth in clause (i) of this subparagraph shall not apply with respect to a railroad in reorganization if the Secretary (I) determines that a different disposition of assets is necessary to carry out a reorganization plan of such railroad in reorganization, and that such different disposition adequately protects the interests of the United States, and (II) transmits his determination to the court having jurisdiction over the reorganization of such railroad.

(5)(A) If, at any time, the Finance Committee of the Association determines that the failure of the Corporation to receive full reimbursement with interest from the estate of a railroad in reorganization in the region for any obligation of such estate paid pursuant to this subsection could adversely affect the fairness and equity of the transfers and conveyances pursuant to section 743(b)(1) of this title, or that the failure of the National Railroad Passenger Corporation to receive such full reimbursement plus interest for any such obligation would be contrary to the public interest, the Association shall forgive the indebtedness, plus accrued interest, of the Corporation or of the National Railroad Passenger Corporation incurred pursuant to paragraph (1) of this subsection in the amount recommended by the Finance Committee. The Association shall have a direct claim, as a current expense of administration of the estate of such railroad in reorganization, equal to the amount by which loans of the Corporation or of the National Railroad Passenger Corporation, plus interest, have been forgiven. Such direct claim shall not be subject to any reduction by way of setoff, cross-claim, or counter-claim which the estate of such railroad in reorganization may be entitled to assert against the Corporation, the National Railroad Passenger Corporation, the Association, or the United States.

(B) The direct claim of the Association under this paragraph, and any direct claim authorized under paragraph (4) of this subsection, shall be prior to all other administrative claims of the estate of a railroad in reorganization, except claims arising under trustee's certificates or from default on the payment of such certificates. The Corporation, the National Rail Passenger Corporation, or a profitable railroad, as the case may be, shall, with respect to each direct claim for reimbursement pursuant to paragraph (4) of this subsection, file a proof of administrative expense claim with the trustees of the railroad in reorganization from whom reimbursement is sought. Each such proof of administrative expense claim shall set forth, by category and amount, the obligations of such railroad in reorganization which were paid pursuant to such paragraph (4).

(6)(A) Notwithstanding any other provision of this subsection, the Association shall forgive any loan made to the Corporation or the National Railroad Passenger Corporation pursuant to this subsection, plus accrued interest thereon, on the 3rd anniversary date of any such loan, except that the Association shall not forgive any loan or portion thereof, in accordance with this paragraph, if—

(i) the Finance Committee makes an affirmative finding, with respect to such loan or portion thereof, that—

(I) the Corporation has not exercised due diligence in executing the procedures adopted pursuant to paragraph (1)(B)(v) of this subsection, and

(II) the failure of the Association to forgive such loan or portion thereof will not adversely affect the ability of the Corporation to become financially self-sustaining;

(ii) the Finance Committee so directs the Association; and

papers, and records of such recipients which in the opinion of the Association, the Secretary, or the Comptroller General may be related or pertinent to the loans, obligations or other arrangements referred to in subsection (a) of this section. The Association or any of its duly authorized representatives shall, until any financial assistance received under this subchapter has been repaid to the Association, have access to any such materials which concern any matter that may bear upon—

(1) the ability of the recipient of such financial assistance to make repayment within the time fixed therefor;

(2) the effectiveness with which the proceeds of such assistance is used; and

(3) the implementation of the final system plan and the realization of the declaration of policy of this chapter.

(Pub. L. 93–236, title II, §212, Jan. 2, 1974, 87 Stat. 1002.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

§723. Emergency assistance pending implementation

(a) Emergency assistance

The Secretary is authorized, pending the implementation of the final system plan, to pay to the trustees of railroads in reorganization such sums as are necessary for the continued provision of essential transportation services by such railroads. Such payments shall be made by the Secretary upon such reasonable terms and conditions as the Secretary establishes, except that recipients must agree to maintain and provide service at a level no less than that in effect on January 2, 1974. Where the Secretary and the trustees agree that funds provided pursuant to this section are to be used (together with funds provided pursuant to section 725 of this title, if any) to perform program maintenance on designated rail properties until the date rail properties are conveyed under this chapter or to improve such designated properties, such agreement shall contain the conditions set forth in section 725(b) of this title.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this section such sums as are necessary, not to exceed \$282,000,000, to remain available until expended. Of amounts authorized to be appropriated under this subsection, \$50,000,000 shall be available solely to pay to the trustees of railroads in reorganization such sums as may be necessary to provide such railroads with amounts equal to revenues attributable to tariff increases proposed by such railroads and suspended by the Interstate Commerce Commission during the calendar year 1975, if the Secretary determines that such payments are necessary to carry out this section.

(Pub. L. 93–236, title II, §213, Jan. 2, 1974, 87 Stat. 1003; Pub. L. 94–5, §6, Feb. 28, 1975, 89 Stat. 8.)

EDITORIAL NOTES

AMENDMENTS

1975—Subsec. (a). Pub. L. 94–5, §6(a), inserted provision that, where Secretary and trustees agree that funds provided pursuant to this section are to be used (together with funds provided pursuant to section 725 of this title, if any) to perform program maintenance on designated rail properties until date rail properties are conveyed under this chapter or to improve such designated properties, such agreement contain conditions set forth in section 725(b) of this title.

Subsec. (b). Pub. L. 94–5, §6(b), substituted "\$282,000,000" for "\$85,000,000" and inserted provision that, of amounts authorized to be appropriated under this subsection \$50,000,000 be available solely to pay to

- (1) to perform the program maintenance on designated rail properties of such railroads until the date rail properties are conveyed under this chapter;
- (2) to improve rail properties of such railroads; and
- (3) to acquire rail properties for lease or loan to any such railroads until the date such rail properties are conveyed under this chapter, and subsequently for conveyance pursuant to the final system plan, or to acquire interests in such rail properties owned by or leased to any such railroads or in purchase money obligations therefor.

(b) Conditions

Agreements pursuant to subsection (a) of this section shall contain such reasonable terms and conditions as the Secretary may prescribe. In addition, agreements under paragraphs (1) and (2) of subsection (a) of this section shall provide that—

- (1) to the extent that physical condition is used as a basis for determining, under section 716(f) or 743(c) of this title, the value of properties subject to such an agreement and designated for transfer to the Corporation under the final system plan, the physical condition of the properties on the effective date of the agreement shall be used; and
- (2) in the event that property subject to the agreement is sold, leased, or transferred to an entity other than the Corporation, the trustees or railroad shall pay or assign to the Secretary that portion of the proceeds of such sale, lease, or transfer which reflects value attributable to the maintenance and improvement provided pursuant to the agreement.

(c) Obligations

Notwithstanding section 720(b) of this title, the Association shall issue obligations under section 720(a) of this title in an amount sufficient to finance such agreements and shall require the Corporation to assume any such obligations. The aggregate amount of obligations issued under this section and outstanding at any one time shall not exceed \$300,000,000. The Association, with the approval of the Secretary, shall designate in the final system plan that portion of such obligations issued or to be issued which shall be refinanced and the terms thereof, and that portion from which the Corporation shall be released of its obligations.

(d) Conveyance

The Secretary may convey to the Corporation or any subsidiary thereof, with or without receipt of consideration, any property or interests acquired by, transferred to, or otherwise held by the Secretary pursuant to this section or section 723 of this title.

(Pub. L. 93-236, title II, §215, Jan. 2, 1974, 87 Stat. 1004; Pub. L. 94-5, §7, Feb. 28, 1975, 89 Stat. 8; Pub. L. 94-210, title VI, §607(i), Feb. 5, 1976, 90 Stat. 97.)

EDITORIAL NOTES

AMENDMENTS

1976—Subsec. (d). Pub. L. 94-210 inserted "or any subsidiary thereof" after "Corporation".

1975—Pub. L. 94-5 expanded provisions covering interim agreements for the acquisition, maintenance, and improvement of railroad properties, substituted provisions setting out the requisite conditions of such agreements for provisions making only a general requirement that such agreements identify the type and quality of improvements to be made, raised from \$150,000,000 to \$300,000,000 the maximum amount of outstanding obligations, and substituted provisions directing the Association in the final system plan to designate that portion of the obligations which shall be refinanced and that portion from which the Corporation shall be released of its obligations for provisions prohibiting the Secretary's entry into agreements unless he issues regulations setting forth procedures and guidelines for the administration of this section, substituted provisions authorizing the Secretary to convey to the Corporation property or interests held by the Secretary pursuant to this section or section 723 of this title for provisions relieving the Corporation of the duty of compensating railroads in reorganization for that portion of transferred properties attributable to the acquisition, maintenance, or improvement of such properties under this section.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

§726. Debentures and series A preferred stock

(a) General

The Association is authorized, in accordance with the provisions of this section, and such rules and regulations as it may prescribe, to invest from time to time in the securities of the Corporation by purchasing (1) up to \$1,000,000,000 of debentures issued by the Corporation, and (2) after the acquisition of such debentures, up to \$2,629,000,000 of the series A preferred stock of the Corporation.

(b) Purposes and procedure for investment

(1) The Association is authorized to purchase debentures and, thereafter, series A preferred stock of the Corporation at such times and in such amounts as may be required and requested by the Corporation in accordance with the terms and conditions governing such purchases (which shall be prescribed by the Association), to provide—

- (A) for the modernization, rehabilitation and maintenance of rail properties of the Corporation;
- (B) for the acquisition of equipment and other capital needs;
- (C) for the refinancing of indebtedness which was incurred by the Corporation under section 721 of this title or which was incurred under section 725 of this title and assumed by the Corporation; or
- (D) working capital as contemplated by the final system plan.

(2) Purchases of up to \$1,000,000,000 of debentures and, thereafter, of up to \$2,300,000,000 of series A preferred stock shall be made by the Association as required and requested by the Corporation, unless the Finance Committee makes an affirmative finding that—

- (A) the Corporation has failed in any material respect to comply with any covenants or undertakings made to the Association and such failure remains uncorrected;
- (B) the Corporation has failed substantially (as determined by performance within the margins prescribed by the Board of Directors) to attain the overall operating (including rehabilitation) and financial results projected for the Corporation in the final system plan (including any modifications of such projected results and of the performance margins applicable to such projected results which are jointly approved by the Finance Committee and the Board of Directors and which would improve the possibility that the Corporation will attain such projected results and perform within such margins, as modified); or
- (C) it is not reasonably likely, taking into consideration all relevant factors including the overall operating (including rehabilitation) and financial results achieved by the Corporation, that the Corporation will be able to become financially self-sustaining without requiring Federal financial assistance substantially in excess of the amounts authorized in this section.

(3)(A) Amounts transferred to the Association pursuant to section 509(b)(1) ¹ of the Railroad Revitalization and Regulatory Reform Act of 1976 may be used to purchase series A preferred stock of the Corporation to provide for the implementation by the Corporation of a program to reduce the Corporation's work force, if the Finance Committee finds that the implementation of such program will result in substantial savings to the United States.

(B) An employee who ceases to be an employee as a result of the reduction of work force under a program implemented pursuant to this paragraph shall not, by reason of so ceasing to be an

employee, or by reason of any work or employment entered into after so ceasing to be an employee, lose such employee's current connection with the railroad industry for the purposes of the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

(4) Purchases of up to \$329,000,000 of a series A preferred stock shall be made by the Association, subject to the availability of appropriations, as required and requested by the Corporation, if the Finance Committee makes an affirmative finding that the Corporation has taken appropriate action to eliminate losses on light density lines and other lines which are unprofitable. Such action shall include the imposition of surcharges on such lines, the abandonment of such lines, and the transfer of such lines.

(5) The authority of the Association to purchase debentures or series A preferred stock of the Corporation shall terminate October 21, 1986.

(c) Finding, direction, and review by Congress

(1) If the Finance Committee makes an affirmative finding pursuant to subsection (b)(2) of this section, it may direct the Association—

(A) not to purchase any debentures or series A preferred stock of the Corporation after the date of such affirmative finding; or

(B) to purchase debentures or series A preferred stock of the Corporation, after the date of such affirmative finding, only in such amounts, at such times, and on such terms and conditions (notwithstanding subsection (e)(1) of this section) as the Finance Committee determines to be appropriate to the role of the Association as an investor in such debentures and series A preferred stock.

(2) A copy of each affirmative finding, the reasons therefor, and each direction made by the Finance Committee under paragraph (1) of this subsection, together with the comments and recommendations thereon of the Board of Directors of the Association, shall be transmitted to the Congress by the Association within 10 days after the date on which the Finance Committee makes such finding and direction, or if not so transmitted, shall be transmitted by the Finance Committee. Each such direction so transmitted shall become finally effective and is required to be implemented by the Association, unless within the first period of 30 calendar days of continuous session of Congress after the date of its transmittal to Congress either House of Congress disapproves such direction (except that such direction shall become finally effective immediately upon approval of such direction by both Houses of Congress) in accordance with the procedures specified in section 688 of title 2. For purposes of this paragraph, continuity of session of Congress is broken only in the circumstances described in section 682(5) of title 2. During review by the Association and Congress, the Association shall take no action inconsistent with the direction of the Finance Committee pursuant to paragraph (c)(1) of this section, except to the extent the Association finds necessary, in its discretion, to assure continuous orderly operation of the Corporation.

(3) If the Congress, pursuant to paragraph (2) of this subsection, disapproves a direction submitted to the Association pursuant to paragraph (1) of this subsection, the Association shall continue to purchase the debentures or series A preferred stock of the Corporation as otherwise provided in this subchapter until such time as a direction is submitted under this section which is not so disapproved (or affirmatively approved). The powers of the Association and of the Board of Directors of the Association shall remain in effect except to the extent modified by any such direction. If any such direction is disapproved by either House of Congress, the Finance Committee may, not earlier than 30 days after the date of such disapproval, make (and the Board of Directors of the Association shall transmit) any additional affirmative finding and direction with respect to the same matter, which direction shall become effective in accordance with paragraph (2) of this subsection. An affirmative finding and direction under this subsection, or action by the Association during a review thereof by the Congress, may not be held unlawful or set aside by any reviewing court on the ground that such finding and direction or action were not adequate to meet the requirements of subparagraph (A), (E), or (F) of section 706(2) of title 5.

(4) Notwithstanding any other provision of this section, or any terms and conditions governing its purchase of securities of the Corporation, the Association shall, upon written application by the

Corporation at least 30 days prior to such investment, make an initial investment in debentures of the Corporation within 60 days after the date of conveyance of rail properties pursuant to section 743(b)(1) of this title. Such initial investment shall be limited to such amounts as the Association and Finance Committee, acting jointly, determine are necessary for the continued and orderly operations of the Corporation prior to any additional investment.

(5) Not later than 60 days after the date of conveyance pursuant to section 743(b)(1) of this title, the Association shall select 6 individuals to serve as members of the Board of Directors of the Corporation, subject to the provisions of section 741(d) of this title.

(d) Terms and conditions

Notwithstanding any other provision of State law, the debentures and the series A preferred stock of the Corporation shall have such terms and conditions, not inconsistent with the final system plan or this subchapter, as may be prescribed by the Association, except as follows:

(1) The Corporation shall not be required to issue to the Association additional shares of series A preferred stock of the Corporation as a dividend on any such stock.

(2) The dividends payable on series A preferred stock of the Corporation shall not be cumulative and shall be paid in cash when and to the extent that there is "cash available for restricted cash payments", as that term is defined in the final system plan.

(3) After the Association calls for redemption of the certificates of value, no shares of series A preferred stock of the Corporation shall be issued in lieu of interest on the debentures of the Corporation and, to the extent such interest is not payable in cash by reason of the absence of sufficient "cash available for restricted cash payment", the Corporation shall deliver to the holders of the debentures contingent interest notes in a face amount equal to such unpaid interest.

(4) If the Board of Directors of the Association and the Finance Committee, acting jointly, modify the terms or conditions governing the purchase of debentures or series A preferred stock of the Corporation pursuant to subsection (e)(1) of this section, or if the Finance Committee waives compliance with any term, condition, provision, or covenant of such securities pursuant to subsection (e)(2) of this section, the Finance Committee may require the Corporation to issue contingent interest notes in such amount as, in the determination of the Finance Committee, will provide protection for the United States, in the event of bankruptcy, reorganization, or receivership of the Corporation, equal to the protection the United States would have had in the absence of such modification or waiver.

(5) The contingent interest notes issued pursuant to this section shall bear interest compounded annually at the rate of 8 percent per annum and such notes and the accumulated interest thereon shall be payable only in the event of bankruptcy, reorganization, or receivership of the Corporation occurring prior to the repayment and redemption of all outstanding debentures and accumulated series A preferred stock of the Corporation. The contingent interest notes and the accumulated interest thereon shall have the same priority in bankruptcy, reorganization, or receivership as the debentures of the Corporation. The other terms and conditions of the contingent interest notes shall be as set forth in an agreement to be entered into between the Association and the Corporation prior to issuance of any debentures.

(e) Modifications, waivers, and conversions

(1) The Board of Directors of the Association and the Finance Committee, acting jointly, may agree with the Corporation to modify any of the terms and conditions governing the purchase by the Association of securities of the Corporation, upon a finding that such action is necessary or appropriate to achieve the purposes of this chapter or the goals of the final system plan.

(2) The Finance Committee may, in its discretion and upon a finding that such action is necessary or appropriate to achieve the purposes of this chapter or the goals of the final system plan, waive compliance with any term, condition, provision, or covenant of the securities of the Corporation held by the Association, including any provision of such securities with respect to redemption of principal or issuance price, payment of interest or dividends, or any term or condition governing the purchase of such securities.

(3) Notwithstanding any provision of State law, there shall be no conversion of the debentures of

the Corporation into series A preferred stock of the Corporation, as provided in the terms and conditions of the debentures and pursuant to the final system plan, unless the Board of Directors of the Association and the Finance Committee jointly determine to effect such conversion.

(f) Employee stock ownership plan

(1) The Association shall not invest the final \$345,000,000 of the additional investment in the Corporation authorized by the Regional Rail Reorganization Act Amendments of 1978 unless and until (A) the Corporation has in effect an employee stock ownership plan which satisfies the requirements of paragraphs (2) and (3), and (B) the requirements of the other paragraphs of this subsection have been satisfied.

(2) The employee stock ownership plan shall:

(A) provide:

(i) for a transfer to the plan and allocation to the accounts of plan participants in periodic installments of Series A preferred stock of the Corporation with a stated redemption value of at least \$345,000,000 or any other securities in an amount determined by the Association, with the concurrence of the Finance Committee, as constituting a meaningful interest in the Corporation, or any combination thereof so determined by the Association, with the concurrence of the Finance Committee. The use of Series A preferred stock to fund the Employee Stock Ownership Plan shall not be interpreted to relieve ConRail of the responsibility for repaying in full to the United States Railway Association its indebtedness as represented by all shares originally issued under Public Law 94-210 and this chapter;

(ii) for immediate vesting of the rights of participants to such securities upon allocation, subject to defeasance as a result of the plan's termination which termination shall occur in the event that, by the end of the 120th month beginning after the month in which securities or interests therein are first allocated to participants' accounts, the Corporation has not attained for two consecutive quarters positive net income and a freight labor cost to freight revenue ratio equal to the average such ratio for all Class I railroads in 1977, as determined pursuant to procedures adopted by the Corporation pursuant to regulations promulgated by the Association with the concurrence of the Finance Committee;

(B) be an employee benefit plan which is designed to invest primarily in employer securities;

(C) meets such other requirements (similar to requirements applicable to employee stock ownership plans as defined in section 4975(e)(7) of title 26) as the Secretary of the Treasury or his delegate may describe;

(D) have been approved by the Board of Directors of the Corporation to the extent and in the manner which may be required by the Corporation's articles of incorporation and bylaws then in effect; and

(E) have been prepared in consultation with, and been approved by, the Association and the Finance Committee.

(3) Notwithstanding any other provision of law, if a plan does not meet the requirements of section 401 of title 26—

(A) stock transferred under paragraph (2) and allocated to the account of any participant under paragraph (2) shall not be considered income of the participant or his beneficiary under title 26 until such stock or dividends are actually distributed or made available to the participant or his beneficiary and, at such time, shall be taxable under section 72 of title 26 (treating the participant or his beneficiary as having a basis of 0 in the stock);

(B) no amount shall be allocated to any participant under the plan in excess of the amount which might be allocated if the plan met the requirements of section 401 of title 26; and

(C) the plan must meet the requirements of sections 410 and 415 of title 26.

(4) The Corporation shall adopt such terms and conditions governing the securities of interests therein to be transferred to the plan (including limitations on voting rights) as the Association, with the concurrence of the Finance Committee, determines are necessary to protect reasonably the

interests of the United States in the litigation pursuant to section 743(c) of this title and in the event of any action to further reorganize or restructure the Corporation's assets or capital structure.

(5) The Corporation, the Association, and a representative appointed by the Chairman of the Railway Labor Executives' Association as representative of all the classes or crafts of employees of the Corporation shall engage in negotiations to agree upon a plan in accordance with the provisions of this subsection. For purposes of this subsection, the Railway Labor Executives' Association shall be deemed to represent all of the representatives of crafts or classes of employees of the Corporation and its subsidiaries as though that organization held powers of attorney from each representative of a craft or class for the limited purposes of negotiating and agreeing upon an employee stock ownership plan. The parties shall incorporate their agreement into a written plan instrument specifying the terms and conditions set forth in this subsection and such other terms and conditions as they may decide upon, with the concurrence of the Finance Committee, unless the parties are unable to reach on ² an agreement on the plan following the exertion of every reasonable effort to do so, in accordance with the Railway Labor Act [45 U.S.C. 151 et seq.], in which event, the Corporation and the Association, with the concurrence of the Finance Committee, shall establish a written plan with such terms and conditions as they may agree upon in accordance with this subsection. The plan shall not be subject to change under the provisions of section 6 of the Railway Labor Act [45 U.S.C. 156] until after such time as securities have been distributed from the plan to the participants in the plan or their beneficiaries pursuant to the terms of the plan. Within one year after November 1, 1978, the Corporation shall transmit a draft of such plan to the Congress and shall report on its progress in establishing and administering the plan. The report shall include recommendations of contractual and statutory provisions necessary to reasonably (A) exempt any Trustee of the plan, the Corporation, the Association, any member of the Finance Committee, and any other person from any fiduciary duty, responsibility or liability for the acquisition of, investment in, or retention of any security or interest therein of the Corporation or for any other transaction contemplated by this subsection and (B) provide for the United States to indemnify, defend, and hold harmless such persons against any and all liabilities, claims, actions, judgments, amounts paid in settlement, and costs and expenses actually incurred in connection with any matter so exempted in which it is determined that such persons were acting in good faith and in a manner they believed to not be opposed to the best interests of the plan.

(6) Within fourteen months of November 1, 1978, the Association shall report to the Congress on the draft plan and on any legal obstacle to the ability of the Corporation to effectuate and implement an employee stock ownership plan of the nature contemplated by this subsection, including specific recommendations on amendments to this subsection and other relevant laws which would harmonize the requirements of this subsection with those other laws. The Department of Transportation and the Department of the Treasury, as each finds appropriate, shall provide separate comments to the Association for inclusion with such report.

(7) For the purposes of this subsection, the officers of each duly authorized representative of the crafts or classes of the employees of the Corporation who have been given leaves of absence by the Corporation to serve as such officers, are to be eligible to participate in such plan on the same basis as are employees whose employment is governed by a collective bargaining agreement with the Corporation.

(8)(A) Except as provided in subparagraph (B) of this paragraph, no person described in subparagraph (C) of this paragraph shall have or be subject to any fiduciary responsibility, obligation, or duty, nor shall any such person be subject to civil liability, under any Federal or State law, as a fiduciary or otherwise—

(i) in connection with the employee stock ownership plan and related trust established by the Corporation pursuant to the requirements of this subsection or with ConRail Equity Corporation (I) on account of any reorganization or restructuring of the Corporation, its successors or assigns, or their assets or capital structure, or (II) on account of any action taken or not taken by the Corporation which may affect its ability to attain the performance levels established in connection with the plan pursuant to paragraph (2)(A)(ii) of this subsection;

(ii) for or in connection with the establishment, continuation or implementation of the plan and related trust or of ConRail Equity Corporation or the acquisition of, investment in or retention of

any security of the Corporation or ConRail Equity Corporation, or of any of their successors and assigns, by the plan or ConRail Equity Corporation, or the disposition of any such security to the extent that such disposition is made in connection with a reorganization or restructuring of the Corporation, its successors and assigns, or their assets or capital structure, as directed or approved by or on behalf of the Association or the United States, or the acquisition or retention of any cash, security or other property received in connection with any such reorganization or restructuring; or

(iii) for or in connection with any other action taken or not taken pursuant to any term or condition of the plan or related trust agreement or of the articles of incorporation or bylaws of ConRail Equity Corporation.

Any directions described in clauses (i)(I), (ii), or (iii) shall be taken at the direction, or with the consent, of the Association or of the Secretary or his designate.

(B) Subparagraph (A) of this paragraph shall not be interpreted to relieve any person from any fiduciary or other responsibility, obligation or duty under any Federal or State law to take or not to take actions with respect to the plan in connection with (i) receiving contributions, (ii) exercising custodial responsibilities, (iii) determining eligibility to participate in the plan, (iv) calculating, determining and paying benefits, (v) processing and deciding claims, (vi) preparing and distributing plan information, benefit statements, returns and reports, (vii) maintaining plan records, (viii) appointing plan fiduciaries and other persons to advise or assist in plan administration and (ix) other than as provided in subparagraph (A), acquiring, holding or disposing of plan assets.

(C) For purposes of subparagraph (A) of this paragraph, the term "person" includes each of the following:

(i) the trustee or trustees of the plan, the Corporation and its subsidiaries, ConRail Equity Corporation, the Association, and any of their successors and assigns;

(ii) each director, officer, employee and agent of the Corporation of ³ any of its subsidiaries, of ConRail Equity Corporation, of the plan, of the Association or of any of their successors and assigns; and

(iii) each member of the Finance Committee and any of their employees and agents.

(D) Neither this paragraph nor paragraph (9) of this subsection shall be construed to grant immunity from any criminal law of the United States or of any State or the District of Columbia.

(9) The United States shall indemnify, defend, and hold harmless the persons described in paragraph (8)(C) of this subsection from and against any and all liabilities, claims, actions, judgments, amounts paid in settlement, and costs and expenses (including reasonable fees of accountants, experts, and attorneys) actually incurred in connection with the establishment, implementation, or operation of the plan or ConRail Equity Corporation or with any transaction which is required by or is appropriate to effectuate fully the provisions of this subsection, except as may arise in connection with the execution of a responsibility, obligation, or duty excluded from paragraph (8)(A) by paragraph (8)(B), if it is determined that such persons were acting in good faith. The indemnity provided in this paragraph shall be a full faith and credit obligation of the United States.

(10) All securities of the Corporation, all securities of any subsidiary of the Corporation and of ConRail Equity Corporation, and all interests in the employee stock ownership plan which are issued or transferred in connection with the employee stock ownership plan established by the Corporation pursuant to the requirements of this subsection shall be deemed for all purposes to have been issued subject to and authorized and approved pursuant to section 11301(b) ⁴ of title 49 and any corresponding provision of any successor statute.

(g) Authorization of appropriations; reappropriation of funds

(1) There is authorized to be appropriated to the Association \$3,629,000,000 to be used for the purchase of securities of the Corporation in accordance with this section. All sums received by the Association on account of the holding or disposition of any such securities shall be deposited in the general fund of the Treasury.

Subsec. (f)(5). Pub. L. 96–254, §118(a), (b), inserted provisions that the plan not be subject to change under the provisions of section 6 of the Railway Labor Act until after such time as securities have been distributed from the plan to the participants in the plan or their beneficiaries pursuant to the terms of the plan and that, for purposes of this subsection, the Railway Labor Executives' Association shall be deemed to represent all of the representatives of crafts or classes of employees of the Corporation and its subsidiaries as though that organization held powers of attorney from each representative of a craft or class for the limited purposes of negotiating and agreeing upon an employee stock ownership plan.

Subsec. (f)(8) to (10). Pub. L. 96–254, §118(c), added pars. (8) to (10).

Subsec. (g). Pub. L. 96–448, §703(f)(2), substituted "\$3,629,000,000" for "\$3,300,000,000".

1978—Subsec. (a). Pub. L. 95–565, §2(a), substituted "\$2,300,000,000" for "\$1,100,000,000".

Subsec. (b)(2). Pub. L. 95–565, §2(b), substituted "\$2,300,000,000" for "\$1,100,000,000".

Subsecs. (f), (g). Pub. L. 95–565, §§2(c), 3, added subsec. (f), redesignated former subsec. (f) as (g), and substituted "\$3,300,000,000" for "\$2,100,000,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 1, 1980, see section 710(a) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94–210, see section 619 of Pub. L. 94–210, set out as a note under section 791 of this title.

¹ [*See References in Text note below.*](#)

² [*So in original.*](#)

³ [*So in original. Probably should be "or".*](#)

⁴ [*See References in Text note below.*](#)

§727. Additional purchases of Series A preferred stock

(a) Federal investment

In addition to the authority provided under section 726 of this title, the Association shall purchase shares of Series A preferred stock and accounts receivable of the Corporation after August 13, 1981, in amounts not to exceed a total of \$137,000,000.

(b) Accounts receivable

(1) In any further purchase under this section or section 726 of this title the Association shall purchase accounts receivable of the Corporation attributable to the dispute over the right-of-way related costs described in section 1111 ¹ of this title until the Commission resolves such dispute under such section, and accounts receivable of the Corporation attributable to delays in reimbursement from commuter authorities.

(2) From funds provided under this section or section 726 of this title, the Association shall purchase Series A preferred stock of the Corporation, to the extent of losses on commuter service, in an amount not to exceed \$15,000,000.

(c) States and localities

The Corporation shall be exempt from liability for any State tax, except for any tax imposed by any political subdivision of a State applicable to any taxable period commencing before January 1, 1987.

(d) Debentures

The Association shall return debentures to the Corporation in an amount equal to the value of the properties conveyed by the Corporation to Amtrak Commuter and any commuter authority.

(e) Rights retained

The Corporation shall retain the right to collect any accounts receivable attributable to delays in reimbursement from commuter authorities that are purchased by the Association under this section. No agency or instrumentality of the United States shall be required to collect such accounts.

(f) Authorization of appropriations

(1) There is authorized to be appropriated not to exceed \$262,000,000—

(A) of which not to exceed \$137,000,000 shall be appropriated to the Association for purposes of purchasing securities and accounts receivable of the Corporation under this section, such sums to remain available until the Secretary transfers the Corporation under subchapter IV ¹ of this chapter;

(B) of which not to exceed \$75,000,000 shall be appropriated to the Secretary, to facilitate the transfer of rail commuter services from the Corporation to other operators, for distribution under the statutory provisions of section 1139(b) of the Northeast Rail Service Act of 1981;

(C) of which not to exceed \$35,000,000 shall be appropriated to the Secretary to be allocated for employee protection under section 1005 of this title; and

(D) of which not to exceed \$15,000,000 shall be appropriated to the Secretary to facilitate the transfer of rail commuter services from railroads that entered reorganization after calendar year 1974 to any commuter authority that was providing commuter service, operated by a railroad that entered reorganization after calendar year 1974, as of January 1, 1979.

(2) All sums received on account of the holding or disposition of any securities or accounts receivable referred to in paragraph (1)(A) of this subsection shall be deposited in the general fund of the Treasury.

(3) The amount authorized to be appropriated under paragraph (1)(B) of this subsection shall be reduced, in an amount equal to any amounts reappropriated under the authority of section 726(g)(2) of this title, upon the date of enactment of any Act which reappropriates such amounts.

(Pub. L. 93–236, title II, §217, as added Pub. L. 97–35, title XI, §1140(a), Aug. 13, 1981, 95 Stat. 653; amended Pub. L. 97–468, title V, §504(c), Jan. 14, 1983, 96 Stat. 2552; Pub. L. 99–509, title IV, §4033(b)(2), (3), Oct. 21, 1986, 100 Stat. 1908.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1111 of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 105–134, title IV, §408, Dec. 2, 1997, 111 Stat. 2586.

Subchapter IV of this chapter, referred to in subsec. (f)(1)(A), was repealed by Pub. L. 99–509, title IV, §4033(a)(1), Oct. 21, 1986, 100 Stat. 1908.

Section 1139(b) of the Northeast Rail Service Act of 1981, referred to in subsec. (f)(1)(B), is section 1139(b) of Pub. L. 97–35, title XI, Aug. 13, 1981, 95 Stat. 652, which is set out as a note under section 744a of this title.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–509, §4033(b)(2), substituted "applicable to any taxable period commencing before January 1, 1987" for " , until the property of the Corporation is transferred by the Secretary under subchapter IV of this chapter".

Subsec. (e). Pub. L. 99–509, §4033(b)(3), struck out "and shall collect" after "right to collect".

1983—Subsec. (a). Pub. L. 97–468, §504(c)(1), substituted "\$137,000,000" for "\$262,000,000".

Subsec. (f). Pub. L. 97–468, §504(c)(2), designated existing provisions as pars. (1)(A) and (2), in (1)(A) as so designated, substituted \$137,000,000 for \$262,000,000 as limit of appropriations for purchase of securities and accounts receivable, and added pars. (1)(B) to (D) and (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as a note under section 1101 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

¹ [*See References in Text note below.*](#)

§728. Reports to Congress

(a) Progress and evaluation

(1) The Association shall prepare and submit to Congress periodic reports on the progress of the Secretary in carrying out the provisions of subchapters II, III, and IV ¹ of this chapter.

(2) Reports submitted under paragraph (1) of this subsection shall also include an evaluation of the performance of the Corporation in order to keep the Congress informed as to matters which may affect the quality of rail service in the Northeast and which may affect the security of Federal funds invested in the Corporation.

(b) Transfer agreements

(1) The Association shall prepare and submit to Congress a final report on the transfer agreements which the Secretary is required to transmit to Congress under section 767 ¹ of this title. Such report shall be submitted on the same date as the Secretary's transmittal of such agreements to Congress.

(2) The report submitted under paragraph (1) of this subsection shall include an evaluation of the effect of the transfer agreements on rail service in the Northeast, railroad employees, the economy of the Region, other railroads in the Northeast and elsewhere, and any other matter which the Association considers appropriate. Such report shall also include recommendations with respect to approval, disapproval, or modification of the transfer agreements.

(Pub. L. 93–236, title II, §218, as added Pub. L. 97–35, title XI, §1150(a), Aug. 13, 1981, 95 Stat. 675.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subchapter IV of this chapter, including section 767 of this title, referred to in subsecs. (a)(1) and (b)(1), was repealed by Pub. L. 99–509, title IV, §4033(a)(1), Oct. 21, 1986, 100 Stat. 1908.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as a note under section 1101 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (a) of this section is listed as the 9th item on page 195), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

¹ [*See References in Text note below.*](#)

§729. Advisory Board

Members of the Board of Directors of the Association serving on the day before August 13, 1981, shall serve as an Advisory Board to the Association. A member of the Advisory Board who is not otherwise an employee of the Federal Government shall receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties. The Chairman of the Association shall serve as Chairman of the Advisory Board. Any vacancy on the Advisory Board shall be filled by the Association with a representative from the group which had a representative in the vacant position.

(Pub. L. 93–236, title II, §219, as added Pub. L. 97–35, title XI, §1150(a), Aug. 13, 1981, 95 Stat. 675.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as a note under section 1101 of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER III—CONSOLIDATED RAIL CORPORATION

§741. Formation and structure

(a) Establishment

There shall be established within 300 days after January 2, 1974, in accordance with the provisions of this section, a corporation to be known as the Consolidated Rail Corporation or such other corporate name as may be duly adopted by the Corporation.

(b) Status

The Corporation shall be a for-profit corporation established under the laws of a State and shall not be an agency or instrumentality of the Federal Government. The Corporation shall be deemed a rail carrier subject to part A of subtitle IV of title 49, shall be subject to the provisions of this Act and, to the extent not inconsistent with such Act and subtitle IV of title 49, shall be subject to applicable State law. The principal office of the Corporation or of its principal railroad operating subsidiary shall be located in Philadelphia in the Commonwealth of Pennsylvania.

(c) Incorporators

(1) The members of the executive committee of the Association shall be the incorporators of the Corporation and shall take whatever steps are necessary to establish the Corporation, including the filing of articles of incorporation.

(2) Notwithstanding any provision of State law, after February 5, 1976, the members of the executive committee of the Association (including duly authorized representatives of members who are authorized by this chapter to be represented) and the chief executive officer and chief operating officer of the Corporation shall adopt the bylaws of the Corporation and serve as the Board of Directors of the Corporation until all members of the Board of Directors of the Corporation have been selected in accordance with subsection (d) of this section. The chief executive officer shall serve as chairman of such Board until a chairman thereof is selected pursuant to subsection (d) of this section, after which time such chairman shall serve at the pleasure of such Board.

(d) Board of Directors

(1) Notwithstanding any provision of State law, the articles of incorporation and bylaws of the Corporation shall provide that the Board of Directors of the Corporation shall consist of 13 members selected in accordance with the articles and bylaws of the Corporation, as follows:

- (A) six individuals selected by the holders of the Corporation's debentures and series A preferred stock voting as one class, with every \$100 principal amount of debentures, and every \$100 liquidation amount of series A preferred stock each receiving one vote for directors;
- (B) three individuals selected by the holders of the Corporation's series B preferred stock; and
- (C) two individuals selected by the holders of the Corporation's common stock.

(2) The chief executive officer and the chief operating officer of the Corporation shall also serve on the Board, but the chief executive officer and chief operating officer of the Corporation shall not be entitled to vote on the election or removal of either. In the event a vacancy occurs on the Board of Directors due to death, disability or resignation of a director, such vacancy shall be filled only by a vote of the holders of the class of securities that initially elected such director.

(e) Initial capitalization

(1) The Corporation is authorized to issue debentures, series A preferred stock, series B preferred stock, common stock, contingent interest notes, and other securities.

(2) Debentures and series A preferred stock shall be issued initially to the Association. Series B preferred stock and common stock shall be issued initially to the estates of railroads in reorganization in the region, to railroads leased, operated, and controlled by railroads in reorganization in the region, and to other persons leased, operated or controlled by a railroad in reorganization who are transferors of rail properties in exchange for rail properties transferred to the Corporation pursuant to the final system plan. Notwithstanding any other provisions of State or Federal law, the series B preferred stock and common stock shall have terms and conditions not inconsistent with the final system plan. As a condition of its investment in the Corporation, the Association may require that the Corporation adopt limitations consistent with the final system plan on the circumstances under which dividends on the series B preferred stock and common stock are payable so long as any of the

debentures or series A preferred stock are outstanding. Notwithstanding anything to the contrary in the final system plan, the initial authorized number of shares of series B preferred stock may be 35,000,000, and the Corporation may issue initially for the purpose of the deposit required under section 743(a)(1) of this title such numbers of shares of series B preferred and common stock as the Association shall certify to the Special Court pursuant to section 719(c)(1)(3) ¹ of this title, including any modifications in such numbers of shares as may be ordered by the Special Court for the purpose of, and in connection with, such deposit and certification.

(f) Officers

The officers of the Corporation shall include a chief executive officer and a chief operating officer, who shall be appointed by the Board of Directors and who shall serve at the pleasure of the Board; and such other officers as shall be provided for in the bylaws of the Corporation.

(g) Voting trustees

For and during the period between the deposit of securities of the Corporation with the special court, in accordance with section 743(a) of this title, and the distribution of such securities, in accordance with section 743(c) of this title, the special court shall, within 30 days after the date of conveyance pursuant to section 743(b)(1) of this title, appoint one or more voting trustees for each class of securities which is so deposited. Such voting trustees shall, on behalf of the distributees, exercise the rights of the holders of such securities as their interests may appear. Within 30 days after such appointment, such voting trustees shall select members of the Board of Directors of the Corporation on behalf of the holders of the class of securities whose rights they exercise pursuant to this subsection.

(h) Annual report

The Corporation shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on all activities and accomplishments of the Corporation during the preceding fiscal year.

(i) Liability of directors

No director of the Corporation shall be liable, for money damages or otherwise, to any party by reason of the fact that such person is or was a director, if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty which he in good faith reasonably believed to be required by law or vested in him in his capacity as a director of the Association or as an officer of the United States. The United States shall indemnify such person against all judgments, amounts paid in settlement, and costs and expenses (including fees of accountants, experts, and attorneys), actually and reasonably incurred in connection with any such action, suit, or proceeding in which such person is determined to have met such standard of conduct. This subsection shall not be construed to grant any immunity from any criminal law of the United States.

(j) Signal systems

If, within two years after August 13, 1981, the Corporation applies for the permission of the Secretary to substitute manual block signal systems for automatic block signal systems on lines on which less than 20,000,000 gross tons of freight are carried annually, the Secretary shall approve or disapprove such application within 90 days of its submission.

(k) Governing provisions after sale

The provisions of this chapter shall not apply to the Corporation and to activities and other actions and responsibilities of the Corporation and its directors and employees after the sale date, other than with regard to—

- (1) section 702 of this title;
- (2) section 711(d) of this title;
- (3) section 713 of this title, but only with respect to information relating to proceedings before the special court established under section 719(b) of this title;
- (4) section 719 of this title, other than subsection (f) thereof;
- (5) section 726(f)(8) of this title, but only as such authority applies to activities related to the

ESOP and related trust before the sale date;

(6) section 726(f)(9) of this title, but only as such indemnification applies to activities relating to the ESOP and related trust before the sale date;

(7) section 726(f)(10) of this title with respect to all securities of the Corporation issued or transferred in connection with the public offering under the Conrail Privatization Act [45 U.S.C. 1301 et seq.] and all securities of ConRail Equity Corporation and all interests in the ESOP;

(8) section 727(c) and (e) of this title;

(9) subsection (b) of this section, but only with respect to matters covered by the last sentence of such subsection;

(10) subsection (i) of this section, but only as such authority applies to service as a director of the Corporation before the sale of the interest of the United States in the common stock of the Corporation;

(11) section 742 of this title, but only to the extent of (A) the creation and maintenance of the power and authority of the Corporation to operate rail service and to rehabilitate, improve, and modernize rail properties, and (B) the creation and maintenance of the powers of the Corporation as a railroad in any State in which it operates as of the sale date;

(12) section 743(b)(1) and (2) of this title, but only to the extent of establishing the legal effect of the conveyance of property ordered and of the deeds and other instruments executed, acknowledged, delivered, or recorded in connection therewith and the quality of title acquired in such property;

(13) section 743(b)(3)(B) of this title with respect to the effect of an assignment, conveyance, or assumption as set forth in the last sentence of such subparagraph (B);

(14) section 743(b)(5) of this title;

(15) section 743(b)(6) of this title, but only with respect to establishing and maintaining the rights of the Corporation with respect to, limiting its obligations with respect to, and establishing the status of, the employee pension and welfare benefit plans transferred to the Corporation thereunder and with respect to the exclusivity of the jurisdiction of the special court and the limitation of jurisdiction of other courts;

(16) section 743(e) of this title;

(17) section 744 of this title, but only with respect to the finality of abandonments completed before the sale date pursuant to the authority thereof;

(18) section 745 of this title, but only as to the effect, and continuing administration, of supplemental transactions consummated before the sale date;

(19) section 748 of this title, but only (A) as to the finality of abandonments completed before the sale date and (B) as to abandonments of lines where a notice or notices of insufficient revenues with respect to such lines have been filed before November 1, 1985;

(20) section 791(a)(2) of this title, but only with respect to activities before the sale date;

(21) section 791(b)(2) and (b)(3) of this title, but only with respect to issuance of and transactions in any security of the Corporation before the sale date;

(22) section 797a(e) of this title;

(23) section 797b of this title;

(24) section 797c of this title;

(25) sections 797e(a), 797f, and 797g(a) of this title, but only insofar as they establish part of the prevailing status quo for the Corporation's employees' rates of pay, rules, and working conditions, such provisions to continue to apply unless changed pursuant to section 156 of this title;

(26) section 797h of this title;

(27) section 797i(b)(1) of this title;

(28) section 797j of this title; and

(29) section 797m of this title, but only with regard to disputes or controversies specified in such section that arose before the sale date.

(Pub. L. 93–236, title III, §301, Jan. 2, 1974, 87 Stat. 1004; Pub. L. 94–210, title VI, §§608, 611, 612(j)(1), (3), (m), Feb. 5, 1976, 90 Stat. 99, 105, 109, 110; Pub. L. 94–216, §§1, 3, Feb. 17, 1976,

90 Stat. 191; Pub. L. 94-248, §4, Mar. 25, 1976, 90 Stat. 286; Pub. L. 97-35, title XI, §1141, Aug. 13, 1981, 95 Stat. 653; Pub. L. 99-509, title IV, §4032, Oct. 21, 1986, 100 Stat. 1906; Pub. L. 104-88, title III, §327(2), Dec. 29, 1995, 109 Stat. 951.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (b), means the Regional Rail Reorganization Act of 1973, Pub. L. 93-236, Jan. 2, 1974, 87 Stat. 985, as amended, which is classified principally to this chapter (§701 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The Conrail Privatization Act, referred to in subsec. (k)(7), is subtitle A (§§4001-4052) of title IV of Pub. L. 99-509, Oct. 21, 1986, 100 Stat. 1892, which is classified principally to chapter 22 (§1301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

CODIFICATION

In subsec. (b), "such Act and subtitle IV of title 49" substituted for "such Acts", on authority of Pub. L. 95-473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§10101 et seq.) of Title 49, Transportation.

The last sentence of subsec. (f) of this section as originally enacted, which amended section 856 of former Title 31, Money and Finance, was repealed by Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1068, the first section of which enacted Title 31.

AMENDMENTS

1995—Subsec. (b). Pub. L. 104-88, §327(2), substituted "rail carrier subject to part A of subtitle IV of title 49" for "common carrier by railroad under section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3))".

1986—Subsec. (k). Pub. L. 99-509 added subsec. (k).

1981—Subsec. (d)(2). Pub. L. 97-35, §1141(a), struck out provisions respecting resignations.

Subsec. (e)(1). Pub. L. 97-35, §1141(b), substituted "The" for "In order to carry out the final system plan, the".

Subsec. (j). Pub. L. 97-35, §1141(c), substituted provisions relating to signal systems for provisions relating to corporate simplification.

1976—Subsec. (a). Pub. L. 94-210, §612(j)(1), inserted "or such other corporate name as may be duly adopted by the Corporation" after "Corporation".

Subsec. (b). Pub. L. 94-210, §612(j)(3), inserted "or of its principal railroad operating subsidiary" after "of the Corporation".

Subsec. (c). Pub. L. 94-210, §611(a), designated existing provisions as par. (1), struck out provision relating to service of the incorporators as the Board of Directors, and added par. (2).

Subsec. (d). Pub. L. 94-210, §611(b), designated existing provisions as par. (1), inserted provision relating to applicability of State law, decreased membership from 15 to 13, and revised criteria for selection to membership, and added par. (2).

Subsec. (e). Pub. L. 94-210, §608, designated existing provisions as par. (1), substituted provisions authorizing issuance of debentures, series A preferred stock, series B preferred stock, common stock, contingent interest notes, and other securities, for provisions relating to issuance of stock and other securities, and added par. (2).

Subsec. (e)(2). Pub. L. 94-248 inserted provisions relating to initial authorized number of shares of series B preferred stock and provisions setting such number at 35,000,000.

Subsec. (f). Pub. L. 94-210, §611(c), added subsec. (f). Former subsec. (f), which related to a Federal Government audit of the Corporation, was struck out.

Subsec. (g). Pub. L. 94-210, §611(c), added subsec. (g). Former subsec. (g) redesignated (h) "Annual report".

Subsec. (h). Pub. L. 94-216, §1, redesignated subsec. (h) "Liability of directors" as (i).

Pub. L. 94-210, §§611(c), 612(m), redesignated former subsec. (g) as (h) "Annual report" and added subsec. (h) "Liability of directors".

Subsec. (i). Pub. L. 94-216, §§1, 3, redesignated former subsec. (h) "Liability of directors" as (i) and substituted "a director of the Association" for "a director of the Corporation". Former subsec. (i) redesignated (j).

Pub. L. 94–210, §612(m), added subsec. (i) "Corporate simplification".

Subsec. (j). Pub. L. 94–216, §1, redesignated former subsec. (i) "Corporate simplification" as (j).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as an Effective Date note under section 1101 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (h) of this section relating to the requirement that the Corporation transmit an annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 7th item on page 199 of House Document No. 103–7.

ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND TRANSFER OF FUNCTIONS

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94–210, see section 619 of Pub. L. 94–210, set out as a note under section 791 of this title.

¹ So in original. Probably should be section "719(c)(3)".

§742. Powers and duties of Corporation

The Corporation shall have all of the powers and is subject to all of the duties vested in it under this chapter, in addition to the powers conferred upon it under the laws of the State or States in which it is incorporated and the powers of a railroad in any State in which it operates. The Corporation is authorized and directed to—

- (a) acquire rail properties designated in the final system plan to be transferred or conveyed to it;
- (b) operate rail service over such rail properties except as provided under sections 744(e) and 791(d)(3) of this title;
- (c) rehabilitate, improve, and modernize such rail properties; and
- (d) maintain adequate and efficient rail services.

So long as 50 per centum or more, as determined by the Secretary of the Treasury, of the outstanding indebtedness of the Corporation consists of obligations of the Association or other debts owing to or guaranteed by the United States, the Corporation shall not engage in activities which are not related to transportation.

(Pub. L. 93–236, title III, §302, Jan. 2, 1974, 87 Stat. 1005.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS

AND SECURITIES

See section 1341 of this title.

§743. Valuation and conveyance of rail properties

(a) Deposit with court

Within 10 days after delivery of a certified copy of a final system plan pursuant to section 719(c) of this title—

(1) the Corporation, in exchange for the rail properties of the railroads in reorganization in the region and of railroads leased, operated, or controlled by railroads in reorganization in the region to be transferred to the Corporation or any subsidiary thereof, shall deposit with the special court all of the stock and other securities of the Corporation and certificates of value issued by the Association designated in the final system plan to be exchanged for such rail properties;

(2) each profitable railroad operating in the region and each state or responsible person (including a government entity) purchasing rail properties from a railroad in reorganization in the region, or from a railroad leased, operated, or controlled by a railroad in reorganization in the region, as provided in the final system plan shall deposit with the special court the compensation to be paid for such rail properties.

(b) Conveyance of rail properties

(1) The special court shall, within 10 days after deposit under subsection (a) of this section of the securities of the Corporation, certificates of value issued by the Association, and compensation from the profitable railroads operating in the region, States, and responsible persons, order the trustee or trustees of each railroad in reorganization in the region to convey forthwith to the Corporation or any subsidiary thereof, the respective profitable railroads operating in the region, States, and responsible persons all right, title, and interest in the rail properties of such railroad in reorganization and shall itself order the conveyance of all right, title, and interest in the rail properties of any person leased, operated, or controlled by such railroad in reorganization that are to be conveyed to them under the final system plan as certified to such court under section 719(d) of this title. In any case where the special court orders the trustee or trustees of a railroad in reorganization in the region to execute and deliver deeds or other instruments conveying rail properties to the Corporation or a subsidiary thereof or to a profitable railroad operating in the region or a State or responsible person, those deeds or other instruments may be executed, acknowledged, and delivered on behalf of the trustee or trustees by any person or persons who have been duly authorized to perform such acts on behalf of the trustee or trustees by the district court of the United States or any other court having jurisdiction over the respective railroad in reorganization in the region. Notwithstanding any provision of State or local law, in any case where deeds or other instruments have been executed, acknowledged, or delivered by a representative of the trustee or trustees of a railroad in reorganization in the region in accordance with the previous sentence, such execution, acknowledgment, and delivery, and the deeds or other instruments to which they pertain, shall have the same legal effect as they would have had if the trustee or trustees had themselves executed, acknowledged and delivered such deeds or other instruments.

(2) All rail properties conveyed to the Corporation or any subsidiary thereof the respective profitable railroads operating in the region, States, and responsible persons under this section shall be conveyed free and clear of any liens or encumbrances, but subject to such leases and agreements as shall have previously burdened such properties or bound the owner or operator thereof in pursuance of an arrangement with any State, or local or regional transportation authority under which financial support from such State, or local or regional transportation authority was being provided on January 2, 1974, for the continuance of rail passenger service or any lien or encumbrance of no greater than 5 years' duration which is necessary for the contractual performance by any person of duties related to public health or sanitation. Such conveyances shall not be restrained or enjoined by any court.

(3)(A)(i) Notwithstanding any other provision of this chapter, if an interest in railroad rolling stock is included in the rail properties conveyed pursuant to subsection (b)(1) of this section, and if such

conveyance is in accordance with the requirements of clause (ii) of this subparagraph, the conveyance of such properties shall be deemed an assignment. Any such assignment shall relieve the assignor of liability for any breach which occurs after the date of such conveyance, except that such assignor shall remain liable for any breach, event of default, or violation of covenant which occurred (and any charges or obligations which accrued) prior to the date of such conveyance, regardless of whether the assignee thereof assumes such liabilities, charges or obligations. If any such liabilities, charges, or obligations (accrued prior to the date of such conveyance) are paid by or on behalf of any person or entity other than such assignor, such person or entity shall have a claim to direct reimbursement, as a current expense of administration, from such assignor, together with interest on the amount so paid.

(ii) A conveyance referred to in clause (i) of this subparagraph may be effected only if—

(I) the Corporation or a subsidiary thereof, the profitable railroad operating in the region, or the State or responsible person to whom such conveyance is made assumes all of the obligations under any applicable conditional sale agreement, equipment trust agreement, or lease with respect to such rolling stock (including any obligations which accrued prior to the date on which such properties are conveyed), and

(II) such conveyance is made subject to such obligations.

As used in this subparagraph, the term "railroad rolling stock" means assets which could be carried in Interstate Commerce Commission account numbers 52, 53, 54, and 57.

(B) Subject to the provisions of this paragraph, the provisions of this chapter shall not affect the title and interests of any lessor, equipment trust trustee, or conditional sale vendor under any conditional sale agreement, equipment trust agreement, or lease under section 77(j) of the Bankruptcy Act. A profitable railroad operating in the region, the Corporation or a subsidiary thereof, or a State or responsible person, to whom such a conveyance is made as assignee or as lessee, shall assume all liability under such conditional sale agreement, equipment trust agreement, or lease. Such an assignment or conveyance to, and such an assumption of liability by, such a profitable railroad, Corporation, subsidiary, State, or responsible person shall not be deemed a breach, an event of default, or a violation of any covenant of any such conditional sale agreement, equipment trust agreement, or lease so assigned or conveyed, notwithstanding any provisions of any such agreement or lease.

(4) Notwithstanding anything to the contrary contained in this chapter, if a railroad in reorganization has leased rail properties from a lessor that is neither a railroad nor controlled by or affiliated with a railroad, and such lease has been approved by the lessee railroad's reorganization court prior to January 2, 1974, conveyance of such lease may only be effected if the Corporation, profitable railroad, State, or responsible person to whom the conveyance is made assumes all future liability under such lease and all of the terms and conditions specified in the lease, including the obligation to pay the specified rent to the non-railroad lessor.

(5) Notwithstanding any covenant, undertaking, condition, or provision of any sort in any lease, agreement, or contract, the conveyance, transfer, assignment, or other disposition of such lease, agreement, or contract or of any interest therein to, or the assumption by, the Corporation or any subsidiary thereof, or a profitable railroad of obligations thereunder, shall not be deemed a breach, an event of default, or a violation of any covenant of such lease, agreement, or contract.

(6)(A) Notwithstanding anything to the contrary contained in this chapter or any other other ¹ provision of law, the special court shall include in its order such further directions as may be necessary to assure (i) that the operation and administration of the employee pension benefit plans described in section 775(a) ² of this title shall be continued, without termination or interruption, by the Corporation until such time as the Corporation elects to amend or terminate any such plan, in whole or in part; and (ii) that appropriate transfers and assignments with respect to all rights and obligations relating to such plans shall be made to the Corporation for such purposes, without prejudice to payment of consideration for whatever rights any railroad in reorganization may have in any residual assets under any such employee pension benefit plan. No court shall enter any judgment against the Corporation with respect to any such rights, except that the special court may enter such a

judgment in an order issued by it pursuant to subsection (c) of this section, after taking into consideration the rights and obligations transferred pursuant to this paragraph. All liabilities as an employer shall be imposed solely upon the railroad in reorganization in the event such plan is terminated, in whole or in part, by the Corporation within 1 year after the date of such transfer or assignment (except liabilities as an employer under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] for benefits accruing during such period), except that in any case in which the Corporation, on or after the date of transfer or assignment as provided by this paragraph, terminates in whole or in part any such plan, the benefits under which are not guaranteed under title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], the Corporation shall guarantee the payment when due of the accrued pension benefits provided for thereunder at the time of termination. The Corporation shall be entitled to a loan pursuant to section 721(h) of this title in an amount required for the adequate funding of accrued pension benefits under all plans transferred or assigned to the Corporation in accordance with this paragraph (whether or not terminated by the Corporation). For purposes of such section 721(h) and notwithstanding any other provision of Federal or State law, amounts required for such adequate funding shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization, due and payable as of the date of transfer or assignment of the plans to the Corporation.

(B) The Corporation shall, through the purchase of insurance or otherwise, maintain in effect any medical insurance coverage or so much of any life insurance coverage that does not exceed in death benefits an amount equal to twice the employee's annual salary at the time of retirement or \$60,000, whichever is lower, which coverage was maintained by a railroad in reorganization in the region immediately prior to April 1, 1976, and which provides insurance benefits to employees who retired, prior to April 1, 1976, from service with such a railroad. With respect to any such employee whose medical or life insurance coverage lapsed after April 1, 1976, due to nonpayment of premiums, the Corporation shall—

(i) through the purchase of insurance or otherwise, provide medical insurance benefits or life insurance benefits at the same level as were provided by the employer railroad in reorganization and in effect with respect to such employees immediately prior to April 1, 1976, except that the life insurance benefits so provided shall not exceed in death benefits an amount equal to twice the employee's annual salary at the time of retirement or \$60,000, whichever is lower; and

(ii) assume and pay any claim for such employee (or his personal representative) for any such insurance benefits, if—

(I) such claim arose during the period beginning April 1, 1976, and ending on the date insurance coverage is provided pursuant to clause (i) of this subparagraph;

(II) such benefits were not paid by an insurer solely because of the lapse of the insurance coverage during such period,

except that such death benefits shall not be paid for any such employee in excess of an amount equal to twice the employee's annual salary at the time of retirement or \$60,000, whichever is lower.

The Corporation shall be entitled to a loan pursuant to section 721(h) of this title in an amount required for the payment of insurance premiums and benefits described in this subparagraph. For purposes of section 721(h)(4)(A)(iii) of this title, amounts required for the payment of such premiums and benefits shall be deemed to be valid administrative claims against the respective estates of the railroads in reorganization, due and payable as of April 1, 1976, or, in the case of a railroad in reorganization which is not subject to a bankruptcy proceeding, such amounts shall be deemed to be obligations of such railroad, due and payable as of such date, and shall be reimbursable in accordance with the procedures set forth in paragraphs (4) and (5) of such section 721(h) of this title. As used in this subparagraph, the term "railroad in reorganization" includes any railroad which is controlled by a railroad in reorganization but is not itself subject to a bankruptcy proceeding, if

such railroad conveyed substantially all of its rail properties to the Corporation pursuant to paragraph (1) of this subsection and conducted operations over such rail properties prior to the date of such conveyance.

(c) Findings and distribution

(1) After the rail properties have been conveyed to the Corporation or any subsidiary thereof, profitable railroads operating in the region, States, and responsible persons under subsection (b) of this section, the special court, giving due consideration to the findings contained in the final system plan, shall decide—

(A) whether the transfers or conveyances—

(i) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to the Corporation or any subsidiary thereof in exchange for the certificates of value and the other benefits accruing to such railroad as a result of such exchange (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad) as provided in the final system plan and this chapter, and

(ii) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to a profitable railroad operating in the region in exchange for compensation and other benefits accruing to such transferor as a result of such exchange (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad) State, or responsible person in accordance with the final system plan,

are in the public interest and are fair and equitable to the estate of each railroad in reorganization in accordance with the standard of fairness and equity applicable to the approval of a plan of reorganization or a step in such a plan under section 77 of the Bankruptcy Act, or fair and equitable to a railroad that is not itself in reorganization but which is leased, operated, or controlled by a railroad in reorganization;

(B) whether the transfers or conveyances are more fair and equitable than is required as a constitutional minimum; and

(C) what portion of the proceeds received by a railroad in reorganization from an entity other than the Corporation or any subsidiary thereof for the sale, lease, or transfer of property subject to an agreement under section 723 or section 725(a)(1) or (2) of this title reflects value attributable to the maintenance or improvement provided pursuant to the agreement.

(2) If the special court finds that the terms of one or more exchanges for certificates of value and other benefits are not fair and equitable to an estate of a railroad in reorganization, or to a railroad leased, operated, or controlled by a railroad in reorganization (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad), which has transferred rail properties pursuant to the final system plan, it may—

(A) enter a judgment reallocating the certificates of value in a fair and equitable manner if they have not been fairly allocated among the railroads transferring rail properties to the Corporation or any subsidiary thereof, except that one certificate of value shall be allocated to each such railroad; and

(B) if the lack of fairness and equity cannot be completely cured by a reallocation of the certificates of value, order the Corporation to provide for the transfer to the railroad of certificates of value issued by the Association as designated in the final system plan in such nature and amount as would make the exchange or exchanges fair and equitable; and

(C) enter a judgment against the Corporation if the judgment would not endanger the viability or solvency of the Corporation.

(3) If the special court finds that the terms of one or more conveyances of rail properties to a profitable railroad operating in the region, State, or responsible person in accordance with the final system plan are not fair and equitable, it shall enter a judgment against such profitable railroad, State, or responsible person. If the special court finds that the terms of one or more conveyances or exchanges for certificates of value or other benefits are fairer and more equitable than is required as a constitutional minimum, then it shall order the return of any excess certificates of value, or compensation to the Corporation or a profitable railroad, State, or responsible person so as not to exceed the constitutional minimum standard of fairness and equity. The special court shall also find the amount of the payments, if any, which each profitable railroad has made on behalf of a transferor railroad in reorganization in accordance with section 721(h) of this title, for which payment the profitable railroad has not been reimbursed, as provided in section 721(h) of this title.

Notwithstanding any other provision of this paragraph or of paragraph (4), the special court shall order the return to any such profitable railroad from compensation deposited by such profitable railroad pursuant to subsection (a)(2) of this section, of any such amount so found together with interest at the rate provided in section 721(h) of this title. In making any finding under this paragraph, the special court shall take into consideration compensable unconstitutional erosion, if any, which it finds to have occurred in the estate of a railroad in reorganization in the region, or of a railroad leased, operated, or controlled by such a railroad, during the bankruptcy proceeding with respect to such railroad.

(4) Upon making the findings referred to in this subsection, the special court shall order distribution of the certificates of value and compensation deposited with it under subsection (a) of this section to the trustee or trustees of each railroad in reorganization in the region and to persons leased, operated, or controlled by such railroads who so transferred or conveyed rail properties who conveyed right, title, and interest in rail properties to the Corporation and the respective profitable railroads, States, and responsible persons under such subsection.

(5) Whenever the special court, pursuant to subsection (b)(1) of this section, orders the transfer or conveyance of rail properties—

(A) designated under section 716(c)(1)(C) or (D) of this title, to the Corporation or any subsidiary thereof, the United States shall indemnify the Corporation against any costs or liabilities imposed on the Corporation as the result of any judgment entered against the Corporation, with respect to such properties, under paragraph (2) of this subsection; and

(B) to the National Railroad Passenger Corporation, a profitable railroad operating in the region, a State, or any other responsible person (including a governmental entity), the United States shall indemnify such Corporation, railroad, State, or person against any costs or liabilities imposed thereon as the result of any judgment entered against such Corporation, railroad, State, or person under paragraph (3) of this subsection;

plus interest on the amount of such judgment at such rate as is constitutionally required. The United States may, in its discretion, represent the Corporation or the National Railroad Passenger Corporation, such profitable railroad, State or responsible person, in any proceedings before the special court that could result in such a judgment against the Corporation under paragraph (2) of this subsection or against the National Railroad Passenger Corporation, such profitable railroad, State or responsible person, under paragraph (3) of this subsection. The Corporation, the National Railroad Passenger Corporation, any profitable railroad, State, or responsible person, which is represented by the United States of America shall cooperate diligently in whatever manner the United States shall reasonably request of it in connection with such proceedings. Neither the Corporation, or its subsidiaries, nor the National Railroad Passenger Corporation, any profitable railroad, State or responsible person, shall be obligated to reimburse the United States for any moneys paid by the United States pursuant to this section.

(6) Whenever the Corporation exercises an option to acquire, or acquires, interests in rail marine freight floating equipment pursuant to the recommendations of the final system plan, and the

Corporation thereafter makes such floating equipment available to a profitable railroad operating in the region, a State, or a responsible person including ³ a government entity), the United States shall indemnify—

(A) the Corporation against any costs or liabilities imposed on the Corporation as the result of any judgment entered against it, with respect to such equipment, under paragraph (2) of this subsection; and

(B) such profitable railroad, State, or responsible person against any costs or liabilities imposed thereon as the result of any judgment entered against such profitable railroads, State, or responsible person under paragraph (3) of this subsection,

plus interest on the amount of such judgment at such rate as is constitutionally required.

(d) Appeal

An order or judgment entered by the United States District Court for the District of Columbia pursuant to subsection (c) of this section or section 746 of this title shall be reviewable in accordance with sections 1291, 1292, and 1294 of title 28.

(e) Transfer and other taxes and recording fees

All transfers or conveyances of rail properties (whether real, personal, or mixed) which are made under this chapter (including transfers and conveyances which are made in accordance with a supplemental transaction pursuant to section 745 of this title or which are made at any time to carry out the purposes of section 791(d) of this title) shall be exempt from any taxes, imposts, or levies now or hereafter imposed, by the United States or by any State or any political subdivision of a State, on or in connection with such transfers or conveyances or on the recording of deeds, bills of sale, liens, encumbrances, or other instruments evidencing, effectuating, or incident to any such transfers or conveyances, whether imposed on the transferor or on the transferee. Such transferors and transferees shall be entitled to record any such deeds, bills of sale, liens, encumbrances, or other instruments and, consistent with the designations and applicable principles in the final system plan, to record the release or removal of any pre-existing liens or encumbrances of record with respect to properties so transferred or conveyed, upon payment of any appropriate and generally applicable charges to compensate for the cost of the service performed.

(Pub. L. 93–236, title III, §303, Jan. 2, 1974, 87 Stat. 1005; Pub. L. 94–5, §8, Feb. 28, 1975, 89 Stat. 9; Pub. L. 94–210, title VI §§601(d), 612(a), (c)–(i), (k), (l), (n)–(q), Feb. 5, 1976, 90 Stat. 84, 107–111; Pub. L. 94–436, §§3, 5, Sept. 30, 1976, 90 Stat. 1398, 1399; Pub. L. 94–555, title II, §§202(b), 204, 220(b), Oct. 19, 1976, 90 Stat. 2616, 2620, 2629; Pub. L. 95–199, §4, Nov. 23, 1977, 91 Stat. 1424; Pub. L. 95–597, §1, Nov. 4, 1978, 92 Stat. 2547; Pub. L. 96–73, title II, §204(a), Sept. 29, 1979, 93 Stat. 556; Pub. L. 97–35, title XI, §1167(a), Aug. 13, 1981, 95 Stat. 686; Pub. L. 100–352, §6(e), June 27, 1988, 102 Stat. 664; Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379; Pub. L. 104–317, title VI, §605(b)(2), Oct. 19, 1996, 110 Stat. 3858.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in subsecs. (b)(3)(B) and (c)(1)(A)(ii), was classified to section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

Section 775 of this title, referred to in subsec. (b)(6)(A), was repealed by Pub. L. 97–35, title XI, §1144(a)(1), Aug. 13, 1981, 95 Stat. 669.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(6)(A), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title IV of the Employee Retirement Income Security Act of 1974 is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

CODIFICATION

The amendments made by section 612(i)(4) of Pub. L. 94-210 could be read as substituting "certificates of value" for "obligations" in subsecs. (b)(3)(A), (b)(5), and (b)(6), as added by section 612(a) and (l) of Pub. L. 94-210. However, this substitution is not appropriate in the context of the new subsecs. (b)(3)(A), (b)(5), and (b)(6).

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-317 substituted "Appeal" for "Review" in heading and amended text generally. Prior to amendment, text read as follows: "A finding or determination entered by the special court pursuant to subsection (c) of this section or section 746 of this title shall be reviewable only upon petition for a writ of certiorari to the Supreme Court of the United States. Such review is exclusive and any such petition shall be filed in the Supreme Court not more than 20 days after entry of such finding or determination."

1994—Subsec. (e). Pub. L. 103-272 struck out "title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 or of" before "section 791(d)".

1988—Subsec. (d). Pub. L. 100-352 substituted "Review" for "Appeal" in heading and amended text generally. Prior to amendment, text read as follows: "A finding or determination entered by the special court pursuant to subsection (c) of this section or section 746 of this title may be appealed directly to the Supreme Court of the United States in the same manner that an injunction order may be appealed under section 1253 of title 28: *Provided*, That such appeal is exclusive and shall be filed in the Supreme Court not more than 20 days after such finding or determination is entered by the special court. The Supreme Court shall dismiss any such appeal within 7 days after the entry of such an appeal if it determines that such an appeal would not be in the interest of an expeditious conclusion of the proceedings and shall grant the highest priority to the determination of any such appeals which it determines not to dismiss."

1981—Subsec. (c). Pub. L. 97-35 struck out all references to securities wherever appearing in text, and reference to share of series B preferred stock.

1979—Subsec. (b)(6)(B). Pub. L. 96-73 inserted provisions which limited coverage to amount that does not exceed in death benefits amount equal to twice the employee's annual salary at time of retirement or \$60,000, whichever is lower, provided for maintenance of regional coverage, and in cases of lapsed coverage due to nonpayment of premiums prescribed the same limitation for claims arising during the lapsed period or thereafter.

1978—Subsec. (b)(6). Pub. L. 95-597 redesignated existing provisions as subpar. (A), redesignated clauses (A) and (B) as (i) and (ii), respectively, and added subpar. (B).

1977—Subsec. (d). Pub. L. 95-199 substituted "entered by the special court pursuant to subsection (c) of this section or section 746 of this title" for "entered pursuant to subsection (c) of this section".

1976—Subsec. (a)(1). Pub. L. 94-210, §612(c)(1), (i), inserted "or any subsidiary thereof" before ", shall deposit", and substituted "certificates of value issued by" for "obligations of".

Subsec. (a)(2). Pub. L. 94-210, §612(d)(1), inserted reference to each State or responsible person (including a governmental entity).

Subsec. (b)(1). Pub. L. 94-210, §612(c)(2), (d)(2), (i), (o), (p), inserted "or any subsidiary thereof" after "to the Corporation", "States, and responsible persons" before "order the trustee", and provisions relating to orders of the trustee or trustees to execute and deliver deeds or other instruments conveying rail properties, and substituted "person leased" for "railroad leased", ", the respective profitable railroads operating in the region, States, and responsible persons" for "and the respective profitable railroads operating in the region", and "certificates of value issued by" for "obligations of".

Subsec. (b)(2). Pub. L. 94-210, §612(c)(2), (d)(3), inserted "or any subsidiary thereof" after "Corporation" and reference to States and responsible persons.

Subsec. (b)(3). Pub. L. 94-210, §612(a), redesignated existing provisions as subpar. (A)(ii), made changes in phraseology, inserted definition of "railroad rolling stock" and struck out provisions relating to affect of chapter on title and interests of any lessor, etc., and added subpar. (A)(i) and (B).

Subsec. (b)(4). Pub. L. 94-210, §612(d)(4), (k), inserted "all future liability under such lease and" after "is made assumes", and substituted ", profitable railroad, State, or responsible person" for "or the profitable railroad".

Subsec. (b)(5), (6). Pub. L. 94-210, §612(l), added pars. (5) and (6).

Subsec. (b)(6). Pub. L. 94-555, §204, inserted provisions entitling the Corporation to a loan to fund accrued, non-guaranteed pension benefits under all plans transferred or assigned to the Corporation, whether terminated or not, and such loan is to be charged to the estate of railroad in reorganization as an administrative expense.

Subsec. (c)(1). Pub. L. 94-210, §612(c)(3), (d)(5), (6), (i), (q)(1), (2), in introductory text inserted "or any

subsidiary thereof" after "Corporation" and inserted reference to States and responsible persons, in subpar. (A)(i) inserted "or any subsidiary thereof" after "Corporation" and ", certificates of value" after "securities", and inserted provision relating to consideration of compensable unconstitutional erosion, in subpar. (A)(ii) inserted reference to State or responsible person, and provision relating to compensation and other benefits accruing to such transferor as a result of the exchange, and in subpar. (C) inserted "or any subsidiary thereof" after "Corporation".

Subsec. (c)(2). Pub. L. 94–210, §612(c)(4), (e), (i), (q)(3), in introductory text inserted reference to certificates of value and provision relating to consideration of compensable unconstitutional erosion, and substituted "may" for "shall", in subpar. (A) inserted reference to any subsidiary of a Corporation, exception relating to allocation to each such railroad of preferred stock, etc., ", certificates of value" after "securities" and "and certificates of value" after "of the Corporation", in subpar. (B) inserted "and certificates of value" after "Corporation's securities" and ", certificates of value" after "other securities", and substituted "certificates of value issued by the Association" for "obligations of the Association", and in subpar. (C) generally revised criteria for entering a judgment against the Corporation.

Subsec. (c)(2)(A). Pub. L. 94–555, §220(b)(1), (2), substituted "securities and certificates of value" for "securities and certificates of value of the Corporation and certificates of value" after "reallocating the" and "they have" for "it has" after "equitable manner".

Subsec. (c)(2)(B). Pub. L. 94–555, §220(b)(3), (4), substituted "securities and certificates of value" for "Corporation's securities, certificates of value" after "reallocation of", and substituted "other securities" for "other securities and certificates of value" after "the railroad of".

Subsec. (c)(3). Pub. L. 94–555, §220(b)(5), substituted "subsection (a)(2) of this section" for "section 303(a)(2)", in the original, necessitating no change in text.

Pub. L. 94–210, §612(d)(7), (i), (n), (q)(4), inserted references to States or responsible persons wherever appearing, provisions relating to unreimbursed payments made by the profitable railroad on behalf of the transferor railroad in reorganization, provisions relating to consideration by the special court of compensable unconstitutional erosion, and "certificates of value" after "securities", and substituted "certificates of value" for "obligations".

Subsec. (c)(4). Pub. L. 94–210, §612(d)(8), (h), (i), inserted ", States, and responsible persons" after "profitable railroads" and "and to persons leased, operated, or controlled by such railroads who so transferred or conveyed rail properties" after "region", and substituted "(a)" for "(b)" and "certificates of value" for "obligations".

Subsec. (c)(5). Pub. L. 94–436, §3, restructured first sentence limiting indemnification of United States to judgments against Corporation or any subsidiary entered pursuant to par. (2) and to judgments against the National Railroad Passenger Corporation, profitable railroads, a State, or any responsible person entered pursuant to par. (3).

Pub. L. 94–210, §612(f), added par. (5).

Subsec. (c)(6). Pub. L. 94–555, §202(b), added par. (6).

Subsec. (d). Pub. L. 94–210, §612(g), substituted "20" for "5".

Subsec. (e). Pub. L. 94–436, §5, inserted, after "section 745 of this title" in second parenthetical expression, "or which are made at any time to carry out the purposes of title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 or section 791 of this title".

Pub. L. 94–210, §601(d), added subsec. (e).

1975—Subsec. (c)(1)(C). Pub. L. 94–5 added subpar. (C).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–317 effective 90 days after Oct. 19, 1996, and except as otherwise provided, applicable to proceedings that arise or continue after such effective date, see section 605(e) of Pub. L. 104–317, set out as a note under section 719 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as an Effective Date note under section 1101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–73, title V, §501(b), Sept. 29, 1979, 93 Stat. 558, provided that: "The amendments made by section 204 of this Act [enacting subsec. (b)(6)(B) of this section and section 721(h)(1)(A)(viii), (6) of this title] shall be effective as of the date of enactment [Nov. 4, 1978] of Pub. L. 95–597."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–555 effective Oct. 1, 1976, see section 303 of Pub. L. 94–555, set out as a note under section 702 of this title.

ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND TRANSFER OF FUNCTIONS

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

CASES PENDING IN SPECIAL COURT

For applicability of amendment by Pub. L. 104–317 to cases pending in special court established under section 719(b) of this title, see section 605(d) of Pub. L. 104–317, set out as a note under section 719 of this title.

ADMINISTRATIVE CLAIM STATUS

Pub. L. 95–597, §2, Nov. 4, 1978, 92 Stat. 2548, provided that: "The conferring of administrative claim status on amounts paid for the insurance premiums and benefits described in the amendment made by the first section of this Act [amending this section] shall be effective solely for purposes of meeting the conditions set forth in section 211(h)(4)(A)(iii) of the Regional Rail Reorganization Act of 1973 [section 721(h)(4)(A)(iii) of this title] with respect to which obligations of the estate of a railroad in reorganization may be paid pursuant to such section 211(h) [section 721(h) of this title], and shall not be construed—

"(1) as affecting the jurisdiction of the district court having jurisdiction over such a railroad in reorganization to determine whether such insurance premiums and benefits constitute enforceable contractual obligations of the estate of such a railroad for purposes of reimbursement under such section 211(h) [section 721(h) of this title]; or

"(2) as establishing or reordering any priority which a claim against the estate of such a railroad for reimbursement for the amounts paid for such insurance premiums and benefits may or may not have under the provisions of the Bankruptcy Act [section 1 et seq. of former Title 11, Bankruptcy] or any other law."

CORPORATION AS SUCCESSOR IN INTEREST

Pub. L. 95–597, §3, Nov. 4, 1978, 92 Stat. 2548, provided that: "Notwithstanding any other provision of law, any corporation which, pursuant to a plan of reorganization under section 77 of the Bankruptcy Act [section 205 of former Title 11, Bankruptcy], is the successor in interest to a railroad in reorganization shall have standing to assert, in any judicial or administrative proceeding, any claim or defense available to such railroad in reorganization with respect to whether the insurance benefits and premiums described in the amendment made by the first section of this Act [amending this section] constitute enforceable contractual obligations of the estate of such railroad in reorganization. For purposes of this section, the term 'railroad in reorganization' has the meaning given such term in paragraph (14) of section 102 of the Regional Rail Reorganization Act of 1973 [section 702(14) of this title]."

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94–210, see section 619 of Pub. L. 94–210, set out as a note under section 791 of this title.

¹ *So in original.*

² *See References in Text note below.*

³ *So in original. Probably should be "(including".*

§744. Termination and continuation of rail services

(a) Discontinuance

(1) Except as provided in subsections (c) and (f) of this section, rail service on rail properties of a railroad in reorganization in the region, or of a person leased, operated, or controlled by such a railroad, which transfers to the Corporation or to profitable railroads operating in the region all or substantially all of its rail properties designated for such conveyance in the final system plan, and rail service on rail properties of a profitable railroad operating in the region which transfers substantially all of its rail properties to the Corporation or to other railroads pursuant to the final system plan, may be discontinued, to the extent such discontinuance is not precluded by the terms of the leases and agreements referred to in section 743(b)(2) of this title, if—

(A) the final system plan does not designate rail service to be operated over such rail properties;

(B) not sooner than 30 days following the effective date of the final system plan, the trustee or trustees of the applicable railroad in reorganization or a profitable railroad give notice in writing of intent to discontinue such service on a date certain which is not less than 60 days after the date of such notice or on the date of any conveyance ordered by the special court pursuant to section 743(b)(1) of this title, whichever is later; and

(C) the notice required by subparagraph (B) of this paragraph is sent by certified mail to the Commission; to the chief executive officer, the transportation agencies, and the government of each political subdivision of each State in which such rail properties are located; and to each shipper who has used such rail service during the previous 12 months.

(2)(A) If rail properties are not, in accordance with the designations in the final system plan, required to be operated, as a consequence of a recommended arrangement for joint use or operation of rail properties (under section 716(g) of this title) or as part of a coordination project (under sections 716(c) and (g) of this title), rail service on such properties may be discontinued, subsequent to the date of conveyance of rail properties pursuant to such section 743(b)(1) of this title, if the Commission determines that such rail service on such rail properties is not compensatory and if—

(i) the petitioner and any other railroad involved in such arrangement or coordination project have, prior to filing an application for such discontinuance, entered into a binding agreement (effective on or before the effective date of such discontinuance) to carry out such arrangement or project;

(ii) such application is filed with the Commission not later than 1 year after the effective date of the final system plan; and

(iii) such discontinuance is not precluded by the terms of the leases and agreements referred to in such section 743(b)(2).

(B) For purposes of this paragraph, rail service on rail properties is compensatory if the revenue attributable to such properties from such service equals or exceeds the sum of the avoidable costs of providing such service on such properties plus a reasonable return on the value of such rail properties, as determined in accordance with the standards developed pursuant to section 10362(b)(6) ¹ of title 49.

(C) The Commission shall make its final determination, with respect to any discontinuance requested under this paragraph, not later than 120 days after the date of filing of an application therefor. The applicant shall have the burden of proving that the service involved is not compensatory. If the Commission fails to make a final determination within such time, the application shall be deemed to be granted.

(D) The Commission may issue such rules, regulations, and procedures as it deems necessary for the conduct of its functions under this paragraph.

(b) Abandonment

(1) Except as provided in subsections (c) and (f) of this section, rail properties over which rail service has been discontinued under subsection (a) of this section may not be abandoned sooner than 120 days after the effective date of the discontinuance. Thereafter, except as provided in subsection (c) of this section, such rail properties may be abandoned upon 30 days' notice in writing to any person (including a government entity) required to receive notice under subsection (a)(1)(C) of this section.

(2) In any case in which rail properties proposed to be abandoned under this section are designated by the final system plan as rail properties which are suitable for use for other public purposes (including roads or highways, other forms of mass transportation, conservation, and recreation), such rail properties shall not be sold, leased, exchanged, or otherwise disposed of during the 240-day period beginning on the date of notice of proposed abandonment under this section unless such rail properties have first been offered, upon reasonable terms, for acquisition for public purposes.

(3) Rail service may be discontinued, under subsection (a) of this section, and rail properties may be abandoned, under this section, notwithstanding any provision of part A of subtitle IV of title 49, the constitution or law of any State, or the decision of any court or administrative agency of the United States or of any State.

(c) Continuation of rail services

No rail service may be discontinued and no rail properties may be abandoned, pursuant to this section—

(1) in the case of service and properties referred to in subsections (a)(1) and (b)(1) of this section, after 2 years from the effective date of the final system plan or more than 2 years after the date on which the final rail service continuation payment is received, whichever is later; or

(2) if a financially responsible person (including a government entity) offers—

(A) to provide a rail service continuation payment which is designed to cover the difference between the revenue attributable to such rail properties and the avoidable costs of providing rail service on such properties, together with a reasonable return on the value of such properties;

(B) to provide a rail service continuation payment which is payable pursuant to a lease or agreement with a State or with a local or regional transportation authority under which financial support was being provided on January 2, 1974 for the continuation of rail passenger service; or

(C) to purchase, pursuant to subsection (f) of this section, such rail properties in order to operate rail services thereon.

If a rail service continuation payment is offered, pursuant to paragraph (2)(A) of this subsection, for both freight and passenger service on the same rail properties, the owner of such properties may not be entitled to more than one payment of a reasonable return on the value of such properties.

(d) Rail freight service

(1) If a rail service continuation payment is offered, pursuant to subsection (c)(2)(A) of this section, for rail freight service, the person offering such payment shall designate the operator of such service and enter into an operating agreement with such operator. The person offering such payment shall designate as the operator of such service—

(A) the Corporation, if rail properties of the Corporation connect with the line of railroad involved, unless the Commission determines that such rail service continuation could be performed more efficiently and economically by another railroad;

(B) any other railroad whose rail properties connect with such line, if the Corporation's rail properties do not so connect or if the Commission makes a determination in accordance with subparagraph (A) of this paragraph; or

(C) any responsible person (including a government entity) which is willing to operate rail service over such rail properties.

A designated railroad may refuse to enter into such an operating agreement only if the Commission determines, on petition by any affected party, that the agreement would substantially impair such railroad's ability to serve adequately its own patrons or to meet its outstanding common carrier obligations. The designated operator shall, pursuant to each such operating agreement (i) be obligated to operate rail freight service on such rail properties, and (ii) be entitled to receive, from the person offering such payment, the difference between the revenue attributable to such properties and the avoidable costs of providing service on such rail properties, together with a reasonable management fee, as determined by the Office.

(2) The trustees of a railroad in reorganization shall permit rail service to be continued on any rail properties with respect to which a rail service continuation payment operating agreement has been entered into under this subsection. Such trustees shall receive a reasonable return on the value of such properties, as determined in accordance with the standards developed pursuant to section 10362(b)(6) ¹ of title 49.

(3) If necessary to prevent any disruption or loss of rail service, at any time after the date of conveyance, pursuant to section 743(b)(1) of this title, the Commission shall take such action as may be appropriate under its existing authority (including the enforcement of common carrier requirements applicable to railroads in reorganization in the region) to ensure compliance with obligations imposed under this subsection. The district courts of the United States shall have jurisdiction, upon petition by the Commission or any interested person (including a government entity), to enforce any order of the Commission issued pursuant to the exercise of its authority under this subsection, or to enjoin any designated entity or the trustees of a railroad in reorganization in the region from refusing to comply with the provisions of this subsection.

(4) No determination of reasonable payment for the use of rail properties of a railroad in reorganization in the region, and no determination of value of rail properties of such a railroad (including supporting or related documents or reports of any kind) which is made in connection with any lease agreement, contract of sale, or other agreement or understanding which is entered into after October 19, 1976—

(A) pursuant to this section; or

(B) pursuant to section 762 ¹ of this title or section 17 ¹ of the Federal Transit Act (49 U.S.C. 1613),

shall be admitted as evidence, or used for any other purpose, in any civil action, or any other proceeding for damages or compensation, arising under this chapter.

(e) Rail passenger service

(1) The Corporation (or a profitable railroad) shall provide rail passenger service for a period of 180 days immediately following the date of conveyance (pursuant to section 743(b)(1) of this title), with respect to any rail properties over which a railroad in reorganization in the region, or a person leased, operated, or controlled by such a railroad, was providing rail passenger service immediately prior to such date of conveyance. Such service shall be provided on such properties regardless of whether or not such properties are designated in the final system plan as rail properties over which rail service is required to be operated, except with respect to properties over which such service is provided by the National Railroad Passenger Corporation.

(2) If a State (or a local or regional transportation authority) was providing financial assistance to support the operation of rail passenger service, pursuant to a lease or agreement which was in effect immediately prior to the date of conveyance (pursuant to such section 743(b)(1) of this title), the Corporation (or a profitable railroad) shall be bound by the service provisions of such lease or

agreement for the duration of the 180-day mandatory operation period specified in paragraph (1) of this subsection. If a State or such an authority was providing financial assistance for the continuation of rail passenger service on rail properties immediately prior to such date of conveyance, it shall provide the same level of financial assistance during such 180-day mandatory operation period. If no such financial assistance was being provided or if no such lease or agreement was in effect immediately prior to such date of conveyance, with respect to any such rail properties, the Corporation (or a profitable railroad) shall provide the same level of rail passenger service, for the duration of such 180-day mandatory operation period, that was provided prior to such date by the applicable railroad. If—

(A) such financial assistance is not provided;

(B) a State (or a local or regional transportation authority) has not, by the end of such 180-day mandatory operation period, offered a rail service continuation payment pursuant to subsection (c)(2)(A) of this section;

(C) an applicable rail service continuation payment pursuant to such subsection (c)(2)(A) is not paid when it is due; or

(D) a payment required under a lease or agreement, pursuant to section 743(b)(2) of this title or subsection (c)(2)(B) of this section, is not paid when it is due,

the Corporation (or, where applicable, the National Railroad Passenger Corporation, a profitable railroad, or the trustee or trustees of a railroad in reorganization in the region) may (i) discontinue such rail passenger service, and (ii) with respect to rail properties not designated for inclusion in the final system plan, abandon such properties pursuant to subsections (a) and (b) of this section.

(3) Nothing in this subsection shall be construed to affect the obligation of the Corporation (or a profitable railroad), or of the trustees of the railroads in reorganization in the region, to provide rail passenger service pursuant to section 743(b)(2) of this title or subsection (c)(2)(B) of this section.

(4) If a State (or a local or regional transportation authority)—

(A) offers a rail service continuation payment, pursuant to subsection (c)(2)(A) of the ² section, for the operation of rail passenger service after the 180-day mandatory operation period, and

(B) provides compensation, pursuant to paragraph (2) of this subsection, for operations conducted during the 180-day mandatory operation period; or

(C) offers a rail service continuation payment, pursuant to subsection (c)(2)(A) of this section, for the operation of rail passenger service provided under an agreement or lease pursuant to section 743(b)(2) of this title or subsection (c)(2)(B) of this section where such offer is made for the continuation of the service beyond the period required by such agreement or lease, except that such services shall not be eligible for assistance under section 17(a)(2) ¹ of the Federal Transit Act (49 U.S.C. 1613(a)(2)),

the Corporation (or a profitable railroad) shall continue to provide such service after the end of such period, except as otherwise provided in this subsection.

(5)(A) The Secretary shall reimburse the Corporation (or a profitable railroad) for any loss which is incurred by it during the 180-day mandatory operation period specified in paragraph (1) of this subsection which is not compensated for by a State (or a local or regional transportation authority). The amount of such reimbursement shall be determined pursuant to section 17(a)(1) ¹ of the Federal Transit Act.

(B) The Secretary shall reimburse States, local public bodies, and agencies thereof for additional costs incurred by such States, bodies, and agencies for rail service continuation payments for rail passenger service pursuant to section 17(a)(2) ¹ of the Federal Transit Act.

(C) For purposes of the obligation of the Secretary to reimburse the Corporation (or a profitable railroad) or States, local public bodies, and agencies thereof under subparagraphs (A) and (B) of this paragraph, the level of rail passenger service shall be determined on the basis of train miles, car miles, or some other appropriate indicia of scheduled train movements. Programs to correct deferred maintenance on rolling stock, right-of-way, and other facilities which are designed to maintain

service, meet on-time performance, and maintain a reasonable degree of passenger comfort (and costs incurred incident thereto) shall be included within the meaning of the term "loss" as used in subparagraph (A) of this paragraph and within the meaning of the term "additional costs" as used in subparagraph (B) of this paragraph and section 17(a)(2) ¹ of the Federal Transit Act (49 U.S.C. 1613(a)(2)).

(D) If a dispute arises with respect to the application of any such regulations, the parties to such dispute may submit such dispute to arbitration by a third party. If the parties are unable to agree upon the selection of an arbitrator, the Chairman of the Commission shall serve in that capacity (except as to matters required to be decided by the Commission, pursuant to section 562(a) of this title).

(6) Notwithstanding any other provision of this subsection, the Corporation is not obligated to provide rail passenger service on rail properties if a State (or a local or regional transportation authority) contracts for such service to be provided on such properties by an operator other than the Corporation, except that the Corporation shall, where appropriate, provide such operator with access to such properties for such purpose.

(7)(A) If a State (or a local or regional transportation authority) in the region offers to provide payment for the provision of additional rail passenger service, the Corporation shall undertake to provide such service pursuant to this subsection (including the discontinuance provisions of paragraph (2) of this subsection). An offer to provide payment for the provision of additional rail passenger service shall be made in accordance with subsection (c)(2)(A) of this section, and shall be designed to avoid any additional costs to the Corporation arising from the construction or modification of capital facilities or from any additional operating delays or costs arising from the absence of such construction or modification. The State (or local or regional transportation authority) shall demonstrate that it has acquired, leased, or otherwise obtained access to all rail properties, other than those designated for conveyance to the National Railroad Passenger Corporation pursuant to sections 716(c)(1)(C) and 716(c)(1)(D) of this title and to the Corporation pursuant to section 743(b)(1) of this title, necessary to provide the additional rail passenger service and that it has completed, or will complete prior to the inception of the additional rail service, all capital improvements necessary to avoid significant costs which cannot be avoided by improved scheduling or other means on other existing rail services (including rail freight service) and to assure that the additional service will not detract from the level and quality of existing rail passenger and freight service.

(B) As used in this paragraph, the term "additional rail passenger service" means rail passenger service (other than rail passenger service provided pursuant to the provisions of paragraphs (2) and (4) of this subsection), including extended or expanded service and modified routings, which is to be provided over rail properties conveyed to the Corporation pursuant to section 743(b)(1) of this title, or over (i) rail properties contiguous thereto conveyed to the National Railroad Passenger Corporation pursuant to this chapter, or (ii) any other rail properties contiguous thereto to which a State (or local or regional transportation authority) has obtained access.

(C) Notwithstanding any other provision of this paragraph, the Corporation shall not be required to operate additional rail passenger service over rail properties leased or acquired from or owned or leased by a profitable railroad in the region.

(8) The Secretary shall, in consultation with the Association, conduct a study to determine the best means of compensating the Corporation for liabilities which it may incur for damages to persons or property, resulting from the operation of rail passenger service required to be operated pursuant to this subsection or section 743(b)(2) of this title, which are not underwritten by private insurance carriers or are not indemnified by a State (or local or regional transportation authority). Such study shall identify the nature of the risks to the Corporation, the probable degree of uninsurability of such risks, and the desirability and feasibility of various indemnification programs, including subsidy offers made pursuant to this section, self-insurance through a passenger tax or other mechanism, or government indemnification for such liabilities. Within one year after November 8, 1978, the Secretary shall prepare a report with appropriate recommendations and shall submit such report to

the Congress. Such report shall specify the most appropriate means of indemnifying the Corporation for such liabilities in a manner which shall prevent the cross-subsidization of passenger services with revenues from freight services operated by the Corporation.

(f) Purchase

If an offer to purchase is made under subsection (c)(2)(C) of this section, such offer shall be accompanied by an offer of a rail service continuation payment. Such payment shall continue until the purchase transaction is completed, unless a railroad assumes operations over such rail properties of its own account pursuant to an order or authorization of the Commission. Whenever a railroad in reorganization in the region or a profitable railroad gives notice of intent to discontinue service pursuant to subsection (a) of this section, such railroad shall, upon the request of anyone apparently qualified to make an offer to purchase or to provide a rail service continuation payment, promptly make available its most recent reports on the physical condition of such property, together with such traffic and revenue data as would be required under subpart B of part 1121 of chapter X of title 49 of the Code of Federal Regulations and such other data as are necessary to ascertain the avoidable costs of providing service over such rail properties.

(g) Abandonment by Corporation

After the rail system to be operated by the Corporation or a subsidiary thereof under the final system plan has been in operation for 2 years, the Commission may authorize the Corporation or a subsidiary thereof to abandon any rail properties as to which it determines that rail service over such properties is not required by the public convenience and necessity, if the Corporation or a subsidiary thereof can demonstrate that no State (or local or regional transportation authority) is willing to offer a rail service continuation payment pursuant to subsection (c) of this section. The Commission may, at any time after the effective date of the final system plan, authorize additional rail service in the region or authorize the abandonment of rail properties which are not being operated by the Corporation or any subsidiary or affiliate thereof or by any other person. Determinations by the Commission under this subsection shall be made pursuant to applicable provisions of part A of subtitle IV of title 49.

(h) Interim abandonment

After February 5, 1976, and prior to the date of conveyance (pursuant to section 743(b)(1) of this title), no railroad in reorganization in the region may discontinue service or abandon any line of railroad other than in accordance with the provisions of this chapter, unless (1) it is authorized to do so by the Association, and (2) no affected State (or local or regional transportation authority) reasonably opposes such action, notwithstanding any provision of any other Federal law, the constitution or law of any State, or the decision or order of, or the pendency of any proceeding before any Federal or State court, agency, or authority.

(i) Disposition of designated rail properties

No railroad in reorganization in the region and no person leased, operated or controlled by such a railroad shall sell, transfer, encumber, or otherwise dispose of rail property, or any right or interest therein, designated for transfer to the Corporation or conveyance to a profitable railroad in the final system plan, except pursuant to section 743(b) of this title. The provisions of this subsection shall not apply to any such sale, transfer, encumbrance, or other disposition—

(1) as to which the Association generally or specifically consents in writing;

(2) which, prior to February 5, 1976, had been specifically approved by a United States district court having jurisdiction over the reorganization of a railroad in reorganization under section 77 of the Bankruptcy Act; or

(3) following certification to the special court, pursuant to section 719(c) of this title, of any such rail properties not previously so certified.

(Pub. L. 93–236, title III, §304, Jan. 2, 1974, 87 Stat. 1008; Pub. L. 94–210, title VI, §607(i), title VIII, §804, Feb. 5, 1976, 90 Stat. 97, 133; Pub. L. 94–555, title II, §§205, 206, Oct. 19, 1976, 90 Stat. 2620, 2621; Pub. L. 95–473, §4(b), Oct. 17, 1978, 92 Stat. 1466; Pub. L. 95–607, title II, §201, Nov. 8, 1978, 92 Stat. 3064; Pub. L. 97–449, §4(b)(2), Jan. 12, 1983, 96 Stat. 2441; Pub. L.

102–240, title III, §3003(b), Dec. 18, 1991, 105 Stat. 2088; Pub. L. 104–88, title III, §327(3), Dec. 29, 1995, 109 Stat. 951; Pub. L. 104–287, §6(f)(4)(A), Oct. 11, 1996, 110 Stat. 3399.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 10362(b)(6) of title 49, referred to in subsecs. (a)(2)(B) and (d)(2), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804. Previously, in subsec. (d)(2), "section 10362(b)(6) of title 49" was substituted for "section 205(d)(6) of this Act", meaning section 205(d)(6) of Pub. L. 93–236, on authority of Pub. L. 95–473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49.

Section 762 of this title, referred to in subsec. (d)(4)(B), was repealed by Pub. L. 94–210, title VIII, §806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 17 of the Federal Transit Act, referred to in subsecs. (d)(4)(B) and (e)(4)(C), (5)(A) to (C), which was classified to section 1613 of former Title 49, Transportation, was repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.

Section 77 of the Bankruptcy Act, referred to in subsec. (i)(2), was classified to section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104–287 made technical amendment to directory language of Pub. L. 104–88, §327(3)(B). See 1995 Amendment note below.

1995—Subsec. (a)(2)(B). Pub. L. 104–88, §327(3)(A), substituted "section 10362(b)(6) of title 49" for "section 205(d)(6) of this Act".

Subsec. (b)(3). Pub. L. 104–88, §327(3)(B), as amended by Pub. L. 104–287, substituted "part A of subtitle IV of title 49" for "the Interstate Commerce Act".

Subsec. (d)(3). Pub. L. 104–88, §327(3)(C), substituted "this title, the Commission" for "this title, the Commission—", struck out "(A)" before "shall take such action", and substituted "under this subsection." for "under this subsection; and

"(B) shall have authority, in accordance with the provisions of section 1(16)(b) of the Interstate

Commerce Act (49 U.S.C. 1(16)(b)), to direct rail service to be provided by any designated railroad or by the trustees of a railroad in reorganization in the region, if a rail service continuation payment has been offered but an applicable operating or lease agreement is not in effect.

For purposes of the preceding sentence, any compensation required as a result of such directed service shall be determined in accordance with the standards developed pursuant to section 205(d)(6) of this Act."

Subsec. (e)(4)(A). Pub. L. 104–88, §327(3)(D)(i), struck out "and under regulations issued by the Office pursuant to section 205(d)(5) of this Act" before ", for the operation".

Subsec. (e)(4)(C). Pub. L. 104–88, §327(3)(D)(ii), struck out "and regulations issued by the Office pursuant to section 205(d)(5) of this Act" after "subsection (c)(2)(A) of this section".

Subsec. (e)(5)(A), (B). Pub. L. 104–88, §327(3)(E), struck out before period at end "and under regulations issued by the Office pursuant to section 205(d)(5) of this Act".

Subsec. (e)(7)(A). Pub. L. 104–88, §327(3)(F), struck out "and under regulations issued by the Office pursuant to section 205(d)(5) of this Act" after "subsection (c)(2)(A) of this section".

Subsec. (g). Pub. L. 104–88, §327(3)(G), substituted "part A of subtitle IV of title 49" for "the Interstate Commerce Act".

1991—Subsecs. (d)(4)(B), (e)(4)(C), (5)(A) to (C). Pub. L. 102–240 substituted "Federal Transit Act" for "Urban Mass Transportation Act of 1964".

1983—Subsec. (j). Pub. L. 97–449 repealed section 304(j) of Pub. L. 93–236, effective Oct. 17, 1978, the date Pub. L. 95–473 repealed subsec. (j) by repealing section 804 "Sec. 304(j)" of Pub. L. 94–210. See 1978 Amendment note below.

1978—Subsec. (e). Pub. L. 95–607 added subpar. (C) of par. (4) and pars. (7) and (8).

Subsec. (j). Pub. L. 95–473 struck out subsec. (j) which provided for exempt rail mass transportation not under the jurisdiction of the Interstate Commerce Commission.

1976—Subsec. (a). Pub. L. 94–210, §804, redesignated existing provisions as par. (1) and inserted

provision relating to applicability to a railroad in reorganization in the region, or of a person leased, operated, or controlled by such a railroad, in subpar. (B) inserted provision relating to notice on the date of any conveyance ordered by the special court, and in subpar. (C) inserted requirement that notice be sent to the Commission and substituted reference to the chief executive officer for reference to the Governor, and added par. (2).

Subsec. (b). Pub. L. 94–210, §804, in par. (1) inserted exception of subsecs. (c) and (f) of this section and substituted provisions requiring notice to be sent to any person (including a government entity), for provisions requiring notice to be sent to all those required to receive notice, in par. (2) substituted "240" for "180", and added par. (3).

Subsec. (c). Pub. L. 94–210, §804, substituted provisions relating to continuation of rail services and applicability of rail service continuation payments to such continuation, for provisions relating to limitations of Interstate Commerce Act, State constitution or law, or decision of Federal or State court or agency on power to discontinue rail service and abandon rail properties and applicability of rail service continuation subsidies on such power.

Subsec. (d). Pub. L. 94–210, §804, added subsec. (d). Former subsec. (d) redesignated (f) and amended.

Subsec. (d)(4). Pub. L. 94–555, §205(a), added par. (4).

Subsec. (e). Pub. L. 94–210, §§607(i), 804, added subsec. (e). Former subsec. (e) redesignated (g) and amended.

Subsec. (e)(5)(D). Pub. L. 94–555, §205(b), redesignated former subpar. (C) as (D) and added subpar. (C).

Subsec. (f). Pub. L. 94–210, §804, redesignated former subsec. (d) as (f) and substituted provisions relating to rail service continuation payments, for provisions relating to rail service continuation subsidies. Former subsec. (f) redesignated (h) and amended.

Subsec. (g). Pub. L. 94–210, §804, redesignated former subsec. (e) as (g) and inserted reference to any subsidiary of a Corporation and provision relating to demonstration by the Corporation, etc., that no State (or local or regional transportation authority) will offer a continuation payment under subsec. (c) of this section.

Subsec. (h). Pub. L. 94–210, §804, redesignated former subsec. (f) as (h), substituted "February 5, 1976, and prior to the date of conveyance (pursuant to section 743(b)(1) of this title)" for "January 2, 1974" and "reorganization in the region may" for "reorganization may", and made minor changes in structure.

Subsecs. (i), (j). Pub. L. 94–210, §804, added subsecs. (i) and (j).

Subsec. (j)(1). Pub. L. 94–555, §206(1), inserted limitation "by rail" to mass transportation services, and provided that any local body providing mass transportation services by rail is exempted from the rules, regulations, and orders promulgated under the Interstate Commerce Act, if interstate fares or application to the Interstate Commerce Commission for a change in such fares is subject to the approval or disapproval of the Governor of any state in which it provides services.

Subsec. (j)(2)(B). Pub. L. 94–555, §206(2), substituted definition of "mass transportation services" for "mass transportation".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–287, §6(f)(4)(A), Oct. 11, 1996, 110 Stat. 3399, provided that the amendment made by section 6(f)(4)(A) is effective Dec. 29, 1995.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–555 effective Oct. 1, 1976, see section 303 of Pub. L. 94–555, set out as a note under section 702 of this title.

ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND TRANSFER OF FUNCTIONS

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise

provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94–210, see section 619 of Pub. L. 94–210, set out as a note under section 791 of this title.

¹ [*See References in Text note below.*](#)

² [*So in original. Probably should be "this".*](#)

§744a. End of Conrail commuter service obligation

Notwithstanding any other provision of law or contract, Conrail shall be relieved of any legal obligation to operate commuter service on January 1, 1983.

(Pub. L. 97–35, title XI, §1136, Aug. 13, 1981, 95 Stat. 647.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1981 and also as part of the Northeast Rail Service Act of 1981, and not as part of the Regional Rail Reorganization Act of 1973 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as a note under section 1101 of this title.

AUTHORIZATION OF APPROPRIATION TO FACILITATE TRANSFER OF RAIL COMMUTER SERVICE FROM CONRAIL TO OTHER OPERATORS; STANDARDS FOR DISTRIBUTION OF APPROPRIATED FUNDS

Pub. L. 97–35, title XI, §1139(b), Aug. 13, 1981, 95 Stat. 652, as amended by Pub. L. 97–468, title V, §504(a), Jan. 14, 1983, 96 Stat. 2552, provided that:

"(1) There are authorized to be appropriated to the Secretary not to exceed \$50,000,000, to facilitate the transfer of rail commuter services from Conrail to other operators. The Secretary shall by regulation prescribe standards for the obligation of such funds, and shall ensure that distribution of such funds is equitably made between Amtrak Commuter and the commuter authorities that operate commuter service. In providing for the distribution of such funds, the Secretary shall consider any particular adverse financial impact upon any commuter authority that results from the termination of any lease or agreement between such commuter authority and Conrail. Amounts appropriated under this section are authorized to remain available until October 1, 1986.

"(2) Any funds appropriated under the authority of this subsection shall be distributed by the Secretary to Amtrak Commuter and commuter authorities according to the statutory provisions of paragraph (1) of this subsection within 60 days after receipt of an application by Amtrak Commuter or such commuter authorities or within 60 days after the date of enactment of the Rail Safety and Service Improvement Act of 1982 [Jan. 14, 1983], whichever is later."

§745. Continuing reorganization; supplemental transactions

(a) Proposals

If the Secretary or the Association determines that, as part of continuing reorganization, further restructuring of rail properties in the region through transactions supplemental to the final system plan would promote the establishment and retention of a financially self-sustaining rail service system in the region adequate to meet the needs of the region, the Secretary or the Association, as the case may be, may develop proposals for such supplemental transactions as are necessary or appropriate to implement the needed restructuring. Transfers of rail properties included in proposals developed by the Association shall be limited to (1) rail properties which would have qualified for designation under section 716(c)(1)(A) of this title but which were not transferred or conveyed under the final system plan, and which the Association finds to be essential to the efficient operations of the Corporation, and (2) transfers, consistent with the final system plan, of rail properties from the Corporation to a subsidiary thereof. Each proposal (other than a proposal developed by the Association) shall be submitted in writing to the Association and shall state and describe any transactions proposed, the rail properties involved, the parties to such transactions, the financial and other terms of such transactions, the purposes of the chapter or the goals of the final system plan intended to be effectuated by such transactions, and such other information incidental thereto as the Association may prescribe. Within 10 days after receipt of a proposal developed by the Secretary, and upon the development of a proposal developed by the Association, the Association shall publish a summary of such proposal in the Federal Register, and shall afford interested persons (including the Corporation when property is to be transferred to or from the Corporation) an opportunity to comment thereon.

(b) Evaluation by Association

The Association shall analyze each proposal containing one or more supplemental transactions, taking into account the comments of interested persons and statements and exhibits submitted at any public hearings which may have been held. The Association shall, within 120 days after the publication of a summary thereof under subsection (a) of this section, publish in the Federal Register a report evaluating such proposal. Such evaluation shall state whether the supplemental transactions contained in such proposal, considered in their entirety, are (1) in the public interest and consistent with the purposes of this chapter and the goals of the final system plan, and (2) fair and equitable. If the Corporation opposes, or seeks modification of, any such proposed transfer, its written comments shall be given due consideration by the Association and shall be published as part of the evaluation. Within 30 days after the Association publishes its report, each proposed transferor or transferee shall notify the Association in writing as to whether any proposed supplemental transaction requiring the transfer of any property from or to such transferor or transferee is acceptable to such proposed transferor or transferee. If any such proposed transferor (other than the Corporation) or transferee fails to notify the Association that any proposed supplemental transaction requiring the transfer of any property from such transferor or to such transferee is acceptable to it, no further administrative or judicial proceedings shall be conducted with respect to such proposed supplemental transaction.

(c) Review by Commission

Within 90 days after the publication in the Federal Register of each report referred to in subsection (b) of this section, the Commission shall determine whether the supplemental transactions referred to in the report, considered in their entirety, would be in the public interest and consistent with the purposes of this chapter and the goals of the final system plan. In making such determination, the Commission shall give due consideration to the views received by it, within 30 days after the publication of the applicable report, from the Corporation and the Secretary. The Commission may condition its approval of such supplemental transactions on such reasonable terms and conditions as it may deem necessary in the public interest. The approval by the Commission of such supplemental transactions shall not be a prerequisite to the consummation of such transactions, but any determination of the Commission modifying, approving, or disapproving any proposed supplemental

transactions shall be given due weight and consideration by the special court in the proceedings prescribed in subsection (d) of this section. If the Commission fails to act within the time period provided in this subsection, the supplemental transactions involved shall be deemed to have been approved by the Commission. The Commission may prescribe such regulations as may be necessary for the administration of this section.

(d) Special court proceedings

(1) If the Association has made the determination pursuant to subsection (b) of this section that a proposal for supplemental transactions is in the public interest and consistent with the purposes of this chapter and the goals of the final system plan, and is fair and equitable, the Association shall, within 40 days after the date of the Commission's determination under subsection (c) of this section, or after the expiration of the 90-day period referred to in such subsection (c), whichever is applicable, petition the special court for an order of such court finding that such proposal for supplemental transactions is in the public interest and consistent with the purposes of this chapter and the goals of the final system plan, and is fair and equitable, and directing the Corporation to carry out the supplemental transactions specified in such proposal. If the Association has determined, pursuant to subsection (b) of this section that a proposal made by the Secretary is not in the public interest or is not consistent with the purposes of this chapter and the goals of the final system plan or is not fair and equitable, the Secretary may, if he determines that such proposal is in the public interest and consistent with the purposes of this chapter and the goals of the final system plan and is fair and equitable, petition the special court for an order of such court finding that such proposal for supplemental transactions is in the public interest and consistent with the purposes of this chapter and the goals of the final system plan and is fair and equitable, and directing the Corporation to carry out any supplemental transactions specified in such proposal. Such a petition shall be submitted to the special court within 90 days after the date of the Commission's determination under such subsection (c), or after the expiration of the 90-day period referred to in such subsection (c), whichever is applicable.

(2) After the filing of a petition under paragraph (1) of this subsection, the special court shall decide, after a hearing, whether the proposed supplemental transactions contained in such petition, considered in their entirety, are in the public interest and consistent with the purposes of this chapter and the goals of the final system plan and are fair and equitable. If the special court determines that such proposed supplemental transactions, considered in their entirety, are in the public interest and consistent with the purposes of this chapter and the goals of the final system plan and are fair and equitable, it shall, upon making such determination, issue such orders as may be necessary to direct the Corporation to consummate the transactions. If the special court determines that such proposed supplemental transactions, considered in their entirety, are not in the public interest or not consistent with the purposes of this chapter and the goals of the final system plan, or are not fair and equitable, it shall file an opinion stating its conclusion and the reasons therefor. In such event the Association (in the case of a proposal developed by the Association) or the Secretary (in the case of a proposal developed by the Secretary) may, within 120 days after the filing of such opinion, certify to the special court that the terms and conditions of the proposal have been modified consistent with the opinion of the court and are acceptable to each proposed transferor (other than the Corporation) or transferee, and may petition the special court for reconsideration of the proposal as so modified. After the filing of such petition, the special court shall decide, after a hearing, whether the proposal as modified by the certification is in the public interest and consistent with the purposes of this chapter and the goals of the final system plan and is fair and equitable, and shall enter such further orders as are consistent with its determination.

(3) The Corporation is authorized to petition the special court and to be represented regarding any proposed supplemental transaction, contained in a proposal developed by either the Association or the Secretary, which involves the properties of the Corporation.

(4) In proceedings under this subsection, the special court is authorized to exercise the powers of a reorganization court.

(5) Any evaluation by the Association, the Secretary, or the Commission shall not be reviewable in any court except the special court in accordance with the provisions of this section. The

supplemental transactions shall not be restrained or enjoined by any court nor shall they be otherwise reviewable by any court other than by the special court to the extent provided in this section.

(6) Notwithstanding any other provision of this chapter, no findings, determinations, or proceedings shall be required with respect to any proposal for supplemental transactions other than as expressly set forth in this section.

(7) Repealed. Pub. L. 97–35, title XI, §1155(b), Aug. 13, 1981, 95 Stat. 679.

(8) A final order or judgment of the special court entering or denying an order pursuant to this subsection shall be reviewable in the same manner as provided in section 719(e)(3) of this title.

(e) "Fair and equitable" defined

As used in this section, the term "fair and equitable" means fair and equitable, in accordance with the standards applicable to the approval of a plan of reorganization (or a step in such plan) under section 77 of the Bankruptcy Act ¹ to—

(1) the estates of railroads in reorganization in the region and persons leased, operated, or controlled by such railroads who have conveyed rail properties, under section 743(b)(1) of this title, in exchange for securities of the Corporation, the Association, or profitable railroads and other benefits provided as a consequence of this chapter and to any subsequent holders of such securities at the time of the supplemental transaction involved; and

(2) the holders of other securities of the Corporation.

Whenever any property or securities of the Corporation are required to be valued in order to determine whether the terms of a supplemental transaction are fair and equitable, the special court shall give proper recognition to the contributions to the Corporation by all classes of security holders, except that such court shall not assign to the series B preferred stock or the common stock of the Corporation any values added to those securities, by reason of investment by the Association in debentures and series A preferred stock of the Corporation, in excess of any value required by constitutional principles applicable to a reorganization process.

(f) Expedited proposals

(1) Within 240 days after the effective date of the Staggers Rail Act of 1980, the Secretary, after providing an opportunity for comments from interested parties, shall determine whether to initiate a proposal for a supplemental transaction under this section for the transfer of all rail properties of the Corporation in the States of Connecticut and Rhode Island to another railroad in the region. If the Secretary determines that—

(A) the proposed transferee railroad is financially and operationally capable of assuming the freight operations and freight service obligations of the Corporation on a financially self-sustaining basis;

(B) the proposed transfer would promote the establishment and retention of a financially self-sustaining rail system in the States of Connecticut and Rhode Island adequate to meet the needs of such States; and

(C) the proposed transfer is consistent with the goals set forth in section 716(a)(8) of this title,

the Secretary shall develop such a proposal and may, after providing the Association, the Commission, and the States of Connecticut and Rhode Island an opportunity to review and comment on such proposal, petition the special court for an order to carry out such proposal.

(2)(A) Within 10 days after August 13, 1981, the Secretary shall initiate discussions and negotiations for the transfer of some or all of the Corporation's rail properties and freight service obligations in the States of Connecticut and Rhode Island to one or more parties under a plan which provides for continued rail freight service on all lines operated by the Corporation on August 13, 1981, for at least four years.

(B) Within 120 days after August 13, 1981, the Secretary shall petition the special court for an order to transfer all of the Corporation's rail properties and freight service obligations in the States of Connecticut and Rhode Island to one or more railroads in the Region—

(i) which have under subparagraph (A) of this paragraph completed negotiations and submitted

to the Secretary a proposal to assume all of the freight operations and freight service obligations of the Corporation in such States on a financially self-sustaining basis for a period of at least four years; or

(ii) which have developed a proposal to assume all of the freight operations and freight service obligations of the Corporation in such States under an agreement by and between the Corporation and such railroad or railroads; or

(iii) which have, prior to May 1, 1981, submitted a proposal to the Secretary for such a transfer.

For the purpose of this section, an order to transfer may include the Corporation if the Corporation agrees to maintain service over lines retained by the Corporation for four years.

(C) To permit efficient and effective rail operations consistent with the public interest, as a part of any transfer under paragraph (2)(B) of this subsection, the Secretary shall promote the transfer of additional non-mainline Corporation properties in adjoining States that connect with properties that are the subject of such transfer.

(D) The special court shall determine a fair and equitable price for the rail properties to be transferred under this subsection, and shall, unless the parties otherwise agree, establish divisions of joint rates for through routes over such properties which are fair and equitable to the parties. The special court shall establish a method to ensure that such divisions are promptly paid.

(E) Notwithstanding any other provision of law or agreement in effect on May 1, 1981, the special court shall require that the railroad or railroads to which properties are to be transferred under this subsection assume all charges payable by the Corporation to Amtrak for the carriage of property by rail over those portions of the Northeast Corridor in Connecticut and Rhode Island. If the Corporation operates any rail freight service over those portions of the Northeast Corridor in Connecticut and Rhode Island after the date of such transfer, the Corporation shall pay Amtrak any compensation that may be separately agreed upon by the Corporation and Amtrak, and the railroad or railroads to which properties are transferred under this subsection shall not be obligated to pay any compensation owed by the Corporation to Amtrak for such post-transfer operations by the Corporation.

(3) If the special court determines that a proposal developed under this subsection is fair and equitable, meets the requirements of this subsection, and is in the public interest, it shall issue such orders as may be necessary to carry out such proposal. The provisions of paragraphs (2)–(6) of subsection (d) of this section shall apply to the determination of the special court under this subsection, except that the standards for such determination shall be those set forth in this paragraph.

(4)(A) Any employee who was protected by the compensatory provisions of subchapter V ² of this chapter immediately prior to August 13, 1981, and who is deprived of employment as a result of the transfer of rail properties under this subsection shall be eligible for benefits under section 797 ² of this title.

(B) As used in this paragraph, "employee deprived of employment" means any employee who is unable to secure employment through the normal exercise of seniority rights, but does not include any employee who refuses an offer of employment with a railroad acquiring properties under this subsection.

(g) Transfer of properties and freight service obligations of specific lines

(1) Within 20 days after August 13, 1981, the Secretary shall initiate discussions and negotiations for the expedited transfer of all properties and freight service obligations of the Corporation with respect to the following lines: Canaan, Connecticut, to Pittsfield, Massachusetts; North Adams Junction, Massachusetts, to North Adams, Massachusetts; Hazardville, Connecticut, to Springfield, Massachusetts; Westfield, Massachusetts, to Easthampton, Massachusetts; Westfield, Massachusetts, to Holyoke, Massachusetts.

(2) Within 120 days after August 13, 1981, the Secretary shall transfer, provided a qualified purchaser offers to purchase, the Corporation's properties and freight service obligations described in

paragraph (1) of this subsection to another railroad or railroads in the Region which are determined by the Secretary to be qualified. A qualified purchaser is defined as a railroad financially self-sustaining which guarantees continuous service for at least four years.

(3) The Secretary shall determine a fair and equitable price for the rail properties to be transferred under this subsection, and shall, unless the parties otherwise agree, establish divisions of joint rates for through routes over such properties which are fair and equitable to the parties.

(4) The Secretary shall determine fair and equitable terms for the provision of such trackage rights, on segments of the Corporation's lines not to exceed 5 miles per line transferred, to acquiring carriers as may be necessary to operate such transferred lines in an efficient manner.

(Pub. L. 93–236, title III, §305, as added Pub. L. 94–210, title VI, §610(b), Feb. 5, 1976, 90 Stat. 100; amended Pub. L. 96–448, title VI, §601(a), Oct. 14, 1980, 94 Stat. 1958; Pub. L. 97–35, title XI, §1155, Aug. 13, 1981, 95 Stat. 677; Pub. L. 98–620, title IV, §402(48), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 104–317, title VI, §605(c)(2), Oct. 19, 1996, 110 Stat. 3859.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in subsec. (e), was classified to section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

The effective date of the Staggers Rail Act of 1980, referred to in subsec. (f)(1), probably means Oct. 1, 1980, the effective date of section 601(a) of Pub. L. 96–448, which enacted subsec. (f) of this section. See section 710 of Pub. L. 96–448, set out as an Effective Date of 1980 Amendment note under section 1170 of Title 11.

Subchapter V of this chapter, referred to in subsec. (f)(4)(A), was repealed by Pub. L. 97–35, title XI, §1144(a)(1), Aug. 13, 1981, 95 Stat. 669.

Section 797 of this title, referred to in subsec. (f)(4)(A), was repealed by Pub. L. 99–509, title IV, §4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

AMENDMENTS

1996—Subsec. (d)(4). Pub. L. 104–317, which directed amendment of par. (4) by striking out "a judge of the United States district court with respect to such proceedings and such powers shall include those of", was executed by striking out text which contained the words "judge of a United States" rather than "judge of the United States" to reflect the probable intent of Congress.

1984—Subsec. (d)(2). Pub. L. 98–620 substituted "After" for "Within 180 days after" at beginning of first and last sentences.

1981—Subsec. (d)(7). Pub. L. 97–35, §1155(b), struck out par. (7) which related to applicable requirements to supplemental transactions.

Subsec. (f). Pub. L. 97–35, §1155(a), in par. (2) substituted provisions relating to discussions and negotiations, judicial procedures applicable, etc., for transfers, for provisions relating to establishment of a fair and equitable price for properties, and in par. (4) substituted provisions relating to eligibility for benefits of employees deprived of employment, for provisions relating to expedited supplemental transactions.

Subsec. (g). Pub. L. 97–35, §1155(c), added subsec. (g).

1980—Subsec. (f). Pub. L. 96–448 added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–317 effective 90 days after Oct. 19, 1996, and except as otherwise provided, applicable to proceedings that arise or continue after such effective date, see section 605(e) of Pub. L. 104–317, set out as a note under section 719 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L.

98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as an Effective Date note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 1, 1980, see section 710(a) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND TRANSFER OF FUNCTIONS

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94–210, see section 619 of Pub. L. 94–210, set out as a note under section 791 of this title.

RAIL ABANDONMENT AND DISCONTINUANCE OF SERVICE REPORT

Pub. L. 94–210, title IX, §904, Feb. 5, 1976, 90 Stat. 148, directed Secretary to submit to Congress, within ninety days of Feb. 5, 1976, a report on anticipated effect of any abandonment of lines of railroad and any discontinuances of rail service in States outside the region as defined in section 702 of this title, prior to repeal by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.

¹ [*See References in Text note below.*](#)

² [*See References in Text note below.*](#)

§746. Certificates of value

(a) General

On the date when the Corporation is required to deposit securities with the special court pursuant to section 743(a)(1) of this title, the Association shall deposit with the special court the certificates of value of the Association required by this section. The Secretary shall guarantee the payment of all certificates of value delivered in accordance with this subchapter. All guarantees entered by the Secretary under this section shall constitute general obligations of the United States of America for the payment or redemption of which its full faith and credit are pledged. Such guarantees shall be valid and incontestable except as to mutual mistake of fact or as to fraud or material misrepresentation by the holder of such certificates or the transferor of rail properties to which certificates of value of any series so guaranteed are issued.

(b) Number and distribution

A separate series of certificates of value shall be issued to each railroad in reorganization in the region and each person leased, operated, or controlled by such a railroad that transfers rail properties to the Corporation or a subsidiary thereof. The number of certificates of value of each series to be deposited pursuant to subsection (a) shall be equal to the number of shares of series B preferred stock

of the Corporation which are required to be deposited by the Corporation with the special court, pursuant to section 743(a)(1) of this title in exchange for the rail properties transferred to the Corporation or a subsidiary thereof by such transferor. Certificates of value of the appropriate series shall be distributed by the special court, pursuant to section 743(c)(4) of this title, at the same time to the same transferors, and in the same numbers of units as shares of such series B preferred stock are distributed to such transferor.

(c) Redemption

(1) Certificates of value, of any series, shall be redeemed by the Association on December 31, 1987, or on such earlier date as the Board of Directors of the Association and the Finance Committee jointly may determine and specify.

(2) Each certificate of value of each series shall be redeemable for an amount, payable in cash, equal to its base value on the redemption date, minus—

(A) the sum of the fair market value of the series B preferred stock applicable to such certificate, the fair market value of the common stock applicable to such certificate, and all cash dividends theretofore paid on any such series B preferred stock and on any such common stock; and

(B) any sums paid to a transferor of rail properties to whom such series of certificates of value was issued resulting from sales or leases by the Corporation of properties transferred to it by such transferor divided by the number of certificates of value distributed to such transferor.

(3) The number of shares of series B preferred stock and common stock applicable to each certificate of value of any series, pursuant to paragraph (2) of this subsection, shall be—

(A) one share of series B preferred stock (adjusted to reflect any stock splits, stock combinations, reclassifications or similar transactions affecting the number of shares of outstanding series B preferred stock following the date of distribution pursuant to section 743(c)(4) of this title); and

(B) the number of shares of common stock determined by dividing the total number of shares of common stock distributed pursuant to section 743(c)(4) of this title to the transferor receiving such series of certificates of value (adjusted to reflect any stock splits, stock combinations, reclassifications, or similar transactions affecting the number of shares of outstanding common stock following the date of distribution pursuant to section 743(c)(4) of this title) by the total number of certificates of value in the series so distributed to such transferor.

(4) The base value of each certificate of value of any series shall be the value obtained by (A) taking the net liquidation value, as determined by the special court, to which the transferor to whom such series of certificates of value is issued is entitled by virtue of transfers of rail properties, under section 743(b)(1) of this title to the Corporation or a subsidiary thereof; (B) subtracting the value of other benefits provided under this chapter, as determined by the special court; (C) adding such amount, if any, as the special court may determine shall be required after taking into consideration compensable unconstitutional erosion, if any, in the estate of a railroad in reorganization, or of a railroad leased, operated, or controlled by such a railroad, which the special court finds to have occurred during any bankruptcy proceeding with respect to such railroad; (D) adding interest from the transfer date to the redemption date to be compounded annually at a rate of 8 percent per annum; and (E) dividing the resulting value by the number of certificates of value of such series distributed to such transferor. In determining such base value, the special court shall give due weight and consideration to the finding of the Association as to the net liquidation value to which each transferor is entitled by virtue of conveyances of rail properties under section 743(b)(1) of this title. For purposes of this paragraph, the term "rail properties" includes all rights with respect to employee benefit plans transferred and assigned to the Corporation pursuant to section 743(b)(6) of this title. Net liquidation value with respect to such rights shall be determined after taking into account all obligations finally transferred or assigned to the Corporation pursuant to such section.

(5) The fair market value of series B preferred stock and of common stock of the Corporation shall be determined in accordance with regulations prescribed by the Association, on the basis of the

average price of each such security in the primary established market in which such securities are traded over a period of 120 consecutive trading days ending not less than 20 nor more than 40 trading days preceding the redemption date, or, in the case of a security for which there is not an established trading market, on the basis of the fair market value thereof as determined by the majority vote of three experts in the valuation of securities, one to be selected by the Association, one to be selected by the directors of the Corporation elected by the holders of the security to be valued, and one to be selected by the two first selected.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary such sums as are necessary to discharge the obligations of the United States arising under this section.

(Pub. L. 93–236, title III, §306, as added Pub. L. 94–210, title VI, §610(b), Feb. 5, 1976, 90 Stat. 104; amended Pub. L. 94–248, §§2, 3, Mar. 25, 1976, 90 Stat. 286.)

EDITORIAL NOTES

AMENDMENTS

1976—Subsec. (c)(3)(A). Pub. L. 94–248, §2, substituted "adjusted to reflect" for "without regard to".

Subsec. (c)(3)(B). Pub. L. 94–248, §3, inserted provisions relating to adjustment of number of shares of common stock to reflect any stock splits, stock combinations, etc.

STATUTORY NOTES AND RELATED SUBSIDIARIES

**ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND
TRANSFER OF FUNCTIONS**

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

**ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS
AND SECURITIES**

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94–210, see section 619 of Pub. L. 94–210, set out as a note under section 791 of this title.

§747. Protection of Federal funds

(a) Audit

(1) The Comptroller General of the United States is authorized to audit the programs, activities, and financial operations of the Corporation for any period during which (A) Federal funds provided pursuant to this chapter are being used to finance any portion of its operations, or (B) Federal funds have been invested therein pursuant to this chapter. Any such audit may be conducted under such rules and regulations as the Comptroller General may prescribe. The Comptroller General shall report to the Congress at such times and to such extent as he considers necessary to keep the Congress informed on the security of such Federal funds and guarantees and, to the extent appropriate, make recommendations for achieving greater economy, efficiency, and effectiveness in such programs, activities, and operations.

(2) For the purpose of any audit conducted pursuant to subsection (a) of this section, the Comptroller General, or a designated representative of the Comptroller General, shall have access to and the right to examine all books, accounts, records, reports, files, and other papers, items, or property belonging to or in use by the Corporation.

(b) Report

The Association shall prepare and submit an annual report to Congress on the performance of the Corporation in order to keep the Congress informed as to matters which may affect the quality of rail services in the region and which may affect the security of Federal funds referred to in subsection (a) of this section. Each such report shall be submitted within 150 days after the end of the fiscal year of the Corporation. Each such report shall include an evaluation of—

- (1) the degree to which the goals of section 716(a) of this title are being met;
- (2) the amounts and causes of deviations, if any, from the financial projections of the final system plan;
- (3) the amount of Federal funds made available to the Corporation and a clear description of the uses of such funds;
- (4) the projected financial needs of the Corporation;
- (5) the projected sources from which such financial needs are likely to be met; and
- (6) the ability of the Corporation to become financially self-sustaining without requiring Federal funds in excess of those authorized by section 716(f) of this title.

(c) Monitoring of Corporation

(1) The Association shall also report to the Congress, in accordance with this subsection, on the policies of the Corporation and the results of such policies with respect to operations, cost containment, and marketing.

(2) Within 90 days after November 1, 1978, the Association shall (A) subdivide each such policy area into constituent parts or groups of parts which are specific and significant, (B) identify the most appropriate indicia to reflect accurately such parts or groups of parts, and (C)(i) determine any and all deficiencies in data used to compute the values of such indicia including consistency and clarity of definitions, timeliness of data entry, editing and validation of input data, and processing, and (ii) outline the efforts of the Association and Corporation to correct the deficiencies and the results of such efforts. On or before the end of such 90-day period, the Association shall submit to the Congress such methodological information and additional information which the Association deems necessary or appropriate to further the purpose of this subchapter.

(3) Using such indicia, the Association shall report on (A) the relationship of each constituent part or groups of parts to the Corporation's revenue and capital and operating expenses, (B) the extent to which such parts or group of parts contributes to profits or losses, (C) the efforts of management to contain or reduce the contribution of such part or group of parts to losses, (D) the results of such efforts, and (E) such other information as the Association deems necessary or appropriate.

(4) The Association shall (A) transmit to the Congress the first such monitoring report pursuant to paragraph (3) at the end of the first calendar quarter which begins after the end of the 90-day period for preparation and submission of the methodological information pursuant to paragraph (2), (B) report such monitoring information to the Congress at the end of the first quarter of each calendar year thereafter, (C) update methodological and monitoring information periodically as the Association deems necessary or appropriate, but in no case less frequently than once a year, and (D) where the results of such updating are statistically significant or relevant to Congressional policymaking, report them and the reasons for their significance at the end of the calendar quarter in which the updating occurred.

(Pub. L. 93–236, title III, §307, as added Pub. L. 94–210, title VI, §609, Feb. 5, 1976, 90 Stat. 99; amended Pub. L. 95–565, §7, Nov. 1, 1978, 92 Stat. 2400.)

EDITORIAL NOTES

AMENDMENTS

1978—Subsec. (c). Pub. L. 95–565 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONRAIL FUNDING STUDIES; REPORTS TO CONGRESS; RECOMMENDATIONS FOR

**FINANCIALLY SELF-SUSTAINING RAIL SYSTEM; AVAILABILITY OF
RECOMMENDATIONS; PUBLICATION IN FEDERAL REGISTER; COMMENTS ON
REPORTS; RECOMMENDATIONS BY SECRETARY ON FUTURE STRUCTURE AND
OPERATIONS BY CORPORATION; IMMUNITY FROM ANTITRUST LAWS; ANALYSIS OF
EFFECTS ON CORPORATION AND EMPLOYEES OF ALTERNATIVE CHANGES IN
LABOR AGREEMENTS AND RELATED OPERATIONAL CHANGES; PROJECTIONS ON
BENEFITS, CHANGES, SAVINGS, AND INCREASED REVENUES**

Pub. L. 96-448, title VII, §703(a)-(d), Oct. 14, 1980, 94 Stat. 1962, directed the United States Railway Association and the Consolidated Rail Corporation, not later than Apr. 1, 1980 (which probably should have been Apr. 1, 1981) to each submit a report to Congress analyzing the impact, upon the Corporation, rail service in the region, railroad employees, the economy of the region, other rail carriers in the region and elsewhere, and the Federal budget, of no further Federal funding for the Corporation, continued Federal funding of the rail system of the Corporation as then structured, and future Federal funding of the Corporation to the extent necessary to preserve rail service in the region which could be self-supporting, without undue interim disruption of operations, required publication of these reports in the Federal Register, directed the Interstate Commerce Commission, not later than May 1, 1981, to submit to Congress its comments on the report of the Association, the Secretary of Transportation, and the Corporation, directed the Secretary of Transportation, not later than Apr. 1, 1981, to submit to Congress his recommendations with respect to the future structure and operations of the Corporation, and not later than May 1, 1981, to submit to Congress his comments and recommendations with respect to the reports of the Association and Corporation, provided that the antitrust laws as defined in section 791(a)(3) of this title not apply to any action of the Association or Secretary of Transportation prior to May 1, 1981, directed the Corporation, not later than Mar. 15, 1981 to submit to Congress an analysis of the effects upon the Corporation and its employees of alternative changes in labor agreements and related operational changes, including an analysis of any Federal funding that would be required, and directed the Corporation, not later than Jan. 15, 1981, to submit to the Association its projections of the benefits to the Corporation of the Staggers Rail Act of 1980, Pub. L. 96-448, Oct. 14, 1980, 94 Stat. 1895, its projections of changes needed in the structure of the rail system of the Corporation, including properties which might be abandoned or transferred, and other projections of potential savings or increased revenues to the Corporation.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsecs. (b) and (c)(4)(B) of this section relating to the requirement that the Association submit annual reports to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 11th and 12th items on page 195 of House Document No. 103-7.

**ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS
AND SECURITIES**

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

§748. Abandonments

(a) General

The Corporation may, in accordance with this section, file with the Commission an application for a certificate of abandonment for any line which is part of the system of the Corporation. Any such application shall be governed by this section and shall not, except as specifically provided in this section, be subject to the provisions of chapter 109 of title 49.

(b) Applications for abandonment

Any application for abandonment that is filed by the Corporation under this section before December 1, 1981, shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in

accordance with subsection (d) of this section with respect to the line to be abandoned.

(c) Notice of insufficient revenues

(1) The Corporation may, prior to November 1, 1985, file with the Commission a notice of insufficient revenues for any line which is part of the system of the Corporation.

(2) At any time after the 90-day period beginning with the filing of a notice of insufficient revenues for a line, the Corporation may file an application for abandonment for such line. An application for abandonment that is filed by the Corporation under this subsection for a line for which a notice of insufficient revenues was filed under paragraph (1) shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to such line.

(d) Offers of financial assistance

(1) The provisions of section 10904 of title 49 (including the timing requirements of subsection (d) thereof) shall apply to any offer of financial assistance under subsection (b) or (c) of this section.

(2) The Corporation shall provide any person that intends to make an offer of financial assistance under subsection (b) or (c) of this section with such information as the Commission may require.

(e) Liquidation

(1) If any application for abandonment is granted under subsection (b) of this section, the Commission shall, as soon as practicable, appraise the net liquidation value of the line to be abandoned, and shall publish notice of such appraisal in the Federal Register.

(2) Appraisals made under paragraph (1) shall not be appealable.

(3)(A) If, within 120 days after the date on which an appraisal is published in the Federal Register under paragraph (1), the Corporation receives a bona fide offer for the sale, for 75 percent of the amount at which the liquidation value of such line was appraised by the Commission, of the line to be abandoned, the Corporation shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

(B) If the Corporation receives no bona fide offer under subparagraph (A), within such 120-day period, the Corporation may abandon or dispose of the line as it chooses, except that the Corporation may not dismantle bridges, or other structures (not including rail, signals, and other rail facilities) for 120 days thereafter. The Secretary may require that bridges or other structures (not including rail, signals, and other rail facilities), not be dismantled for an additional 8 months if he assumes all liability of any sort related to such property.

(4) If the purchaser under paragraph (3)(A) of this subsection of any line of the Corporation abandons such line within five years after such purchase, the proceeds of any track liquidations shall be paid into the general fund of the Treasury of the United States.

(f) Employee protection

The provisions of section 10903(b)(3) ¹ of title 49 shall not apply to any abandonment granted under this section. Any employee who was protected by the compensatory provisions of subchapter V ² of this chapter immediately prior to August 13, 1981, who is deprived of employment by such an abandonment shall be eligible for employee protection under section 797 ² of this title.

(Pub. L. 93–236, title III, §308, as added Pub. L. 97–35, title XI, §1156(a), Aug. 13, 1981, 95 Stat. 679; amended Pub. L. 98–181, title II, §2003(c)(2), Nov. 30, 1983, 97 Stat. 1298; Pub. L. 104–88, title III, §327(4), Dec. 29, 1995, 109 Stat. 952.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subchapter V of this chapter, referred to in subsec. (f), was repealed by Pub. L. 97–35, title XI, §1144(a)(1), Aug. 13, 1981, 95 Stat. 669.

Section 797 of this title, referred to in subsec. (f), was repealed by Pub. L. 99–509, title IV, §4024(c), Oct.

21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

AMENDMENTS

1995—Subsec. (d)(1). Pub. L. 104–88, §327(4)(A), substituted "section 10904" for "section 10905(d)–(f)". Subsec. (f). Pub. L. 104–88, §327(4)(B), substituted "section 10903(b)(3)" for "section 10903(b)(2)".

1983—Subsec. (c)(1). Pub. L. 98–181 substituted "1985" for "1983".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as a note under section 1101 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

¹ *So in original. Section 10903(b) of Title 49, Transportation, does not contain a par. (3).*

² *See References in Text note below.*

SUBCHAPTER IV—TRANSFER OF FREIGHT SERVICES

§§761 to 769c. Repealed. Pub. L. 99–509, title IV, §4033(a)(1), Oct. 21, 1986, 100 Stat. 1908

Section 761, Pub. L. 93–236, title IV, §401, as added Pub. L. 97–35, title XI, §1142, Aug. 13, 1981, 95 Stat. 654, related to sale of interest of United States in common stock of Consolidated Rail Corporation.

A prior section 761, Pub. L. 93–236, title IV, §401, Jan. 2, 1974, 87 Stat. 1010, related to Congressional findings and purpose in providing for a program of rail service continuation subsidies, prior to repeal by Pub. L. 94–210, title VIII, §806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 762, Pub. L. 93–236, title IV, §402, as added Pub. L. 97–35, title XI, §1142, Aug. 13, 1981, 95 Stat. 655, related to debt and preferred stock of Consolidated Rail Corporation.

A prior section 762, Pub. L. 93–236, title IV, §402, Jan. 2, 1974, 87 Stat. 1010; Pub. L. 93–488, §1(d), Oct. 26, 1974, 88 Stat. 1464; Pub. L. 94–210, title VIII, §805(a), Feb. 5, 1976, 90 Stat. 139, directed Secretary to provide financial assistance to States and local or regional transportation authorities in facilitating and maintaining main line or local rail service, prior to repeal by Pub. L. 94–210, title VIII, §806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 763, Pub. L. 93–236, title IV, §403, as added Pub. L. 97–35, title XI, §1142, Aug. 13, 1981, 95 Stat. 655, related to determinations about profitability of Consolidated Rail Corporation.

A prior section 763, Pub. L. 93–236, title IV, §403, Jan. 2, 1974, 87 Stat. 1012; Pub. L. 93–488, §1(e), Oct. 26, 1974, 88 Stat. 1465; Pub. L. 94–210, title VIII, §805(b), (c), Feb. 5, 1976, 90 Stat. 142, authorized Association to provide loans for acquisition of rail properties by States or local or regional transportation authorities and for modernization of those acquired properties, prior to repeal by Pub. L. 94–210, title VIII, §806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 764, Pub. L. 93–236, title IV, §404, as added Pub. L. 97–35, title XI, §1142, Aug. 13, 1981, 95 Stat.

656, related to failure to sell interest of United States in common stock of Consolidated Rail Corporation as an entity.

Section 765, Pub. L. 93–236, title IV, §405, as added Pub. L. 97–35, title XI, §1142, Aug. 13, 1981, 95 Stat. 657, related to plans to transfer Consolidated Rail Corporation's freight rail properties and service responsibilities.

Section 766, Pub. L. 93–236, title IV, §406, as added Pub. L. 97–35, title XI, §1142, Aug. 13, 1981, 95 Stat. 658, related to consolidation and review of freight transfer agreements.

Section 767, Pub. L. 93–236, title IV, §407, as added Pub. L. 97–35, title XI, §1142, Aug. 13, 1981, 95 Stat. 658, related to public comment and Congressional notification regarding freight transfer agreements.

Section 768, Pub. L. 93–236, title IV, §408, as added Pub. L. 97–35, title XI, §1142, Aug. 13, 1981, 95 Stat. 659, related to performance under freight transfer agreements.

Section 769, Pub. L. 93–236, title IV, §409, as added Pub. L. 97–35, title XI, §1142, Aug. 13, 1981, 95 Stat. 659, provided that conveyance of interest in rail properties under freight transfer agreement is deemed to be an assignment.

Section 769a, Pub. L. 93–236, title IV, §410, as added Pub. L. 97–35, title XI, §1142, Aug. 13, 1981, 95 Stat. 660, related to identification and sale of unprofitable subsidiaries of Consolidated Rail Corporation.

Section 769b, Pub. L. 93–236, title IV, §411, as added Pub. L. 97–35, title XI, §1146(a), Aug. 13, 1981, 95 Stat. 672, related to labor transfer agreements.

Section 769c, Pub. L. 93–236, title IV, §412, as added Pub. L. 97–35, title XI, §1146(a), Aug. 13, 1981, 95 Stat. 673, related to labor protection benefits.

SUBCHAPTER V—EMPLOYEE PROTECTION

§§771 to 780. Repealed. Pub. L. 97–35, title XI, §1144(a)(1), Aug. 13, 1981, 95 Stat. 669

Section 771, Pub. L. 93–236, title V, §501, Jan. 2, 1974, 87 Stat. 1012; Pub. L. 94–210, title VI, §§607(i), 613, Feb. 5, 1976, 90 Stat. 97, 112; Pub. L. 94–248, §5, Mar. 25, 1976, 90 Stat. 286; Pub. L. 94–555, title II, §207(a), Oct. 19, 1976, 90 Stat. 2621; Pub. L. 96–448, title V, §508(d), Oct. 14, 1980, 94 Stat. 1957, set forth provisions defining terms applicable to employee protection rights.

Section 772, Pub. L. 93–236, title V, §502, Jan. 2, 1974, 87 Stat. 1013; Pub. L. 94–210, title VI, §614, Feb. 5, 1976, 90 Stat. 112, set forth provisions respecting employment offers.

Section 773, Pub. L. 93–236, title V, §503, Jan. 2, 1974, 87 Stat. 1014, related to assignment of work.

Section 774, Pub. L. 93–236, title V, §504, Jan. 2, 1974, 87 Stat. 1014; Pub. L. 94–210, title VI, §615, Feb. 5, 1976, 90 Stat. 113; Pub. L. 94–555, title II, §§207(b), 208, Oct. 19, 1976, 90 Stat. 2622; Pub. L. 96–448, title V, §506, Oct. 14, 1980, 94 Stat. 1956, set forth provisions respecting collective bargaining agreements.

Section 775, Pub. L. 93–236, title V, §505, Jan. 2, 1974, 87 Stat. 1015; Pub. L. 94–210, title VI, §616(a)–(g), Feb. 5, 1976, 90 Stat. 115, 116; Pub. L. 94–555, title II, §§209, 210, Oct. 19, 1976, 90 Stat. 2623; Pub. L. 96–448, title V, §§501–503, Oct. 14, 1980, 94 Stat. 1948–1954, set forth provisions relating to employee protection programs.

Section 776, Pub. L. 93–236, title V, §506, Jan. 2, 1974, 87 Stat. 1019, related to contracting out of work.

Section 777, Pub. L. 93–236, title V, §507, Jan. 2, 1974, 87 Stat. 1020; Pub. L. 96–448, title V, §508(e), Oct. 14, 1980, 94 Stat. 1957, related to arbitration of disputes or controversies.

Section 778, Pub. L. 93–236, title V, §508, Jan. 2, 1974, 87 Stat. 1020; Pub. L. 94–210, title VI, §617, Feb. 5, 1976, 90 Stat. 117, related to duties of acquiring and selling railroads.

Section 779, Pub. L. 93–236, title V, §509, Jan. 2, 1974, 87 Stat. 1020; Pub. L. 94–210, title VI, §616(h), Feb. 5, 1976, 90 Stat. 116; Pub. L. 94–555, title II, §207(c), Oct. 19, 1976, 90 Stat. 2622; Pub. L. 96–448, title V, §504, Oct. 14, 1980, 94 Stat. 1955, set forth provisions respecting benefit payments.

Section 780, Pub. L. 93–236, title V, §510, as added Pub. L. 96–448, title V, §505, Oct. 14, 1980, 94 Stat. 1956, related to railroad hiring.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL; CONTINUATION OF BENEFITS AFTER REPEAL; LAW

GOVERNING DISPUTES; PREREQUISITES TO DISBURSEMENT OF BENEFITS

Pub. L. 97–35, title XI, §1144(a)(2)–(4), Aug. 13, 1981, 95 Stat. 669, provided that:

"(2) Notwithstanding the repeal made by paragraph (1) of this subsection [repealing this subchapter]—

"(A) benefits accrued as of the effective date of this subsection as a result of events that occurred wholly prior to October 1, 1981, shall be disbursed except as provided in paragraph (3); and

"(B) any dispute or controversy regarding such benefits shall be determined under the terms of the law in effect on the date the claim arose.

"(3) Benefits shall not be disbursed under paragraph (2)(A) unless the employee has filed a claim for such benefits within 90 days after the date of repeal; except that, with respect to a claim which is the subject of or is based upon any arbitration decision issued after the date of repeal, such 90-day period shall not commence until such arbitration decision is issued to the employee and the employee's representative; and no benefits shall be disbursed unless appropriations for such purposes are or become available.

"(4) The provisions of this subsection shall take effect on the first day of the first month beginning after the date of enactment of this subtitle [Aug. 13, 1981]."

EMPLOYEE PROTECTION PAYMENTS UNDER FORMER PROVISIONS; REIMBURSEMENT

Pub. L. 96–448, title V, §507, Oct. 14, 1980, 94 Stat. 1956, provided that notwithstanding any other provision of law, the Consolidated Rail Corporation and other employers with employees protected under this subchapter, until the effective date of Pub. L. 96–448 [probably means Oct. 1, 1980, see section 710 of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy], continue to make payments for employee protection under such Act, [probably means this subchapter] in accordance with the provisions of such Act [probably means this subchapter], which were in effect on Jan. 1, 1979, and that notwithstanding any other provision of law, such Corporation and employers be reimbursed for such payments in accordance with former section 779(a) of this title.

CONRAIL EMPLOYEE PROTECTION

Pub. L. 96–254, title II, §214, May 30, 1980, 94 Stat. 417, provided that the Consolidated Railroad Corporation make payments in accordance with this subchapter, and the United States Railway Association not, as a result of such payments, withhold any funds from the Corporation, and that this provision take effect as of Mar. 1, 1980, and remain in effect until the expiration of the 45-day period beginning on May 30, 1980, and after the expiration of such 45-day period, payments by the Consolidated Rail Corporation under this subchapter and funding of the Corporation by the United States Railway Association be governed by applicable law.

SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

§791. Relationship to other laws

(a) Antitrust

(1) Except as specifically provided in paragraph (2) of this subsection, no provision of this chapter shall be deemed to convey to any railroad or employee or director thereof any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(2) The antitrust laws are inapplicable with respect to any action taken to formulate or implement the final system plan where such action was in compliance with the requirements of such plan and with respect to any action taken to formulate or implement any supplemental transaction.

(3) As used in this subsection, "antitrust laws" includes the Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended; the Federal Trade Commission Act (38 Stat. 717), as amended [15 U.S.C. 41 et seq.], sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), as amended [15 U.S.C. 8, 9]; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended; and the antitrust laws of any State or subdivision thereof.

(b) Commerce, securities, and bankruptcy

(1) The provisions of subtitle IV of title 49 and the Bankruptcy Act, are inapplicable (A) to actions taken under this chapter to formulate and implement the final system plan where such action was in

compliance with the requirements of such plan, and (B) to actions taken under this chapter to formulate or implement any supplemental transaction.

(2) All securities of the Corporation which are issued to the Association as the initial holder, or which are issued in connection with the transfer to the Corporation or a subsidiary thereof of rail properties under this chapter, shall be deemed for all purposes to have been issued subject to and authorized pursuant to section 11301 ¹ of title 49.

(3) The provisions of section 77e of title 15, shall not apply to transactions involving the issuance of any security of the Corporation to the Association, transactions involving the issuance of any security of the Corporation that is deposited with the special court pursuant to section 743(a) of this title, or transactions involving the issuance or distribution of any security of the Corporation, where the terms and conditions of such issuance or distribution are approved by the special court pursuant to section 743(c) of this title.

(4) The powers and duties of the Commission under section 77 of the Bankruptcy Act, with respect to a railroad in reorganization in the region which conveys all or substantially all of its designated rail properties to the Corporation or a subsidiary thereof, or to profitable railroads in the region, pursuant to the final system plan, and the requirement that plans of reorganization be filed with the Commission, shall cease upon the date of such conveyance. The powers and duties of the Commission under section 77 of the Bankruptcy Act shall also so terminate, as of February 5, 1976, with respect to any railroad in reorganization under such section 77 but not subject to this chapter which (1) does not operate any line of railroad, and (2) has transferred all or substantially all of its rail properties to a railroad in reorganization in the region which was subject to this chapter prior to February 5, 1976. Thereafter, such powers and duties of the Commission shall be vested in the district court of the United States which has jurisdiction of the estate of any such railroad in reorganization at the time of such conveyance. Such court shall proceed to reorganize or liquidate such railroad in reorganization pursuant to such section 77 on such terms as the court deems just and reasonable, or pursuant to any other provisions of the Bankruptcy Act, if the court finds that such action would be in the best interests of such estate. This paragraph does not affect any obligation of any carrier by railroad subject to regulation under subtitle IV of title 49. The powers and duties of the Commission under section 77 of the Bankruptcy Act shall continue in effect only to the extent that the railroad in reorganization continues to operate any line of railroad.

(c) Environment

The provisions of section 4332(2)(C) of title 42 shall not apply with respect to any action taken under authority of this chapter before, and including, the conveyance of rail properties ordered by the special court under section 743 (b)(1) of this title, and shall not apply thereafter to any action taken in compliance with the requirements of the final system plan.

(d) Northeast Corridor

(1) Rail properties designated in accordance with section 716(c)(1)(C) of this title shall be purchased or leased by the National Railroad Passenger Corporation. The Corporation shall negotiate an appropriate sale or lease agreement with the National Railroad Passenger Corporation for the properties designated for transfer pursuant to section 716(c)(1)(C) of this title, which shall take effect on the date of conveyance of such properties to the Corporation.

(2) Properties acquired by purchase, lease, or otherwise pursuant to this subsection shall be improved in order to meet the goal set forth in section 716(a)(3) of this title, relating to improved highspeed passenger service, by the earliest practicable date after January 2, 1974.

(3) The Secretary shall begin the necessary engineering studies and improvements on January 2, 1974.

(4) The final system plan shall provide for any necessary coordination with freight or commuter services of use of the facilities designated in section 716(c)(1)(C) of this title. Such coordination may be effectuated through a single operating entity, designated in the final system plan, or as mutually agreed upon by the interested parties.

(5) Construction or improvements made pursuant to this subsection may be made in consultation with the Corps of Engineers.

(Pub. L. 93–236, title VI, §601(a)–(d), Jan. 2, 1974, 87 Stat. 1021; Pub. L. 94–210, title VI, §618, title VII, §706(b), formerly §705(b), Feb. 5, 1976, 90 Stat. 117, 123, renumbered Pub. L. 96–254, title II, §206(a), May 30, 1980, 94 Stat. 412.)

EDITORIAL NOTES

REFERENCES IN TEXT

Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended, referred to in subsec. (a)(3), is known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended, referred to in subsec. (a)(3), is known as the Clayton Act, which is classified to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act (38 Stat. 717), as amended, referred to in subsec. (a)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Sections 73 and 74 of the Act of August 27, 1894, referred to in subsec. (a)(3), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570. Sections 73 to 77 of this Act are known as the Wilson Tariff Act. Sections 73 to 76 enacted sections 8 to 11 of Title 15. Section 77 was not classified to the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8 of Title 15 and Tables.

Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended, referred to in subsec. (a)(3), is popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Tables.

The Bankruptcy Act, referred to in subsec. (b)(1), (4), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. Section 77 of this Act was classified to section 205 of former Title 11. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

Section 11301 of title 49, referred to in subsec. (b)(2), was omitted and a new section 11301 enacted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804, 837. The new section 11301 does not relate to issuance of securities. Previously, in subsec. (b)(2), "section 11301 of title 49" was substituted for "section 20a of the Interstate Commerce Act (49 U.S.C. 20a)" on authority of Pub. L. 95–473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§10101 et seq.) of Title 49.

CODIFICATION

In subsec. (b)(1), (4), "subtitle IV of title 49" substituted for "the Interstate Commerce Act (49 U.S.C. 1 et seq.)" on authority of Pub. L. 95–473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§10101 et seq.) of Title 49, Transportation.

A subsec. (e) of section 601 of Pub. L. 93–236, which was designated in the original as "Emergency Service", amended section 1(16) of former Title 49, Transportation.

AMENDMENTS

1976—Subsec. (a)(2). Pub. L. 94–210, §618(a), inserted provision relating to any action to formulate or implement any supplemental transaction.

Subsec. (b). Pub. L. 94–210, §618(b), redesignated existing provisions as par. (1), substituted provisions relating to inapplicability to actions under this chapter to formulate and implement the final system plan and any supplemental transaction, for provisions relating to inapplicability to transactions under this chapter to the extent necessary to formulate and implement the final system plan whenever a provision of the Interstate Commerce or Bankruptcy Act is inconsistent with this chapter, and added pars. (2) to (4).

Subsec. (c). Pub. L. 94–210, §618(c), substituted provisions relating to inapplicability to action taken before, and including, the conveyance of rail properties under section 743(b)(1) of this title, and action taken thereafter in compliance with the requirements of the final system plan, for provisions relating to inapplicability to action taken before the effective date of the final system plan.

Subsec. (d)(1). Pub. L. 94–210, §705(b), substituted mandatory for discretionary authority for purchase of properties by the Corporation and provisions relating to negotiations for properties for transfer pursuant to

section 716(c)(1)(C) of this title, for provisions relating to negotiations as provided in the final system plan.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND TRANSFER OF FUNCTIONS

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Pub. L. 94–210, title VI, §619, Feb. 5, 1976, 90 Stat. 119, provided that: "Nothing in this title [enacting sections 726 and 745 to 747 of this title and amending sections 702, 711 to 713, 716, 718 to 721, 724, 725, 741, 743, 744, 771, 772, 774, 775, 778, 779, and 791 of this title, and section 856 of former Title 31, Money and Finance] shall affect the application of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to actions of the Commission."

¹ [*See References in Text note below.*](#)

§792. Repealed. Pub. L. 97–375, title I, §111(b), Dec. 21, 1982, 96 Stat. 1821

Section, Pub. L. 93–236, title VI, §602, Jan. 2, 1974, 87 Stat. 1022, provided that as part of his annual report, the Secretary transmit to Congress a comprehensive report on the effectiveness of the Association and the Corporation in implementing the purposes of this chapter, together with any recommendations for additional legislative or other action.

Subsequent to repeal by Pub. L. 97–375, section was repealed and the provisions thereof were reenacted as the last sentence of section 308(a) of Title 49, Transportation, by Pub. L. 97–449, §1(b), 7(b), Jan. 12, 1983, 96 Stat. 2413, 2443. Section 6(a) of Pub. L. 97–449 provided that: "Sections 1–5 of this act restate, without substantive change, laws enacted before November 15, 1982, that were replaced by those sections. * * * Laws enacted after November 14, 1982, that are inconsistent with this Act supersede this Act to the extent of the inconsistency." Accordingly, the last sentence of section 308(a) of Title 49 was superseded by the repeal made by section 111(b) of Pub. L. 97–375, and was specifically repealed by Pub. L. 98–216, §2(1)(A)(ii), Feb. 14, 1984, 98 Stat. 4.

Pub. L. 97–375, title I, §111(b), Dec. 21, 1982, 96 Stat. 1821, which repealed this section, was itself repealed by Pub. L. 98–216, §6(b), Feb. 14, 1984, 98 Stat. 8.

§793. Repealed. Pub. L. 95–473, §4(b), Oct. 17, 1978, 92 Stat. 1466; Pub. L. 97–449, §4(b)(2), Jan. 12, 1983, 96 Stat. 2441, eff. Oct. 17, 1978

Section, Pub. L. 93–236, title VI, §603, Jan. 2, 1974, 87 Stat. 1023, related to freight rates for recyclables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

INVESTIGATION OF DISCRIMINATORY FREIGHT RATES FOR TRANSPORTATION OF

RECYCLABLE OR RECYCLED MATERIALS

Pub. L. 94–210, title II, §204, Feb. 5, 1976, 90 Stat. 40, which provided for an investigation by the Interstate Commerce Commission of discriminatory freight rates for transportation of recyclable or recycled materials, was repealed by Pub. L. 95–473, §4(b), Oct. 17, 1978, 92 Stat. 1466.

§794. Tax payments to States

(a) Notwithstanding any other provision of law, no railroad in reorganization shall withhold from any State, or any political subdivision thereof, the payment of the portion of any tax owed by such railroad to such State or subdivision, which portion has been collected by such railroad from any tenant thereof.

(b) Any railroad which violates the provisions of subsection (a) of this section by withholding any portion of a tax referred to in such subsection shall be fined not more than \$10,000 for each such violation.

(Pub. L. 93–236, title VI, §605, as added Pub. L. 94–5, §9, Feb. 28, 1975, 89 Stat. 9.)

SUBCHAPTER VII—PROTECTION OF EMPLOYEES

§797. Repealed. Pub. L. 99–509, title IV, §4024(c), Oct. 21, 1986, 100 Stat. 1904

Section, Pub. L. 93–236, title VII, §701, as added Pub. L. 97–35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 661; Pub. L. 99–509, title IV, §4024(a), (b), Oct. 21, 1986, 100 Stat. 1903, related to employee protection agreement.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEAL OF SECTION; CONTINUING RESPONSIBILITIES OF CONSOLIDATED RAIL CORPORATION AFTER SALE DATE

Pub. L. 99–509, title IV, §4024(c)–(f), Oct. 21, 1986, 100 Stat. 1904, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(c) REPEAL OF SECTION 701.—Section 701 of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] is repealed effective on the sale date [Apr. 2, 1987, see 45 U.S.C. 702(17A)]. Notwithstanding this repeal—

"(1) any dispute or controversy regarding benefits under section 701 shall be determined under the terms of the law in effect prior to such repeal; and

"(2) the Railroad Retirement Board shall take such actions as may be necessary to complete administration and closeout of the section 701 program and the Board is authorized to receive and apply Corporation funds for this purpose.

"(d) CONTINUING RESPONSIBILITIES.—(1) On and after the sale date, the Corporation shall provide the protection for its employees described in 'Part III, Article III, Employee Protection', of the 'Definitive Agreement of September 17, 1985, By and Between Conrail and the Undersigned Representatives of Conrail's Agreement Employees' and Appendix 3 thereto, together with any amendments thereto, or under any other terms and conditions as shall be agreed between the Corporation and the representatives of its employees.

"(2) The Corporation shall pay, as designated by the Railroad Retirement Board, any remaining benefits under section 701 of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] that accrued, but were not disbursed, prior to the sale date.

"(3) The Railroad Retirement Board shall transfer to the Corporation such information regarding administration of the labor protection program under such section 701 as may be reasonably necessary for the Corporation to discharge its responsibilities under this subsection, including copies of the individual claim records of employees of the Corporation.

"(4) The United States shall have no liability for benefits under this subsection.

"(e) COMPENSATION FOR WAGES BELOW INDUSTRY STANDARD.—The Corporation shall pay

\$200,000,000 to present and former employees subject to collective bargaining agreements, in accordance with the terms and conditions in the Definitive Agreement referred to in subsection (d)(1), or as otherwise agreed between the parties.

"(f) ESOP TRANSACTIONS.—(1) As soon as practicable after the date of the enactment of this Act [Oct. 21, 1986], the employee stock ownership plan of the Corporation (hereafter in this subsection referred to as the 'ESOP') shall be amended to provide that—

"(A) the shares of the ConRail Equity Corporation preferred stock held by the ESOP shall be surrendered by the ESOP in exchange for an equal number of shares of the common stock of the Corporation, and such common stock of the Corporation shall be allocated by the ESOP to the same persons in the same amounts as the shares of ConRail Equity Corporation preferred stock had been allocated; and

"(B) the remaining shares of the ConRail Equity Corporation preferred stock held by the Corporation shall be cancelled, and an equal number of shares of the common stock of the Corporation shall be contributed by the Corporation to the ESOP, which shares shall be allocated by the ESOP to persons who are or were ESOP participants in accordance with the formula set forth in section 2 of Article II of Part III of the Definitive Agreement referred to in subsection (d)(1), and in accordance with a comparable formula for present and former employees of the Corporation not covered by such section of the Definitive Agreement, except that no contribution by the Corporation to the ESOP shall be made which would affect the tax-qualified status of the ESOP, or of any of the employee benefit plans maintained by the Corporation or any affiliate of the Corporation, under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.].

"(2)(A)(i) As soon as practicable after the expiration of 180 days after 100 percent of the United States shares are sold, the ESOP shall distribute all of the stock in the accounts of its participants and beneficiaries, except as provided in clause (ii).

"(ii) Fractional shares shall not be distributed under clause (i). Shares equal to the aggregate amount of fractional shares shall be surrendered by the ESOP and redeemed by the Corporation for cash at the average closing price for the common stock of the Corporation on a national securities exchange for the 10 business days immediately preceding the date of distribution under clause (i), or, if the common stock of the Corporation is not listed on a national securities exchange, at the average closing price for such stock for such 10 business days as appearing in any regularly published reporting or quotation service, and the proceeds of such redemption shall be distributed by the ESOP to the same participants and beneficiaries and in the same amounts as the fractional shares had been allocated.

"(B) After completing the distribution under subparagraph (A), the ESOP shall terminate.

"(3) The Corporation shall distribute any full shares of its common stock which, because of the exception under paragraph (1)(B), could not be contributed to the ESOP to those persons to whom the ESOP would have allocated such shares pursuant to paragraph (1)(B) had such shares been contributed to the ESOP. The Corporation shall pay cash pursuant to the formula set forth in paragraph (2)(A)(ii) in lieu of fractional shares.

"(4) For purposes of Rule 144 promulgated under the Securities Act of 1933 [15 U.S.C. 77a et seq.], each share of the common stock of the Corporation distributed under this subsection shall be deemed to have been beneficially owned by the recipient, as of the date of such distribution, for a period of 3 years."

§797a. Termination allowance

(a) General

The Corporation may terminate the employment of certain employees, in accordance with this section, upon the payment of an allowance of \$350 for each month of active service with the Corporation or with a railroad in reorganization, but in no event may any such termination allowance exceed \$25,000.

(b) Employment needs

Within 90 days after August 13, 1981, the Corporation shall determine, for each location, the number of employees that the Corporation intends to separate under subsection (a) of this section.

(c) Notification and separation procedure

(1) Within 90 days after August 13, 1981, the Corporation shall notify its employees of their rights and responsibilities under this section.

(2) Within 90 days after August 13, 1981, the Corporation shall notify each train and engine service employee eligible to be separated under paragraph (3) that such employee may be entitled to

receive a separation payment under this section if such employee files a written request to be separated. Such notice may be revised from time to time.

(3) If the number of employees who request to be separated pursuant to paragraph (2) of this subsection is greater, in engine service at any location, than the number of excess firemen at the location, and in train service at the location than the number of excess second and third brakemen, as determined by the Corporation, the Corporation shall separate the employees described in paragraph (2) of this subsection in order of seniority beginning with the most senior employee, until the excess firemen and second and third brakemen positions at that location, as determined by the Corporation, have been eliminated.

(d) Designated separations

If the number of employees who are separated pursuant to subsection (c)(3) is less at any location than the number of excess firemen in freight and commuter service and second and third brakemen in freight service at such location, as determined by the Corporation, the Corporation may, after 210 days after August 13, 1981, designate for separation employees in engine service or train service respectively in inverse order of seniority, beginning with the most junior employee in active service at such location until the excess firemen in freight and commuter service and second and third brakemen in freight service, at that location have been eliminated. An employee designated under this subsection may choose (1) to furlough himself voluntarily, in which case the next most junior employee protected under the fireman manning or crew consist agreements or any other agreement or law, in the same craft or class at such location may be separated instead and receive the separation allowance, or (2) to exercise his seniority to another location, in which case the Corporation may separate, under the provisions of this subsection, the next most junior protected employee in active service at the location to which seniority ultimately is exercised.

(e) Effect on positions

(1) The Corporation shall refrain from filling one fireman position in freight service, or in commuter service where applicable, for each employee in engine service separated in accordance with this section.

(2) The Corporation may refrain from filling one brakeman position in excess of one conductor and one brakeman on one crew in freight service for each employee in train service who is separated in accordance with this section.

(3) Positions permitted to be not filled under this subsection shall be not filled in different types of freight service actually operated at or from the location in a sequence to be agreed upon between the Corporation and the general chairman representative of classes or crafts of employees having jurisdiction over the positions to be not filled. If no such agreement is reached, the Corporation may designate the position to be not filled.

(4) Notwithstanding paragraphs (1) and (2) of this subsection, the Corporation shall retain all rights it has under any provision of law or agreement to refrain from filling any position of employment.

(f) Procedures

The Corporation and representatives of the various classes and crafts of employees to be separated may agree on procedures to implement this section, but the absence of such agreement shall not interfere with implementation of the separations authorized by this section.

(g) Commuter employees

The provisions of this section shall apply to the separation of firemen in commuter service, except that with respect to such employees the Corporation is required to make the separations authorized by this section.

(Pub. L. 93-236, title VII, §702, as added Pub. L. 97-35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 662.)

§797b. Preferential hiring

(a) General

Any employee who is deprived of employment shall have the first right of hire by any other railroad for a vacancy for which he is qualified in a class or craft (or in the case of a non-agreement employee, for a non-agreement vacancy) in which such employee was employed by the Corporation or a predecessor carrier for not less than one year, except where such a vacancy is covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a railroad shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.

(b) Status

The first right of hire afforded to employees under this section shall be coequal to the first right of hire afforded under sections 907 and 1004 of this title.

(Pub. L. 93-236, title VII, §703, as added Pub. L. 97-35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 663.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EXEMPTION OF NATIONAL RAILROAD PASSENGER CORPORATION IN HIRING QUALIFIED TRAIN AND ENGINE EMPLOYEES

Pub. L. 99-272, title IV, §4011(c), Apr. 7, 1986, 100 Stat. 109, provided that: "The provisions of section 703 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797b), section 8 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 907), and section 105 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1004) shall not apply to the National Railroad Passenger Corporation in the hiring of qualified train and engine employees who hold seniority rights to work in intercity rail passenger service in connection with the assumption by such Corporation of functions previously performed under contract by other carriers."

§797c. Central register of railroad employment

(a) Register

(1) The Railroad Retirement Board (hereafter in this section referred to as the "Board") shall prepare and maintain a register of persons separated from railroad employment after at least one year of completed service with a railroad who have declared their current availability for employment in the railroad industry. The register shall be subdivided by class and craft of prior employment and shall be updated periodically to reflect current availability.

(2) Each entry in the register shall include, or provide access to, basic information concerning the individual's experience and qualifications.

(3) The Board shall place at the top of the register those former railroad employees entitled to priority under applicable provisions of law, including this chapter.

(b) Corporation employees

As soon as is practicable after August 13, 1981, the Corporation shall provide to the Board the names of its former employees who elect to appear on the register and who have not been offered employment with acquiring railroads.

(c) Vacancy notices; warning; civil penalty

(1) Each railroad shall timely file with the Board a notice of vacancy with respect to any position for which the railroad intends to accept applications from persons other than current employees of that carrier.

(2)(A) As soon as the Board becomes aware of any failure on the part of a railroad to comply with paragraph (1), the Board shall issue a warning to such railroad of its potential liability under

subparagraph (B).

(B) Any railroad failing to comply with paragraph (1) of this subsection after being warned by the Board under subparagraph (A) shall be liable for a civil penalty in the amount of \$500 for each subsequent vacancy with respect to which such railroad has so failed to comply.

(d) Placement

The Board shall, through distribution of copies of the central register (or portions thereof) to railroads and representatives of classes or crafts of employees and through publication of employment information derived from vacancy notices filed with the Board, promote the placement of former railroad employees possessing requisite skills and experience in appropriate positions with other railroads.

(e) Employment applications

In addition to its responsibilities under subsections (a) through (d) of this section, the Board shall facilitate the filing of employment applications with respect to current vacancies in the industry by former railroad employees entitled to priority under applicable provisions of law, including this chapter.

(f) Expiration

The provisions of this section shall cease to be effective on the expiration of the 6-year period beginning on August 13, 1981.

(g) Resolution of disputes

Any dispute, grievance, or claim arising under this section, section 797b of this title, section 907 of this title, or section 1004 of this title shall be subject to resolution in accordance with the following procedures:

(1) Any employee with such a dispute, grievance, or claim may petition the Board to review and investigate the dispute, grievance, or claim.

(2) The Board shall investigate the dispute, grievance, or claim, and if it concludes that the employee's rights under this section, section 797b of this title, section 907 of this title, or section 1004 of this title may have been violated, the dispute, grievance, or claim shall be subject to resolution in accordance with the procedures set forth in section 153 of this title.

(3) In the case of any violation of this section, section 797b of this title, section 907 of this title, or section 1004 of this title, the Adjustment Board (or any division or delegate thereof) or any other board of adjustment created under section 153 of this title shall, where appropriate, award such relief, including back pay, as may be necessary to enforce the employee's rights.

(Pub. L. 93-236, title VII, §704, as added Pub. L. 97-35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 663; amended Pub. L. 97-468, title II, §235, Jan. 14, 1983, 96 Stat. 2547; Pub. L. 99-272, title IV, §4011(a), (b), Apr. 7, 1986, 100 Stat. 108, 109.)

EDITORIAL NOTES

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-272, §4011(a), designated existing provisions as par. (1) and added par. (2). Subsec. (f). Pub. L. 99-272, §4011(b), substituted "6-year" for "4-year".

1983—Subsec. (f). Pub. L. 97-468, §235(a), substituted "4-year" for "3-year".

Subsec. (g). Pub. L. 97-468, §235(b), substituted "this section, section 797b of this title, section 907 of this title, or section 1004 of this title" for "this section or section 797b of this title" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-272, title IV, §4011(d), Apr. 7, 1986, 100 Stat. 109, provided that: "The amendments made by subsections (a) and (c) [amending this section and enacting provisions set out as a note under section 797b of this title] shall take effect on the date of enactment of this Act [Apr. 7, 1986], and the amendment made by

subsection (b) [amending this section] shall be effective as of August 1, 1985."

§797d. Election and treatment of benefits

(a) Election

(1) Any employee who accepts any benefits under an agreement entered into under section 797 ¹ of this title or a termination allowance under section 797a of this title, shall, except as provided in paragraph (2) of this subsection, be deemed to waive any employee protection benefits otherwise available under any other provision of law or any contract or agreement in effect on August 13, 1981, except benefits under sections 797b and 797c of this title, and shall be deemed to waive any cause of action for any alleged loss of benefits resulting from the provisions of or the amendments made by the Northeast Rail Service Act of 1981.

(2) Nothing in paragraph (1) of this subsection shall affect the right of any employee described in such paragraph to benefits under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

(b) Treatment of benefits

Any benefits received by an employee under an agreement entered into pursuant to section 797 ¹ of this title and any termination allowance received under section 797a of this title shall be considered compensation solely for purposes of—

(1) the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

(2) determining the compensation received by such employee in any base year under the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

(Pub. L. 93–236, title VII, §705, as added Pub. L. 97–35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 664.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 797 of this title, referred to in subsecs. (a)(1) and (b), was repealed by Pub. L. 99–509, title IV, §4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

The Northeast Rail Service Act of 1981, referred to in subsec. (a)(1), is subtitle E (§§1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

The Railroad Retirement Act of 1974, referred to in subsecs. (a)(2) and (b)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

The Railroad Unemployment Insurance Act, referred to in subsecs. (a)(2) and (b)(2), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

¹ *See References in Text note below.*

§797e. Assignment of work

(a) General

With respect to any craft or class of employees not covered by a collective bargaining agreement that provides for a process substantially equivalent to that provided for in this section, the Corporation shall have the right to assign, allocate, reassign, reallocate, and consolidate work formerly performed on the rail properties acquired pursuant to the provisions of this chapter from a

railroad in reorganization to any location, facility, or position on its system if it does not remove such work from coverage of a collective bargaining agreement and does not infringe upon the existing classification of work rights of any craft or class of employees at the location or facility to which such work is assigned, allocated, reassigned, reallocated, or consolidated. Prior to the exercise of authority under this subsection, the Corporation shall negotiate an agreement with the representatives of the employees involved permitting such employees the right to follow their work.

(b) Expiration

The authority granted by this section shall apply only for as long as benefits are provided under this subchapter with funds made available under section 7971 ¹ of this title.

(Pub. L. 93–236, title VII, §706, as added Pub. L. 97–35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 665.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7971 of this title, referred to in subsec. (b), was repealed by Pub. L. 99–509, title IV, §4033(a)(2), Oct. 21, 1986, 100 Stat. 1908, and a new section 7971 of this title was subsequently added by Pub. L. 104–88, §327(5).

¹ See References in Text note below.

§797f. Contracting out

All work in connection with the operation or services provided by the Corporation on the rail lines, properties, equipment, or facilities acquired pursuant to the provisions of this chapter and the maintenance, repair, rehabilitation, or modernization of such lines, properties, equipment, or facilities which has been performed by practice or agreement in accordance with provisions of the existing contracts in effect with the representatives of the employees of the classes or crafts involved shall continue to be performed by the Corporation's employees, including employees on furlough. Should the Corporation lack a sufficient number of employees, including employees on furlough, and be unable to hire additional employees, to perform the work required, it shall be permitted to subcontract that part of such work which cannot be performed by its employees, including those on furlough, except where agreement by the representatives of the employees of the classes or crafts involved is required by applicable collective-bargaining agreements. The term "unable to hire additional employees" as used in this section contemplates establishment and maintenance by the Corporation of an apprenticeship, training, or recruitment program to provide an adequate number of skilled employees to perform the work.

(Pub. L. 93–236, title VII, §707, as added Pub. L. 97–35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 665.)

§797g. New collective-bargaining agreements

(a) Agreement

Not later than 60 days after the effective date of any conveyance pursuant to the provisions of this chapter, the representatives of the various classes or crafts of employees of a railroad in reorganization involved in a conveyance and representatives of the Corporation shall commence negotiation of a new single collective bargaining agreement for each class and craft of employees covering the rate of pay, rules, and working conditions of employees who are the employees of the Corporation. Such collective bargaining agreement shall include appropriate provisions concerning rates of pay, rules, and working conditions, but shall not, before April 1, 1984, include any

provisions for job stabilization which may exceed or conflict with those established herein. Negotiations with respect to such single collective bargaining agreement, and any successor thereto, shall be conducted systemwide.

(b) Procedure

(1) Any procedure for finally determining the components of the first single collective bargaining agreement for any class or craft, agreed upon before August 13, 1981, shall be completed no later than 45 days after August 13, 1981. Such agreed upon procedure shall be deemed to satisfy the requirements of sections 157 and 158 of this title. The National Mediation Board shall appoint any person as provided for by such agreements.

(2) Nothing in this section shall be construed to require the parties to enter into a new single collective bargaining agreement if the agreement between the parties in effect immediately prior to August 13, 1981, complied with section 774(d) ¹ of this title as in effect immediately prior to such date.

(c) Railway Labor Act notices

Employees of the Corporation may not serve notices under section 156 of this title for the purpose of negotiating job stabilization or other protective agreements with the Corporation until after April 1, 1984.

(Pub. L. 93-236, title VII, §708, as added Pub. L. 97-35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 665.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 774 of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 97-35, title XI, §1144(a)(1), Aug. 13, 1981, 95 Stat. 669.

¹ [See References in Text note below.](#)

§797h. Employee and personal injury claims

(a) Liability for employee claims

In all cases of claims, prior to April 1, 1976, by employees, arising under the collective bargaining agreements of the railroads in reorganization in the Region, and subject to section 153 of this title, the Corporation, the National Railroad Passenger Corporation, or an acquiring carrier, as the case may be, shall assume responsibility for the processing of any such claims, and payment of those which are sustained or settled on or subsequent to the date of conveyance, under section 743(b)(1) of this title, and shall be entitled to direct reimbursement from the Association pursuant to section 721(h) of this title, to the extent that such claims are determined by the Association to be the obligation of a railroad in reorganization in the Region. Any liability of an estate of a railroad in reorganization to its employees which is assumed, processed, and paid pursuant to this subsection by the Corporation, the National Railroad Passenger Corporation, or an acquiring carrier shall remain the preconveyance obligation of the estate of such railroad for purposes of section 721(h)(1) of this title. The Corporation, the National Railroad Passenger Corporation, an acquiring carrier, or the Association, as the case may be, shall be entitled to a direct claim as a current expense of administration, in accordance with the provisions of section 721(h) of this title (other than paragraph (4)(A) thereof), for reimbursement (including costs and expenses of processing such claims) from the estate of the railroad in reorganization on whose behalf such obligations are discharged or paid. In those cases in which claims for employees were sustained or settled prior to such date of conveyance, it shall be the obligation of the employees to seek satisfaction against the estate of the railroads in reorganization which were their former employers.

(b) Assumption of personal injury claims

All cases or claims by employees or their personal representatives for personal injuries or death against a railroad in reorganization in the Region arising prior to the date of conveyance of rail properties, pursuant to section 743 of this title, shall be assumed by the Corporation or an acquiring railroad, as the case may be. The Corporation or the acquiring railroad shall process and pay any such claims that are sustained or settled, and shall be entitled to direct reimbursement from the Association pursuant to section 721(h) of this title, to the extent that such claims are determined by the Association or its successor authority to be the obligation of such railroad. Any liability of an estate of a railroad in reorganization which is assumed, processed, and paid, pursuant to this subsection, by the Corporation or an acquiring railroad shall remain the preconveyance obligation of the estate of such railroad for purposes of section 721(h)(1) of this title. The Corporation, an acquiring railroad, or the Association, as the case may be, shall be entitled to a direct claim as a current expense of administration, in accordance with the provisions of section 721(h) of this title (other than paragraph (4)(A) thereof), for reimbursement (including costs and expenses of processing such claims) from the estate of the railroad in reorganization on whose behalf such obligations were discharged or paid.

(Pub. L. 93–236, title VII, §709, as added Pub. L. 97–35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 666.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

§797i. Limitations on liability

(a) Federal Government

The liability of the United States under an agreement entered into or benefit schedule prescribed under section 797 ¹ of this title or for payment of a termination allowance under section 797a of this title shall be limited to amounts appropriated under section 797i ¹ of this title.

(b) The Corporation

(1) The Corporation, Amtrak Commuter, and commuter authorities shall incur no liability under an agreement entered into or benefit schedule prescribed under section 797 ¹ of this title or for the payment of a termination allowance under section 797a of this title.

(2) Notwithstanding any other provision of law, until April 1, 1984, the Corporation shall have no liability for employee protection in the event of a sale of any asset to a purchaser, and such purchaser shall assume the liability for the application of employee protection conditions imposed by the Commission for all employees adversely affected by such sale.

(Pub. L. 93–236, title VII, §710, as added Pub. L. 97–35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 667.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 797 of this title, referred to in subsecs. (a) and (b)(1), was repealed by Pub. L. 99–509, title IV, §4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

Section 797i of this title, referred to in subsec. (a), was repealed by Pub. L. 99–509, title IV, §4033(a)(2), Oct. 21, 1986, 100 Stat. 1908, and a new section 797i of this title was subsequently added by Pub. L. 104–88, §327(5).

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

¹ [*See References in Text note below.*](#)

§797j. Preemption

No State may adopt or continue in force any law, rule, regulation, order, or standard requiring the Corporation to employ any specified number of persons to perform any particular task, function, or operation, or requiring the Corporation to pay protective benefits to employees, and no State in the Region may adopt or continue in force any such law, rule, regulation, order, or standard with respect to any railroad in the Region.

(Pub. L. 93–236, title VII, §711, as added Pub. L. 97–35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 667; amended Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.)

EDITORIAL NOTES

AMENDMENTS

1994—Pub. L. 103–272 struck out ", the National Railroad Passenger Corporation, or the Amtrak Commuter Services Corporation" before "to employ any".

§797k. Factfinding panel

(a) Purpose

The Corporation shall enter into collective bargaining agreements with its employees which provide for the establishment of one or more advisory factfinding panels, chaired by a neutral expert in industrial relations, for purposes of recommending changes in operating practices and procedures which result in greater productivity to the maximum extent practicable.

(b) National Mediation Board

The National Mediation Board shall appoint public members to any panel established by an agreement entered into under this subparagraph, and shall perform such functions contained in the agreement as are consistent with the duties of such Board under the Railway Labor Act [45 U.S.C. 151 et seq.].

(c) Other functions

The factfinding panel may, before making its report to the parties, provide mediation, conciliation, and other assistance to the parties.

(Pub. L. 93–236, title VII, §712, as added Pub. L. 97–35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 668.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (b), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended,

which is classified principally to chapter 8 (§151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

§797l. Class II railroads receiving Federal assistance

The Surface Transportation Board shall impose no labor protection conditions in approving an application under section 10902 of title 49 when the application involves a Class II rail carrier which—

(1) is headquartered in a State, and operates in at least one State, with a population of less than 1,000,000 persons, as determined by the 1990 census; and

(2) has, as of January 1, 1996, been a recipient of repayable Federal Railroad Administration assistance in excess of \$5,000,000.

(Pub. L. 93–236, title VII, §713, as added Pub. L. 104–88, title III, §327(5)(A), formerly §327(5), Dec. 29, 1995, 109 Stat. 952, renumbered Pub. L. 104–287, §6(f)(4)(B), Oct. 11, 1996, 110 Stat. 3399.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 797l, Pub. L. 93–236, title VII, §713, as added Pub. L. 97–35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 668, authorized appropriations to carry out activities for protection of employees of Consolidated Rail Corporation, prior to repeal by Pub. L. 99–509, title IV, §4033(a)(2), Oct. 21, 1986, 100 Stat. 1908.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as a note under section 1301 of Title 49, Transportation.

§797m. Arbitration

Any dispute or controversy with respect to the interpretation, application, or enforcement of the provisions of this subchapter, except sections 797b, 797c, 797g, and 797l ¹ of this title, or section 1144 of the Northeast Rail Service Act of 1981, and except those matters subject to judicial review under section 1152 of the Northeast Rail Service Act of 1981 [45 U.S.C. 1105], which have not been resolved within 90 days, may be submitted by either party to an Adjustment Board for a final and binding decision thereon as provided in section 153 of this title, in which event the burden of proof on all issues so presented shall be on the Corporation, or the Association, where appropriate.

(Pub. L. 93–236, title VII, §714, as added Pub. L. 97–35, title XI, §1143(a), Aug. 13, 1981, 95 Stat. 668.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 797l of this title, referred to in text, was repealed by Pub. L. 99–509, title IV, §4033(a)(2), Oct. 21, 1986, 100 Stat. 1908, and a new section 797l of this title was subsequently added by Pub. L. 104–88, §327(5).

Section 1144 of the Northeast Rail Service Act of 1981, referred to in text, is section 1144 of Pub. L. 97–35, title XI, Aug. 13, 1981, 95 Stat. 669, which repealed subchapter V (§771 et seq.) of this chapter and sections 910 and 1006 of this title and enacted provisions set out as a note under section 771 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

¹ [*See References in Text note below.*](#)

CHAPTER 17—RAILROAD REVITALIZATION AND REGULATORY REFORM

SUBCHAPTER I—GENERAL PROVISIONS

Sec.

801. Declaration of policy.

802. Definitions.

803. Repealed.

SUBCHAPTER II—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

821. Definitions.

822. Direct loans and loan guarantees.

823. Administration of direct loans and loan guarantees.

824 to 835. Repealed or Transferred.

836. Employee protection.

837, 838. Repealed.

SUBCHAPTER III—NORTHEAST CORRIDOR PROJECT IMPLEMENTATION

851 to 856. Repealed.

SUBCHAPTER I—GENERAL PROVISIONS

§801. Declaration of policy

(a) Purpose

It is the purpose of the Congress in this Act to provide the means to rehabilitate and maintain the physical facilities, improve the operations and structure, and restore the financial stability of the railway system of the United States, and to promote the revitalization of such railway system, so that this mode of transportation will remain viable in the private sector of the economy and will be able to provide energy-efficient, ecologically compatible transportation services with greater efficiency, effectiveness, and economy, through—

(1) ratemaking and regulatory reform;

(2) the encouragement of efforts to restructure the system on a more economically justified basis, including planning authority in the Secretary of Transportation, an expedited procedure for determining whether merger and consolidation applications are in the public interest, and continuing reorganization authority;

(3) financing mechanisms that will assure adequate rehabilitation and improvement of facilities and equipment, implementation of the final system plan, and implementation of the Northeast Corridor project;

(4) transitional continuation of service on light-density rail lines that are necessary to continued employment and community well-being throughout the United States;

(5) auditing, accounting, reporting, and other requirements to protect Federal funds and to assure repayment of loans and financial responsibility; and

(6) necessary studies.

(b) Policy

It is declared to be the policy of the Congress in this Act to—

- (1) balance the needs of carriers, shippers, and the public;
- (2) foster competition among all carriers by railroad and other modes of transportation, to promote more adequate and efficient transportation services, and to increase the attractiveness of investing in railroads and rail-service-related enterprises;
- (3) permit railroads greater freedom to raise or lower rates for rail services in competitive markets;
- (4) promote the establishment of railroad rate structures which are more sensitive to changes in the level of seasonal, regional, and shipper demand;
- (5) promote separate pricing of distinct rail and rail-related services;
- (6) formulate standards and guidelines for determining adequate revenue levels for railroads;
- and
- (7) modernize and clarify the functions of railroad rate bureaus.

(Pub. L. 94–210, title I, §101, Feb. 5, 1976, 90 Stat. 33.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 94–210, Feb. 5, 1976, 90 Stat. 31, as amended, known as the Railroad Revitalization and Regulatory Reform Act of 1976. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114–94, div. A, title XI, §11601(a), Dec. 4, 2015, 129 Stat. 1693, provided that: "This subtitle [subtitle F (§§11601–11611) of title XI of div. A of Pub. L. 114–94, amending sections 821 to 823 of this title and enacting provisions set out as notes under section 821 of this title] may be cited as the 'Railroad Infrastructure Financing Improvement Act'."

SHORT TITLE

Pub. L. 94–210, §1, Feb. 5, 1976, 90 Stat. 31, provided in part that this Act [enacting this chapter and sections 726 and 745 to 747 of this title, and sections 1a, 5c, 26b, 26c, 1613, 1653a, 1654, and 1657a of former Title 49, Transportation, amending sections 543, 545, 546, 562 to 564, 702, 711 to 713, 715, 716, 718 to 721, 724, 725, 741, 743, 744, 762, 763, 771, 772, 774, 775, 778, 779, and 791 of this title, sections 77c, 77s, 78m, and 80a–3 of Title 15, Commerce and Trade, sections 11 and 856 of former Title 31, Money and Finance, and sections 1, 1a, 5, 5b, 6, 12, 13, 15, 15a, 17, 20, 27, 314, 1653, 1658, and 1659 of former Title 49, repealing sections 761 to 762 of this title, enacting provisions set out as notes under sections 745, 761, 791, and 793 of this title, sections 77c and 80a–3 of Title 15, and sections 1, 1a, 5b, 5c, 17, and 1654 of former Title 49, and amending notes set out under section 1651 of former Title 49] may be cited as the "Railroad Revitalization and Regulatory Reform Act of 1976".

§802. Definitions

As used in this Act, unless the context otherwise indicates, the term—

- (1) "Association" means the United States Railway Association;
- (2) "Commission" means the Interstate Commerce Commission;
- (3) "Corporation" means the Consolidated Rail Corporation;
- (4) "final system plan" means the final system plan and any additions thereto adopted by the Association pursuant to the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.);
- (5) "includes" and variants thereof should be read as if the phrase "but is not limited to" were also set forth;

- (6) "Office" means the Rail Services Planning Office of the Commission;
- (7) "railroad" has the meaning given that term in section 20102 of title 49; and
- (8) "Secretary" means the Secretary of Transportation or his designated representative.

(Pub. L. 94–210, title I, §102, Feb. 5, 1976, 90 Stat. 33; Pub. L. 97–468, title VI, §615(b)(2), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 104–88, title III, §330(1), Dec. 29, 1995, 109 Stat. 953; Pub. L. 109–59, title IX, §9003(a), Aug. 10, 2005, 119 Stat. 1921.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 94–210, Feb. 5, 1976, 90 Stat. 31, as amended, known as the Railroad Revitalization and Regulatory Reform Act of 1976. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

The Regional Rail Reorganization Act of 1973, referred to in par. (4), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended, which is classified principally to chapter 16 (§701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

AMENDMENTS

2005—Par. (7). Pub. L. 109–59 amended par. (7) generally. Prior to amendment, par. (7) read as follows: " 'railroad' means a rail carrier subject to part A of subtitle IV of title 49, and includes the National Railroad Passenger Corporation; and".

1995—Par. (7). Pub. L. 104–88 substituted "rail carrier subject to part A of subtitle IV of title 49" for "common carrier by railroad or express, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3))".

1983—Par. (7). Pub. L. 97–468 struck out "and the Alaska Railroad" before the semicolon at end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title, see section 615(b) of Pub. L. 97–468.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

§803. Repealed. Pub. L. 97–449, §7(b), Jan. 12, 1983, 96 Stat. 2443

Section, Pub. L. 94–210, title IX, §905, Feb. 5, 1976, 90 Stat. 148, directed that no person in the United States be discriminated against on the basis of race, color, national origin, or sex with regard to any activity funded in whole or in part under this Act and provided for cut-off of funds to and civil action against any person who persisted in failure to comply. See section 306 of Title 49, Transportation.

SUBCHAPTER II—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

§821. Definitions

For purposes of this subchapter:

(1)(A) The term "cost" means the estimated long-term cost to the Government of a direct loan or loan guarantee or modification thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

(B) The cost of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following estimated cash flows:

(i) Loan disbursements.

(ii) Repayments of principal.

(iii) Payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries.

Calculation of the cost of a direct loan shall include the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.

(C) The cost of a loan guarantee shall be the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:

(i) Payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments.

(ii) Payments to the Government, including origination and other fees, penalties, and recoveries.

Calculation of the cost of a loan guarantee shall include the effects of changes in loan terms resulting from the exercise by the guaranteed lender of an option included in the loan guarantee contract, or by the borrower of an option included in the guaranteed loan contract.

(D) The cost of a modification is the difference between the current estimate of the net present value of the remaining cash flows under the terms of a direct loan or loan guarantee contract, and the current estimate of the net present value of the remaining cash flows under the terms of the contract, as modified.

(E) In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the cash flows of the direct loan or loan guarantee for which the estimate is being made.

(F) When funds are obligated for a direct loan or loan guarantee, the estimated cost shall be based on the current assumptions, adjusted to incorporate the terms of the loan contract, for the fiscal year in which the funds are obligated.

(2) The term "current" has the same meaning as in section 900(c)(9) of title 2.

(3) The term "direct loan" means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims.

(4) The term "direct loan obligation" means a binding agreement by the Secretary to make a direct loan when specified conditions are fulfilled by the borrower.

(5) The term "intermodal" means of or relating to the connection between rail service and other modes of transportation, including all parts of facilities at which such connection is made.

(6) The term "investment-grade rating" means a rating of BBB minus, Baa 3, bbb minus, BBB(low), or higher assigned by a rating agency.

(7) The term "loan guarantee" means any guarantee, insurance, or other pledge with respect to

the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(8) The term "loan guarantee commitment" means a binding agreement by the Secretary to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

(9) The term "master credit agreement" means an agreement to make 1 or more direct loans or loan guarantees at future dates for a program of related projects on terms acceptable to the Secretary.

(10) The term "modification" means any Government action that alters the estimated cost of an outstanding direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) from the current estimate of cash flows. This includes the sale of loan assets, with or without recourse, and the purchase of guaranteed loans. This also includes any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated cost of outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) such as a change in collection procedures.

(11) The term "project obligation" means a note, bond, debenture, or other debt obligation issued by a borrower in connection with the financing of a project, other than a direct loan or loan guarantee under this subchapter.

(12) The term "railroad" has the meaning given the term "railroad carrier" in section 20102 of title 49.

(13) The term "rating agency" means a credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in section 78c(a) of title 15).

(14) The term "substantial completion" means—

(A) the opening of a project to passenger or freight traffic; or

(B) a comparable event, as determined by the Secretary and specified in the terms of the direct loan or loan guarantee provided by the Secretary.

(Pub. L. 94–210, title V, §501, as added Pub. L. 105–178, title VII, §7203(a)(1), June 9, 1998, 112 Stat. 471; amended Pub. L. 114–94, div. A, title XI, §11602, Dec. 4, 2015, 129 Stat. 1693.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 821, Pub. L. 94–210, title V, §501, Feb. 5, 1976, 90 Stat. 66; Pub. L. 95–620, title VIII, §803(c)(1), Nov. 9, 1978, 92 Stat. 3347; Pub. L. 96–101, §24(b), Nov. 4, 1979, 93 Stat. 747; Pub. L. 96–448, title IV, §405(d), Oct. 14, 1980, 94 Stat. 1947; Pub. L. 97–35, title XI, §1162(b), Aug. 13, 1981, 95 Stat. 684; Pub. L. 99–509, title IV, §4033(c)(2), Oct. 21, 1986, 100 Stat. 1908, defined terms for purposes of this subchapter, prior to repeal by Pub. L. 105–178, title VII, §7203(a)(1), June 9, 1998, 112 Stat. 471.

AMENDMENTS

2015—Pars. (6) to (8). Pub. L. 114–94, §11602(2), (3), added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively. Former par. (8) redesignated (10).

Par. (9). Pub. L. 114–94, §11602(4), added par. (9).

Par. (10). Pub. L. 114–94, §11602(1), redesignated par. (8) as (10).

Pars. (11) to (14). Pub. L. 114–94, §11602(5), added pars. (11) to (14).

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SAVINGS PROVISION

Pub. L. 114–94, div. A, title XI, §11607(b), Dec. 4, 2015, 129 Stat. 1699, provided that: "All provisions under sections 502 through 504 [45 U.S.C. 822, 823, 836] of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) as they existed on the day before enactment of this Act shall apply to direct loans provided by the Secretary [of Transportation] prior to the date of enactment of this Act [Dec. 4, 2015], and nothing in this title [see Tables for classification] may be construed to limit the payback of a credit risk premium, with interest accrued thereon, if a direct loan provided by the Secretary under such sections has been paid back in full, prior to the date of enactment of this Act."

Pub. L. 114–94, div. A, title XI, §11610, Dec. 4, 2015, 129 Stat. 1700, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b) and section 11607(b) [set out above], this subtitle [see Short Title of 2015 Amendment note set out under section 801 of this title], and the amendments made by this subtitle, shall not affect any direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) that was in effect prior to the date of enactment of this Act [Dec. 4, 2015]. Any such transaction entered into before the date of enactment of this Act shall be administered until completion under its terms as if this Act [div. A of Pub. L. 114–94, see Tables for classification] were not enacted.

"(b) MODIFICATION COSTS.—At the discretion of the Secretary [of Transportation], the authority to accept modification costs on behalf of an applicant under section 502(f) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(f)), as amended by section 11607 of this Act, may apply with respect to any direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) that was in effect prior to the date of enactment of this Act."

Pub. L. 105–178, title VII, §7203(b)(2), June 9, 1998, 112 Stat. 477, provided that: "A transaction entered into under the authority of title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) before the date of enactment of this Act [June 9, 1998] shall be administered until completion under its terms as if this Act [see Tables for classification] were not enacted."

§822. Direct loans and loan guarantees

(a) General authority

The Secretary shall provide direct loans and loan guarantees to—

- (1) State and local governments;
- (2) interstate compacts consented to by Congress under section 410(a) of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 note);
- (3) government sponsored authorities and corporations;
- (4) railroads;
- (5) joint ventures that include at least 1 of the entities described in paragraph (1), (2), (3), (4), or (6); and
- (6) solely for the purpose of constructing a rail connection between a plant or facility and a railroad, limited option freight shippers that own or operate a plant or other facility.

(b) Eligible purposes

(1) In general

Direct loans and loan guarantees under this section shall be used to—

- (A) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops, and costs related to these activities, including pre-construction costs;
- (B) refinance outstanding debt incurred for the purposes described in subparagraph (A) or (C);
- (C) develop or establish new intermodal or railroad facilities;
- (D) reimburse planning and design expenses relating to activities described in subparagraph (A) or (C); or
- (E) finance economic development, including commercial and residential development, and related infrastructure and activities, that—
 - (i) incorporates private investment;

(ii) is physically or functionally related to a passenger rail station or multimodal station that includes rail service;

(iii) has a high probability of the applicant commencing the contracting process for construction not later than 90 days after the date on which the direct loan or loan guarantee is obligated for the project under this subchapter; and

(iv) has a high probability of reducing the need for financial assistance under any other Federal program for the relevant passenger rail station or service by increasing ridership, tenant lease payments, or other activities that generate revenue exceeding costs.

(2) Operating expenses not eligible

Direct loans and loan guarantees under this section shall not be used for railroad operating expenses.

(3) Sunset

The Secretary may provide a direct loan or loan guarantee under this section for a project described in paragraph (1)(E) until September 30, 2021.

(c) Priority projects

In granting applications for direct loans or guaranteed loans under this section, the Secretary shall give priority to projects that—

(1) enhance public safety, including projects for the installation of a positive train control system (as defined in section 20157(i) of title 49);

(2) promote economic development;

(3) enhance the environment;

(4) enable United States companies to be more competitive in international markets;

(5) are endorsed by the plans prepared under section 135 of title 23 or chapter 227 of title 49 by the State or States in which they are located;

(6) improve railroad stations and passenger facilities and increase transit-oriented development;

(7) preserve or enhance rail or intermodal service to small communities or rural areas;

(8) enhance service and capacity in the national rail system; or

(9) would materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.

(d) Extent of authority

The aggregate unpaid principal amounts of obligations under direct loans and loan guarantees made under this section shall not exceed \$35,000,000,000 at any one time. Of this amount, not less than \$7,000,000,000 shall be available solely for projects primarily benefiting freight railroads other than Class I carriers. The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.

(e) Rates of interest

(1) Direct loans

The Secretary shall require interest to be paid on a direct loan made under this section at a rate not less than that necessary to recover the cost of making the loan.

(2) Loan guarantees

The Secretary shall not make a loan guarantee under this section if the interest rate for the loan exceeds that which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates and customary fees incurred under similar obligations in the private capital market.

(f) Infrastructure partners

(1) Authority of Secretary

In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 661c(b)(1) of title 2, including the cost of a

modification thereof, the Secretary may accept on behalf of an applicant for assistance under this section a commitment from a non-Federal source, including a State or local government or agency or public benefit corporation or public authority thereof, to fund in whole or in part credit risk premiums and modification costs with respect to the loan that is the subject of the application or modification. In no event shall the aggregate of appropriations of budget authority and credit risk premiums described in this paragraph with respect to a direct loan or loan guarantee be less than the cost of that direct loan or loan guarantee.

(2) Credit risk premium amount

The Secretary shall determine the amount required for credit risk premiums under this subsection on the basis of—

- (A) the circumstances of the applicant, including the amount of collateral offered, if any;
- (B) the proposed schedule of loan disbursements;
- (C) historical data on the repayment history of similar borrowers;
- (D) consultation with the Congressional Budget Office; and
- (E) any other factors the Secretary considers relevant.

(3) Creditworthiness

An applicant may propose and the Secretary shall accept as a basis for determining the amount of the credit risk premium under paragraph (2) any of the following in addition to the value of any tangible asset:

- (A) The net present value of a future stream of State or local subsidy income or other dedicated revenues to secure the direct loan or loan guarantee.
- (B) Adequate coverage requirements to ensure repayment, on a non-recourse basis, from cash flows generated by the project or any other dedicated revenue source, including—
 - (i) tolls;
 - (ii) user fees; or
 - (iii) payments owing to the obligor under a public-private partnership.
- (C) An investment-grade rating on the direct loan or loan guarantee, as applicable, except that if the total amount of the direct loan or loan guarantee is greater than \$75,000,000, the applicant shall have an investment-grade rating from at least 2 rating agencies on the direct loan or loan guarantee.

(4) Payment of premiums

Credit risk premiums under this subsection shall be paid to the Secretary before the disbursement of loan amounts (and in the case of a modification, before the modification is executed), to the extent appropriations are not available to the Secretary to meet the costs of direct loans and loan guarantees, including costs of modifications thereof.

(g) Prerequisites for assistance

The Secretary shall not make a direct loan or loan guarantee under this section unless the Secretary has made a finding in writing that—

- (1) repayment of the obligation is required to be made within a term of not more than the lesser of—
 - (A) 35 years after the date of substantial completion of the project; or
 - (B) the estimated useful life of the rail equipment or facilities to be acquired, rehabilitated, improved, developed, or established;
- (2) the direct loan or loan guarantee is justified by the present and probable future demand for rail services or intermodal facilities;
- (3) the applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, improved, developed, or established with the proceeds of the obligation will be economically and efficiently utilized;
- (4) the obligation can reasonably be repaid, using an appropriate combination of credit risk

premiums and collateral offered by the applicant to protect the Federal Government; and

(5) the purposes of the direct loan or loan guarantee are consistent with subsection (b).

(h) Conditions of assistance

(1) The Secretary shall, before granting assistance under this section, require the applicant to agree to such terms and conditions as are sufficient, in the judgment of the Secretary, to ensure that, as long as any principal or interest is due and payable on such obligation, the applicant, and any railroad or railroad partner for whose benefit the assistance is intended—

(A) will not use any funds or assets from railroad or intermodal operations for purposes not related to such operations, if such use would impair the ability of the applicant, railroad, or railroad partner to provide rail or intermodal services in an efficient and economic manner, or would adversely affect the ability of the applicant, railroad, or railroad partner to perform any obligation entered into by the applicant under this section;

(B) will, consistent with its capital resources, maintain its capital program, equipment, facilities, and operations on a continuing basis; and

(C) will not make any discretionary dividend payments that unreasonably conflict with the purposes stated in subsection (b).

(2) The Secretary shall not require an applicant for a direct loan or loan guarantee under this section to provide collateral. Any collateral provided or thereafter enhanced shall be valued as a going concern after giving effect to the present value of improvements contemplated by the completion and operation of the project, if applicable. The Secretary shall not require that an applicant for a direct loan or loan guarantee under this section have previously sought the financial assistance requested from another source.

(3) The Secretary shall require recipients of direct loans or loan guarantees under this section to comply with—

(A) the standards of section 24312 of title 49, as in effect on September 1, 2002, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with such standards for construction work financed under an agreement made under section 24308(a) of that title; and

(B) the protective arrangements established under section 836 of this title, with respect to employees affected by actions taken in connection with the project to be financed by the loan or loan guarantee.

(4) The Secretary shall require each recipient of a direct loan or loan guarantee under this section for a project described in subsection (b)(1)(E) to provide a non-Federal match of not less than 25 percent of the total amount expended by the recipient for such project.

(i) Application processing procedures

(1) Application status notices

Not later than 30 days after the date that the Secretary receives an application under this section, or additional information and material under paragraph (2)(B), the Secretary shall provide the applicant written notice as to whether the application is complete or incomplete.

(2) Incomplete applications

If the Secretary determines that an application is incomplete, the Secretary shall—

(A) provide the applicant with a description of all of the specific information or material that is needed to complete the application, including any information required by an independent financial analyst; and

(B) allow the applicant to resubmit the application with the information and material described under subparagraph (A) to complete the application.

(3) Application approvals and disapprovals

(A) In general

Not later than 60 days after the date the Secretary notifies an applicant that an application is complete under paragraph (1), the Secretary shall provide the applicant written notice as to whether the Secretary has approved or disapproved the application.

(B) Actions by the Office of Management and Budget

In order to enable compliance with the time limit under subparagraph (A), the Office of Management and Budget shall take any action required with respect to the application within that 60-day period.

(4) Expedited processing

The Secretary shall implement procedures and measures to economize the time and cost involved in obtaining an approval or a disapproval of an application for a direct loan or loan guarantee under this subchapter.

(5) Dashboard

The Secretary shall post on the Department of Transportation's Internet Web site a monthly report that includes, for each application—

- (A) the applicant type;
 - (B) the location of the project;
 - (C) a brief description of the project, including its purpose;
 - (D) the requested direct loan or loan guarantee amount;
 - (E) the date on which the Secretary provided application status notice under paragraph (1);
- and
- (F) the date that the Secretary provided notice of approval or disapproval under paragraph (3).

(j) Repayment schedules

(1) In general

The Secretary shall establish a repayment schedule requiring payments to commence not later than 5 years after the date of substantial completion.

(2) Accrual

Interest shall accrue as of the date of disbursement, and shall be amortized over the remaining term of the loan beginning at the time the payments begin.

(3) Deferred payments

(A) In general

If at any time after the date of substantial completion the obligor is unable to pay the scheduled loan repayments of principal and interest on a direct loan provided under this section, the Secretary, subject to subparagraph (B), may allow, for a maximum aggregate time of 1 year over the duration of the direct loan, the obligor to add unpaid principal and interest to the outstanding balance of the direct loan.

(B) Interest

A payment deferred under subparagraph (A) shall—

- (i) continue to accrue interest under paragraph (2) until the loan is fully repaid; and
- (ii) be scheduled to be amortized over the remaining term of the loan.

(4) Prepayments

(A) Use of excess revenues

With respect to a direct loan provided by the Secretary under this section, any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and direct loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the direct loan without penalty.

(B) Use of proceeds of refinancing

The direct loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

(k) Sale of direct loans

(1) In general

Subject to paragraph (2) and as soon as practicable after substantial completion of a project, the Secretary, after notifying the obligor, may sell to another entity or reoffer into the capital markets a direct loan for the project if the Secretary determines that the sale or reoffering has a high probability of being made on favorable terms.

(2) Consent of obligor

In making a sale or reoffering under paragraph (1), the Secretary may not change the original terms and conditions of the secured loan without the prior written consent of the obligor.

(l) Nonsubordination

(1) In general

Except as provided in paragraph (2), a direct loan provided by the Secretary under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(2) Preexisting indentures

(A) In general

The Secretary may waive the requirement under paragraph (1) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture if—

- (i) the direct loan is rated in the A category or higher;
- (ii) the direct loan is secured and payable from pledged revenues not affected by project performance, such as a tax-based revenue pledge or a system-backed pledge of project revenues; and
- (iii) the program share, under this subchapter, of eligible project costs is 50 percent or less.

(B) Limitation

The Secretary may impose limitations for the waiver of the nonsubordination requirement under this paragraph if the Secretary determines that such limitations would be in the financial interest of the Federal Government.

(m) Master credit agreements

(1) In general

Subject to subsection (d) and paragraph (2) of this subsection, the Secretary may enter into a master credit agreement that is contingent on all of the conditions for the provision of a direct loan or loan guarantee, as applicable, under this subchapter and other applicable requirements being satisfied prior to the issuance of the direct loan or loan guarantee.

(2) Conditions

Each master credit agreement shall—

- (A) establish the maximum amount and general terms and conditions of each applicable direct loan or loan guarantee;
- (B) identify 1 or more dedicated non-Federal revenue sources that will secure the repayment of each applicable direct loan or loan guarantee;
- (C) provide for the obligation of funds for the direct loans or loan guarantees contingent on and after all requirements have been met for the projects subject to the master credit agreement; and
- (D) provide 1 or more dates, as determined by the Secretary, before which the master credit

agreement results in each of the direct loans or loan guarantees or in the release of the master credit agreement.

(Pub. L. 94–210, title V, §502, as added Pub. L. 105–178, title VII, §7203(a)(1), June 9, 1998, 112 Stat. 473; amended Pub. L. 109–59, title IX, §9003(b)–(g), Aug. 10, 2005, 119 Stat. 1921–1923; Pub. L. 110–432, div. A, title VII, §701(e), Oct. 16, 2008, 122 Stat. 4906; Pub. L. 114–94, div. A, title XI, §§11603–11605(a), 11606, 11607(a), 11608, 11609, Dec. 4, 2015, 129 Stat. 1694, 1695, 1697–1700; Pub. L. 116–94, div. H, title I, §192, Dec. 20, 2019, 133 Stat. 2972; Pub. L. 116–159, div. B, title I, §1104(b), Oct. 1, 2020, 134 Stat. 727.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 410(a) of the Amtrak Reform and Accountability Act of 1997, referred to in subsec. (a)(2), is section 410(a) of Pub. L. 105–134, which is set out as a note under section 24101 of Title 49, Transportation.

PRIOR PROVISIONS

A prior section 822, Pub. L. 94–210, title V, §502, Feb. 5, 1976, 90 Stat. 67; Pub. L. 95–620, title VIII, §803(c)(2)–(4), Nov. 9, 1978, 92 Stat. 3347, related to the Rail Fund, prior to repeal by Pub. L. 105–178, title VII, §7203(a)(1), June 9, 1998, 112 Stat. 471.

AMENDMENTS

2020—Subsec. (b)(3). Pub. L. 116–159 substituted "September 30, 2021" for "September 30, 2020".

2019—Subsec. (b)(3). Pub. L. 116–94 substituted "until September 30, 2020" for "only during the 4-year period beginning on December 4, 2015".

2015—Subsec. (a)(5). Pub. L. 114–94, §11603(1), substituted "1 of the entities described in paragraph (1), (2), (3), (4), or (6)" for "one railroad".

Subsec. (a)(6). Pub. L. 114–94, §11603(2), amended par. (6) generally. Prior to amendment, par (6) read as follows: "solely for the purpose of constructing a rail connection between a plant or facility and a second rail carrier, limited option rail freight shippers that own or operate a plant or other facility that is served by no more than a single railroad."

Subsec. (b)(1)(A). Pub. L. 114–94, §11604(a)(1), inserted ", and costs related to these activities, including pre-construction costs" after "shops".

Subsec. (b)(1)(B). Pub. L. 114–94, §11604(a)(2), substituted "subparagraph (A) or (C);" for "subparagraph (A); or".

Subsec. (b)(1)(D), (E). Pub. L. 114–94, §11604(a)(3), (4), added subpars. (D) and (E).

Subsec. (b)(3). Pub. L. 114–94, §11604(c), added par. (3).

Subsec. (c)(1). Pub. L. 114–94, §11609(a)(1), inserted ", including projects for the installation of a positive train control system (as defined in section 20157(i) of title 49)" after "public safety".

Subsec. (c)(2), (3). Pub. L. 114–94, §11609(a)(2), redesignated pars. (2) and (3) as (3) and (2), respectively.

Subsec. (c)(5). Pub. L. 114–94, §11609(a)(3), inserted "or chapter 227 of title 49" after "section 135 of title 23".

Subsec. (c)(6) to (9). Pub. L. 114–94, §11609(a)(4), (5), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.

Subsec. (f)(1). Pub. L. 114–94, §11607(a)(1), substituted "In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 661c(b)(1) of title 2, including the cost of a modification thereof, the Secretary may accept on behalf of an applicant for assistance under this section a commitment from a non-Federal source, including a State or local government or agency or public benefit corporation or public authority thereof, to fund in whole or in part credit risk premiums and modification costs with respect to the loan that is the subject of the application or modification." for "In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 661c(b)(1) of title 2, the Secretary may accept on behalf of an applicant for assistance under this section a commitment from a non-Federal source to fund in whole or in part credit risk premiums with respect to the loan that is the subject of the application."

Subsec. (f)(2)(D) to (F). Pub. L. 114–94, §11607(a)(2), inserted "and" at end of subpar. (D), redesignated subpar. (F) as (E), and struck out former subpar. (E) which read as follows: "the size and characteristics of the cohort of which the loan or loan guarantee is a member; and".

Subsec. (f)(3). Pub. L. 114–94, §11607(a)(5), added par. (3). Former par. (3) redesignated (4).

Subsec. (f)(4). Pub. L. 114–94, §11607(a)(4), (6), redesignated par. (3) as (4) and substituted "amounts (and in the case of a modification, before the modification is executed), to the extent appropriations are not available to the Secretary to meet the costs of direct loans and loan guarantees, including costs of modifications thereof" for "amounts".

Pub. L. 114–94, §11607(a)(3), struck out par. (4). Text read as follows: "In order to maintain sufficient balances of credit risk premiums to adequately protect the Federal Government from risk of default, while minimizing the length of time the Government retains possession of those balances, the Secretary shall establish cohorts of loans. When all obligations attached to a cohort of loans have been satisfied, credit risk premiums paid for the cohort, and interest accrued thereon, which were not used to mitigate losses shall be returned to the original source on a pro rata basis. A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for 1 loan or loan guarantee."

Subsec. (g)(1). Pub. L. 114–94, §11606(a), substituted "the lesser of—" for "35 years from the date of its execution;" and added subpars. (A) and (B).

Subsec. (h)(2). Pub. L. 114–94, §11609(b), inserted ", if applicable" after "project".

Subsec. (h)(4). Pub. L. 114–94, §11604(b), added par. (4).

Subsec. (i). Pub. L. 114–94, §11605(a), amended subsec. (i) generally. Prior to amendment, text read as follows: "Not later than 90 days after receiving a complete application for a direct loan or loan guarantee under this section, the Secretary shall approve or disapprove the application."

Subsec. (j)(1). Pub. L. 114–94, §11606(b)(1), substituted "5 years after the date of substantial completion" for "the sixth anniversary date of the original loan disbursement".

Subsec. (j)(3), (4). Pub. L. 114–94, §11606(b)(2), added pars. (3) and (4).

Subsec. (k). Pub. L. 114–94, §11606(c), added subsec. (k).

Subsec. (l). Pub. L. 114–94, §11606(d), added subsec. (l).

Subsec. (m). Pub. L. 114–94, §11608, added subsec. (m).

2008—Subsec. (g)(1). Pub. L. 110–432 substituted "35 years" for "25 years".

2005—Subsec. (a). Pub. L. 109–59, §9003(b), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "The Secretary may provide direct loans and loan guarantees to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least 1 railroad."

Subsec. (c)(7), (8). Pub. L. 109–59, §9003(c), added pars. (7) and (8).

Subsec. (d). Pub. L. 109–59, §9003(d), substituted "\$35,000,000,000" for "\$3,500,000,000" and "\$7,000,000,000" for "\$1,000,000,000" and inserted at end "The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee."

Subsec. (f)(2)(A). Pub. L. 109–59, §9003(f)(2), substituted "amount of collateral offered, if any;" for "amount of collateral offered;"

Subsec. (f)(2)(E), (F). Pub. L. 109–59, §9003(e)(1)–(3), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (f)(4). Pub. L. 109–59, §9003(e)(4), inserted at end "A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for 1 loan or loan guarantee."

Subsec. (h). Pub. L. 109–59, §9003(f)(1), designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C) of par. (1), respectively, and added pars. (2) and (3).

Subsecs. (i), (j). Pub. L. 109–59, §9003(g), added subsecs. (i) and (j).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

RETURN OF CREDIT RISK PREMIUMS NOT USED TO MITIGATE LOSSES

Pub. L. 115–265, title II, §212(d), Oct. 11, 2018, 132 Stat. 3749, provided that:

"(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Transportation, for purposes of section 502(f)(4) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(f)(4)) (as in effect on the day before the amendments made by section 11607 of Public Law 114–94 (129 Stat. 1698) took effect [Oct. 1, 2015])—

"(A) not later than 30 days after the date of enactment of this Act [Oct. 11, 2018], and in consultation with the Director of the Office of Management and Budget, shall define the term 'cohorts of loans';

"(B) before the deadline described in paragraph (2), shall return to the original source, on a pro rata basis, the credit risk premiums paid for the loans in the cohort of loans, with interest accrued thereon, that were not used to mitigate losses; and

"(C) shall not treat the repayment of a loan after the date of enactment of Public Law 114–94 [Dec. 4, 2015] as precluding, limiting, or negatively affecting the satisfaction of the obligation of its cohort prior to the enactment of Public Law 114–94.

"(2) DEADLINE DESCRIBED.—The deadline described in this paragraph is—

"(A) if all obligations attached to a cohort of loans have been satisfied, not later than 60 days after the date of enactment of this Act; and

"(B) if all obligations attached to a cohort of loans have not been satisfied, not later than 60 days after the date on which all obligations attached to the cohort of loans are satisfied."

SUBSTANTIVE CRITERIA AND STANDARDS

Pub. L. 109–59, title IX, §9003(j), Aug. 10, 2005, 119 Stat. 1923, provided that: "Not later than 30 days after the date of enactment of this Act [Aug. 10, 2005], the Secretary of Transportation shall publish in the Federal Register and post on the Department of Transportation Web site the substantive criteria and standards used by the Secretary to determine whether to approve or disapprove applications submitted under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822). The Secretary of Transportation shall ensure adequate procedures and guidelines are in place to permit the filing of complete applications within 30 days of such publication."

§823. Administration of direct loans and loan guarantees

(a) Applications

The Secretary shall prescribe the form and contents required of applications for assistance under section 822 of this title, to enable the Secretary to determine the eligibility of the applicant's proposal, and shall establish terms and conditions for direct loans and loan guarantees made under that section, including a program guide, a standard term sheet, and specific timetables.

(b) Full faith and credit

All guarantees entered into by the Secretary under section 822 of this title shall constitute general obligations of the United States of America backed by the full faith and credit of the United States of America.

(c) Assignment of loan guarantees

The holder of a loan guarantee made under section 822 of this title may assign the loan guarantee in whole or in part, subject to such requirements as the Secretary may prescribe.

(d) Modifications

The Secretary may approve the modification of any term or condition of a direct loan, loan guarantee, direct loan obligation, or loan guarantee commitment, including the rate of interest, time of payment of interest or principal, or security requirements, if the Secretary finds in writing that—

(1) the modification is equitable and is in the overall best interests of the United States;

(2) consent has been obtained from the applicant and, in the case of a loan guarantee or loan guarantee commitment, the holder of the obligation; and

(3) the modification cost has been covered under section 822(f) of this title.

(e) Compliance

The Secretary shall assure compliance, by an applicant, any other party to the loan, and any railroad or railroad partner for whose benefit assistance is intended, with the provisions of this subchapter, regulations issued hereunder, and the terms and conditions of the direct loan or loan guarantee, including through regular periodic inspections.

(f) Commercial validity

For purposes of claims by any party other than the Secretary, a loan guarantee or loan guarantee commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this subchapter, and that such obligation has been approved and is legal as to principal, interest, and other terms. Such a guarantee or commitment shall be valid and incontestable in the hands of a holder thereof, including the original lender or any other holder, as of the date when the Secretary granted the application therefor, except as to fraud or material misrepresentation by such holder.

(g) Default

The Secretary shall prescribe regulations setting forth procedures in the event of default on a loan made or guaranteed under section 822 of this title. The Secretary shall ensure that each loan guarantee made under that section contains terms and conditions that provide that—

(1) if a payment of principal or interest under the loan is in default for more than 30 days, the Secretary shall pay to the holder of the obligation, or the holder's agent, the amount of unpaid guaranteed interest;

(2) if the default has continued for more than 90 days, the Secretary shall pay to the holder of the obligation, or the holder's agent, 90 percent of the unpaid guaranteed principal;

(3) after final resolution of the default, through liquidation or otherwise, the Secretary shall pay to the holder of the obligation, or the holder's agent, any remaining amounts guaranteed but which were not recovered through the default's resolution;

(4) the Secretary shall not be required to make any payment under paragraphs (1) through (3) if the Secretary finds, before the expiration of the periods described in such paragraphs, that the default has been remedied; and

(5) the holder of the obligation shall not receive payment or be entitled to retain payment in a total amount which, together with all other recoveries (including any recovery based upon a security interest in equipment or facilities) exceeds the actual loss of such holder.

(h) Rights of the Secretary

(1) Subrogation

If the Secretary makes payment to a holder, or a holder's agent, under subsection (g) in connection with a loan guarantee made under section 822 of this title, the Secretary shall be subrogated to all of the rights of the holder with respect to the obligor under the loan.

(2) Disposition of property

The Secretary may complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, rent, sell, or otherwise dispose of any property or other interests obtained pursuant to this section. The Secretary shall not be subject to any Federal or State regulatory requirements when carrying out this paragraph.

(i) Action against obligor

The Secretary may bring a civil action in an appropriate Federal court in the name of the United States in the event of a default on a direct loan made under section 822 of this title, or in the name of the United States or of the holder of the obligation in the event of a default on a loan guaranteed under section 822 of this title. The holder of a guarantee shall make available to the Secretary all records and evidence necessary to prosecute the civil action. The Secretary may accept property in full or partial satisfaction of any sums owed as a result of a default. If the Secretary receives, through the sale or other disposition of such property, an amount greater than the aggregate of—

(1) the amount paid to the holder of a guarantee under subsection (g) of this section; and

(2) any other cost to the United States of remedying the default,

the Secretary shall pay such excess to the obligor.

(j) Breach of conditions

The Attorney General shall commence a civil action in an appropriate Federal court to enjoin any activity which the Secretary finds is in violation of this subchapter, regulations issued hereunder, or

any conditions which were duly agreed to, and to secure any other appropriate relief.

(k) Attachment

No attachment or execution may be issued against the Secretary, or any property in the control of the Secretary, prior to the entry of final judgment to such effect in any State, Federal, or other court.

(l) Charges and loan servicing

(1) Purposes

The Secretary may collect from each applicant, obligor, or loan party a reasonable charge for—

(A) the cost of evaluating the application, amendments, modifications, and waivers, including for evaluating project viability, applicant creditworthiness, and the appraisal of the value of the equipment or facilities for which the direct loan or loan guarantee is sought, and for making necessary determinations and findings;

(B) the cost of award management and project management oversight;

(C) the cost of services from expert firms, including counsel, and independent financial advisors to assist in the underwriting, auditing, servicing, and exercise of rights with respect to direct loans and loan guarantees; and

(D) the cost of all other expenses incurred as a result of a breach of any term or condition or any event of default on a direct loan or loan guarantee.

(2) Standards

The Secretary may charge different amounts under this subsection based on the different costs incurred under paragraph (1).

(3) Servicer

(A) In general

The Secretary may appoint a financial entity to assist the Secretary in servicing a direct loan or loan guarantee under this subchapter.

(B) Duties

A servicer appointed under subparagraph (A) shall act as the agent of the Secretary in serving a direct loan or loan guarantee under this subchapter.

(C) Fees

A servicer appointed under subparagraph (A) shall receive a servicing fee from the obligor or other loan party, subject to approval by the Secretary.

(4) National Surface Transportation and Innovative Finance Bureau account

Amounts collected under this subsection shall—

(A) be credited directly to the National Surface Transportation and Innovative Finance Bureau account; and

(B) remain available until expended to pay for the costs described in this subsection.

(m) Fees and charges

Except as provided in this subchapter, the Secretary may not assess any fees, including user fees, or charges in connection with a direct loan or loan guarantee provided under section 822 of this title.

(Pub. L. 94–210, title V, §503, as added and amended Pub. L. 105–178, title VII, §7203(a)(1), (4), June 9, 1998, 112 Stat. 475, 477; Pub. L. 109–59, title IX, §9003(h), (i), Aug. 10, 2005, 119 Stat. 1923; Pub. L. 114–94, div. A, title XI, §11605(b), Dec. 4, 2015, 129 Stat. 1695; Pub. L. 115–56, div. D, §164(b), as added Pub. L. 115–123, div. B, §20101(2), Feb. 9, 2018, 132 Stat. 121.)

EDITORIAL NOTES

CODIFICATION

The text of section 831(c) of this title, which was transferred to subsec. (b) of this section, relating to full

faith and credit backing of guarantees entered into by Secretary, by Pub. L. 105–178, title VII, §7203(a)(4), June 9, 1998, 112 Stat. 477, was based on Pub. L. 94–210, title V, §511, Feb. 5, 1976, 90 Stat. 76; Pub. L. 94–555, title II, §215(a), Oct. 19, 1976, 90 Stat. 2625; Pub. L. 105–178, title VII, §7203(a)(2), (3), June 9, 1998, 112 Stat. 477.

PRIOR PROVISIONS

A prior section 823, Pub. L. 94–210, title V, §503, Feb. 5, 1976, 90 Stat. 69; Pub. L. 94–555, title II, §216(b), Oct. 19, 1976, 90 Stat. 2627, related to classification and designation of rail lines, prior to repeal by Pub. L. 105–178, title VII, §7203(a)(1), June 9, 1998, 112 Stat. 471.

AMENDMENTS

2018—Subsec. (l)(4). Pub. L. 115–56, §164(b)(1), as added by Pub. L. 115–123, §20101(2), substituted "National Surface Transportation and Innovative Finance Bureau account" for "Safety and operations account" in heading.

Subsec. (l)(4)(A). Pub. L. 115–56, §164(b)(2), as added by Pub. L. 115–123, §20101(2), substituted "National Surface Transportation and Innovative Finance Bureau account" for "Safety and Operations account of the Federal Railroad Administration".

2015—Subsec. (a). Pub. L. 114–94, §11605(b)(1), inserted ", including a program guide, a standard term sheet, and specific timetables" before period at end.

Subsecs. (b), (c). Pub. L. 114–94, §11605(b)(3), redesignated subsec. (b), relating to assignment of loan guarantees, as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 114–94, §11605(b)(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(3). Pub. L. 114–94, §11605(b)(4), added par. (3).

Subsecs. (e) to (k). Pub. L. 114–94, §11605(b)(2), redesignated subsecs. (d) to (j) as (e) to (k), respectively. Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 114–94, §11605(b)(5), added subsec. (l) and struck out former subsec. (l). Prior to amendment, text read as follows: "The Secretary may charge and collect from each applicant a reasonable charge for the cost of evaluating the application, including appraisal of the value of the equipment or facilities for which the direct loan or loan guarantee is sought, and for making necessary determinations and findings. Such charge shall not aggregate more than one-half of 1 percent of the principal amount of the obligation. Amounts collected under this subsection shall be credited directly to the Safety and Operations account of the Federal Railroad Administration, and shall remain available until expended to pay for the evaluation costs described in this subsection."

Pub. L. 114–94, §11605(b)(2), redesignated subsec. (k) as (l). Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 114–94, §11605(b)(2), redesignated subsec. (l) as (m).

2005—Subsec. (k). Pub. L. 109–59, §9003(h), in heading, substituted "Evaluation" for "Investigation" and, in text, inserted "the cost of evaluating the application, including" after "reasonable charge for" and inserted at end "Amounts collected under this subsection shall be credited directly to the Safety and Operations account of the Federal Railroad Administration, and shall remain available until expended to pay for the evaluation costs described in this subsection."

Subsec. (l). Pub. L. 109–59, §9003(i), added subsec. (l).

1998—Subsec. (b). Pub. L. 105–178, §7203(a)(4), redesignated subsec. (c) of section 831 of this title as subsec. (b) of this section, relating to full faith and credit backing of guarantees entered into by Secretary. See Codification note above.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

§§824, 825. Repealed. Pub. L. 105–178, title VII, §7203(a)(1), (2), June 9, 1998, 112 Stat. 471, 477

Section 824, Pub. L. 94–210, title V, §504, Feb. 5, 1976, 90 Stat. 70; Pub. L. 94–555, title II, §216(c), 220(d), Oct. 19, 1976, 90 Stat. 2627, 2629, related to capital needs study to be submitted to Secretary.

Section 825, Pub. L. 94–210, title V, §505, Feb. 5, 1976, 90 Stat. 71; Pub. L. 94–555, title II, §§212, 216(a), Oct. 19, 1976, 90 Stat. 2624, 2626; Pub. L. 95–565, §5, Nov. 1, 1978, 92 Stat. 2400; Pub. L. 95–607, title III, §§301(a), 302, Nov. 8, 1978, 92 Stat. 3066; Pub. L. 95–620, title VIII, §803(c)(5), (6), Nov. 9, 1978, 92 Stat. 3347, 3348; Pub. L. 96–73, title IV, §401, Sept. 29, 1979, 93 Stat. 557; Pub. L. 96–101, §§16, 24(a), Nov. 4, 1979, 93 Stat. 744, 747; Pub. L. 96–254, title I, §112, May 30, 1980, 94 Stat. 404; Pub. L. 96–448, title IV, §§404, 405(a)(1), (c)(1), (2), (4), (5), 406, title VII, §701(d), Oct. 14, 1980, 94 Stat. 1945–1947, 1961; Pub. L. 97–35, title XI, §1162(a), (c), (d), Aug. 13, 1981, 95 Stat. 683, 684; Pub. L. 97–468, title IV, §§401, 403(b), Jan. 14, 1983, 96 Stat. 2550, 2551; Pub. L. 99–509, title IV, §4033(c)(3), Oct. 21, 1986, 100 Stat. 1908; Pub. L. 104–88, title III, §330(2), Dec. 29, 1995, 109 Stat. 953, related to rehabilitation and improvement financing.

§825a. Repealed. Pub. L. 99–509, title IV, §4033(c)(6), Oct. 21, 1986, 100 Stat. 1909

Section, Pub. L. 97–468, title IV, §402, Jan. 14, 1983, 96 Stat. 2550, provided for financial assistance to responsible persons for purchase, lease, or rehabilitation of rail lines of Consolidated Rail Corporation.

§§826 to 830. Repealed. Pub. L. 105–178, title VII, §7203(a)(2), June 9, 1998, 112 Stat. 477

Section 826, Pub. L. 94–210, title V, §506, Feb. 5, 1976, 90 Stat. 73; Pub. L. 94–555, title II, §§213, 214, Oct. 19, 1976, 90 Stat. 2624, 2625; Pub. L. 96–448, title IV, §405(c)(3)(A), (C), Oct. 14, 1980, 94 Stat. 1946, 1947, related to redeemable preference shares.

Section 827, Pub. L. 94–210, title V, §507, Feb. 5, 1976, 90 Stat. 74; Pub. L. 95–607, title III, §301(b), Nov. 8, 1978, 92 Stat. 3066; Pub. L. 96–73, title IV, §401, Sept. 29, 1979, 93 Stat. 557; Pub. L. 96–448, title IV, §§404, 405(a)(2), (c)(3)(B), Oct. 14, 1980, 94 Stat. 1945, 1946; Pub. L. 97–468, title IV, §401, Jan. 14, 1983, 96 Stat. 2550, related to fund anticipation notes.

Section 828, Pub. L. 94–210, title V, §508, Feb. 5, 1976, 90 Stat. 74, related to fund bonds.

Section 829, Pub. L. 94–210, title V, §509, Feb. 5, 1976, 90 Stat. 76; Pub. L. 94–555, title II, §216(d), Oct. 19, 1976, 90 Stat. 2627; Pub. L. 95–607, title III, §301(c), Nov. 8, 1978, 92 Stat. 3066; Pub. L. 96–73, title IV, §401, Sept. 29, 1979, 93 Stat. 557; Pub. L. 96–448, title IV, §§404, 405(a)(2), (b)(1), Oct. 14, 1980, 94 Stat. 1945; Pub. L. 97–35, title XI, §1162(e), (f), Aug. 13, 1981, 95 Stat. 684, 685; Pub. L. 97–468, title IV, §§401, 403(a), Jan. 14, 1983, 96 Stat. 2550, 2551; Pub. L. 99–509, title IV, §4033(c)(4), Oct. 21, 1986, 100 Stat. 1909; Pub. L. 104–88, title III, §330(3), Dec. 29, 1995, 109 Stat. 953, related to authorization of appropriations, purchases, transfer of funds, and restrictions.

Section 830, Pub. L. 94–210, title V, §510, Feb. 5, 1976, 90 Stat. 76; Pub. L. 104–88, title III, §330(4), Dec. 29, 1995, 109 Stat. 953, related to exemption of redeemable preference shares from certain Federal and State securities provisions.

§831. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 94–210, title V, §511, Feb. 5, 1976, 90 Stat. 76; Pub. L. 94–555, title II, §§215, 220(e), (f), Oct. 19, 1976, 90 Stat. 2625, 2629, 2630; Pub. L. 96–448, title IV, §405(e), Oct. 14, 1980, 94 Stat. 1947; Pub. L. 99–509, title IV, §4033(c)(5), Oct. 21, 1986, 100 Stat. 1909; Pub. L. 102–240, title I, §1036(e), Dec. 18, 1991, 105 Stat. 1986, which related to guarantee of obligations, was repealed, except for subsec. (c), by Pub. L. 105–178, title VII, §7203(a)(2), June 9, 1998, 112 Stat. 477. Subsec. (c) of section 831 was amended, redesignated, and transferred to section 823(b) of this title by Pub. L. 105–178, title VII, §7203(a)(3), (4), June 9, 1998, 112 Stat. 477.

§§832 to 834. Repealed. Pub. L. 105–178, title VII, §7203(a)(2), June 9, 1998, 112 Stat. 477

Section 832, Pub. L. 94–210, title V, §512, Feb. 5, 1976, 90 Stat. 79, related to issuance of notes or obligations.

Section 833, Pub. L. 94–210, title V, §513, Feb. 5, 1976, 90 Stat. 80, related to default on guaranteed obligations.

Section 834, Pub. L. 94–210, title V, §514, Feb. 5, 1976, 90 Stat. 81, related to audit of transactions.

§835. Repealed. Pub. L. 97–375, title I, §111(d), Dec. 21, 1982, 96 Stat. 1821; Pub. L. 105–178, title VII, §7203(a)(2), June 9, 1998, 112 Stat. 477

Section, Pub. L. 94–210, title V, §515, Feb. 5, 1976, 90 Stat. 82, directed Secretary to report to Congress within 90 days following end of each fiscal year on financial condition and operations of Fund and of obligation guarantee fund during such fiscal year, and on anticipated condition and operations of Fund and of obligation guarantee fund during current fiscal year.

§836. Employee protection

(a) General

Fair and equitable arrangements shall be provided, in accordance with this section, to protect the interests of any employees not otherwise protected under title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771 et seq.), who may be affected by actions taken pursuant to authorizations or approval obtained under this subchapter. Such arrangements shall be determined by the execution of an agreement between the representatives of the railroads and the representatives of their employees, within 120 days after February 5, 1976. In the absence of such an executed agreement, the Secretary of Labor shall prescribe the applicable protective arrangements, within 150 days after February 5, 1976.

(b) Terms

The arrangements required by subsection (a) of this section shall apply to each employee who has an employment relationship with a railroad on the date on which such railroad first applies for applicable financial assistance under this subchapter. Such arrangements shall include such provisions as may be necessary for the negotiation and execution of agreements as to the manner in which the protective arrangements shall be applied, including notice requirements. Such agreements shall be executed prior to implementation of work funded from financial assistance under this subchapter. If such an agreement is not reached within 30 days after the date on which an application for such assistance is approved, either party to the dispute may submit the issue for final and binding arbitration. The decision on any such arbitration shall be rendered within 30 days after such submission. Such arbitration decision shall in no way modify the protection afforded in the protective arrangements established pursuant to this section, shall be final and binding on the parties thereto, and shall become a part of the agreement. Such arrangements shall also include such provisions as may be necessary—

(1) for the preservation of compensation (including subsequent general wage increases, vacation allowances, and monthly compensation guarantees), rights, privileges, and benefits (including fringe benefits such as pensions, hospitalization, and vacations, under the same conditions and so long as such benefits continue to be accorded to other employees of the employing railroad in active service or on furlough, as the case may be) to such employees under existing collective-bargaining agreements or otherwise;

(2) to provide for final and binding arbitration of any dispute which cannot be settled by the parties, with respect to the interpretation, application, or enforcement of the provisions of the protective arrangements;

(3) to provide that an employee who is unable to secure employment by the exercise of his or

her seniority rights, as a result of actions taken with financial assistance obtained under this subchapter, shall be offered reassignment and, where necessary, retraining to fill a position comparable to the position held at the time of such adverse effect and for which he is, or by training and retraining can become, physically and mentally qualified, so long as such offer is not in contravention of collective bargaining agreements relating thereto; and

(4) to provide that the protection afforded pursuant to this section shall not be applicable to employees benefited solely as a result of the work which is financed by funds provided pursuant to this subchapter.

(c) Subcontracting

The arrangements which are required to be negotiated by the parties or prescribed by the Secretary of Labor, pursuant to subsections (a) and (b) of this section, shall include provisions regulating subcontracting by the railroads of work which is financed by funds provided pursuant to this subchapter.

(Pub. L. 94–210, title V, §504, formerly §516, Feb. 5, 1976, 90 Stat. 82; renumbered §504, Pub. L. 105–178, title VII, §7203(a)(5), June 9, 1998, 112 Stat. 477.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Regional Rail Reorganization Act of 1973, referred to in subsec. (a), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended. Title V of the Regional Rail Reorganization Act of 1973, which was classified generally to subchapter V (§771 et seq.) of chapter 16 of this title, was repealed by Pub. L. 97–35, title XI, §1144(a)(1), Aug. 13, 1981, 95 Stat. 669. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

PRIOR PROVISIONS

A prior section 504 of Pub. L. 94–210 was classified to section 824 of this title prior to repeal by Pub. L. 105–178.

§§837, 838. Repealed. Pub. L. 105–178, title VII, §7203(a)(2), June 9, 1998, 112 Stat. 477

Section 837, Pub. L. 94–210, title V, §517, Feb. 5, 1976, 90 Stat. 83, related to intercity rail passenger service.

Section 838, Pub. L. 94–210, title V, §518, as added Pub. L. 102–533, §12(a), Oct. 27, 1992, 106 Stat. 3521, related to Columbus and Greenville Railway.

SUBCHAPTER III—NORTHEAST CORRIDOR PROJECT IMPLEMENTATION

§851. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 94–210, title VII, §701, Feb. 5, 1976, 90 Stat. 119; Pub. L. 96–254, title II, §205, May 30, 1980, 94 Stat. 412, specified powers and duties of National Railroad Passenger Corporation with respect to implementing the Northeast Corridor improvement project. See sections 24102, 24305, 24315, 24902, and 24903 of Title 49, Transportation.

§852. Repealed. Pub. L. 97–35, title XI, §1188(e), Aug. 13, 1981, 95 Stat. 699

Section, Pub. L. 94–210, title VII, §702, Feb. 5, 1976, 90 Stat. 120, set forth provisions relating to the

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 1189 of Pub. L. 97–35.

§§853 to 855. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 853, Pub. L. 94–210, title VII, §703, Feb. 5, 1976, 90 Stat. 121; Pub. L. 95–421, §§5, 8, Oct. 5, 1978, 92 Stat. 926, 927; Pub. L. 96–254, title II, §§202, 203, 209, May 30, 1980, 94 Stat. 410, 414; Pub. L. 97–468, title III, §301(1), Jan. 14, 1983, 96 Stat. 2547; Pub. L. 99–272, title IV, §4007(d), Apr. 7, 1986, 100 Stat. 108, enumerated goals of Northeast Corridor improvement project. See section 24902 of Title 49, Transportation.

Section 854, Pub. L. 94–210, title VII, §704, Feb. 5, 1976, 90 Stat. 122; Pub. L. 94–555, title II, §217, Oct. 19, 1976, 90 Stat. 2627; Pub. L. 95–421, §9, Oct. 5, 1978, 92 Stat. 928; Pub. L. 96–254, title II, §§204(a), (b), 210, May 30, 1980, 94 Stat. 411, 414; Pub. L. 97–35, title XI, §1193, Aug. 13, 1981, 95 Stat. 701; Pub. L. 97–468, title III, §301(2)–(4), Jan. 14, 1983, 96 Stat. 2548, 2549; Pub. L. 100–342, §6, June 22, 1988, 102 Stat. 627, related to funding of Northeast Corridor improvement project. See sections 24902, 24903, 24907, and 24909 of Title 49.

Section 855, Pub. L. 94–210, title VII, §705, as added Pub. L. 96–254, title II, §206(a), May 30, 1980, 94 Stat. 412; amended Pub. L. 97–468, title III, §301(5), Jan. 14, 1983, 96 Stat. 2550, related to transfers of authority with respect to track improvements and implementation of Northeast Corridor improvement project goals. See sections 24902, 24903, and 24909 of Title 49.

§856. Repealed. Pub. L. 103–429, §7(a)(1), Oct. 31, 1994, 108 Stat. 4388

Section, Pub. L. 94–210, title VII, §708, as added Pub. L. 102–533, §4(a), Oct. 27, 1992, 106 Stat. 3516, directed Secretary to develop and report to Congress within one year after Oct. 27, 1992, on a program master plan for improvements in passenger service between Boston and New York.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Pub. L. 103–429, §7(a)(1), Oct. 31, 1994, 108 Stat. 4388, provided that the repeal by section 7(a)(1) is effective July 5, 1994.

CHAPTER 18—MILWAUKEE RAILROAD RESTRUCTURING

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901.	Congressional findings.
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§901. Congressional findings

(a) Congress hereby finds that—

(1) the severe operating losses and the deteriorating plant and equipment of the Milwaukee Railroad threaten to cause cessation of its operations in the near future;

(2) a cessation of operations by the Milwaukee Railroad would have serious repercussions on the economies of the States in which such railroad principally operates (the States of Washington, Montana, Idaho, North Dakota, South Dakota, Illinois, Iowa, Missouri, Michigan, Indiana, Minnesota, and Wisconsin);

(3) a cessation of operations of the Milwaukee Railroad would result in the loss of many thousands of jobs of railroad workers and other workers whose employment is dependent upon rail service over the lines presently operated by the Milwaukee Railroad;

(4) experienced railroad employees make a valuable contribution toward strengthening the railroad industry; and other railroads have the ability and willingness to employ displaced employees of the Milwaukee Railroad;

(5) the ownership by employees or by employees and shippers of part or all of the Milwaukee Railroad may be a valuable tool in reorganization and should be given serious consideration;

(6) cessation of essential transportation services by the Milwaukee Railroad would endanger the public welfare;

(7) cessation of such services is imminent; and

(8) there is no other practicable means of obtaining funds to meet payroll and other expenses necessary for continuation of services and reorganization of the Milwaukee Railroad.

(b) The Congress declares that emergency measures set forth in this chapter must be taken to restructure the Milwaukee Railroad and to avoid the potential unemployment and damage to the economy of the region and of the Nation which a cessation of essential services by the Milwaukee Railroad would otherwise cause.

(Pub. L. 96–101, §2, Nov. 4, 1979, 93 Stat. 736.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 96–101, Nov. 4, 1979, 93 Stat. 736, as amended, known as the Milwaukee Railroad Restructuring Act, which enacted this chapter and amended sections 231f, 662, 721, 821, and 825 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 97–468, title II, §201, Jan. 14, 1983, 96 Stat. 2543, provided that: "This title [amending sections 797c, 907, 913, 915, 1004, 1005, 1007, 1014, and 1017 of this title, repealing section 1008 of this title and enacting provisions set out as notes under this section] may be referred to as the 'Bankrupt Railroad Service

SHORT TITLE

Pub. L. 96–101, §1, Nov. 4, 1979, 93 Stat. 736, provided: "That this Act [enacting this chapter and amending sections 231f, 662, 721, 821, and 825 of this title] may be cited as the 'Milwaukee Railroad Restructuring Act'."

STATEMENT OF PURPOSE

Pub. L. 97–468, title II, subtitle A, §211, Jan. 14, 1983, 96 Stat. 2543, provided that: "It is the purpose of this subtitle [amending sections 915 and 1017 of this title and enacting provisions set out as notes under this section] to continue the effort by Congress to assure service over the lines of rail carriers subject to liquidation in instances where rail carriers are willing to provide service over such lines and financially responsible persons are willing to purchase the lines for continued rail operations."

CONGRESSIONAL FINDINGS

Pub. L. 97–468, title II, §212, Jan. 14, 1983, 96 Stat. 2543, provided that: "The Congress finds that—

"(1) it is necessary to establish procedures to facilitate and expedite the acquisition of rail lines of carriers subject to liquidation by financially responsible persons in instances where service is not being provided over the line by the carrier and where the financially responsible person seeks to provide rail service over the line;

"(2) procedures set forth in the amendments made by this title [see Short Title of 1983 Amendment note above] represent an exercise of the powers of the Congress under the Constitution to regulate commerce among the several States which will provide a practicable means for preserving rail service, thus benefiting shippers, employees, and the economies of the States in which such carriers subject to liquidation have operated service, and for facilitating interstate commerce, while at the same time providing safeguards to protect the interest of the estates of such carriers by requiring compensation which is not less than the constitutionally required minimum; and

"(3) it is in the public interest that the Interstate Commerce Commission's authority to issue orders involving temporary authority to operate service over lines of carriers subject to liquidation be clarified."

[Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.]

§902. Definitions

As used in this chapter—

(1) the term "bankruptcy court" means the court having jurisdiction over the reorganization of the Milwaukee Railroad;

(2) the term "Board" means the Railroad Retirement Board;

(3) the term "Commission" means the Interstate Commerce Commission;

(4) the term "employee"—

(A) includes any employee of the Milwaukee Railroad who worked on a line of such railroad the sale of which became effective on October 1, 1979; but

(B) does not include any individual serving as president, vice-president, secretary, treasurer, comptroller, counsel, member of the board of directors, or any other person performing such functions;

(5) the term "Milwaukee Railroad" means the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; and

(6) the term "restructured Milwaukee Railroad" means the entity that is designated as the reorganized railroad under the reorganization plan for the Milwaukee Railroad finally certified by the Commission.

EDITORIAL NOTES

AMENDMENTS

1980—Par. (6). Pub. L. 96–254 redefined "restructured Milwaukee Railroad" to mean the entity that is designated as the reorganized railroad under the reorganization plan for the Milwaukee Railroad finally certified by the Commission.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

§903. Sales and transfers

(a) The Milwaukee Railroad may negotiate and enter into agreements to sell, to another rail carrier or any other person, all or any portion of its rail properties used in railroad operations as of October 15, 1979. Such sale agreements may in no event become final and effective until the occurrence of an event described in section 920(b) of this title, or April 1, 1980, whichever first occurs. In taking action under this subsection, the Milwaukee Railroad may consult with the Secretary of Transportation.

(b)(1) The Secretary of Transportation, under the authority of section 333 of title 49, may develop plans, participate in negotiations, and recommend to the trustee proposals for the sale or transfer of any rail properties of the Milwaukee Railroad which are used in rail operations as of October 15, 1979. In taking action under this paragraph, the Secretary shall give preference to financially responsible persons, including governmental entities, negotiating for the purchase of any lines with the intent of providing common carrier service.

(2) Any sale or transfer proposal developed under paragraph (1) of this subsection shall be submitted to the bankruptcy court. Such a proposal may in no event become final or effective until the occurrence of an event described in section 920(b) of this title, or April 1, 1980, whichever first occurs.

(Pub. L. 96–101, §4, Nov. 4, 1979, 93 Stat. 737.)

EDITORIAL NOTES

CODIFICATION

In subsec. (b)(1), "section 333 of title 49" was substituted for "section 5(a)–(e) of the Department of Transportation Act [49 U.S.C. 1654(a)–(e)]", on authority of Pub. L. 97–449, §6(b), Jan. 12, 1983, 96 Stat. 2443, the first section of which enacted subtitle I (§101 et seq.) and chapter 31 (§3101 et seq.) of subtitle II of Title 49, Transportation.

§904. Court approved abandonments and sales

(a) Abandonment of lines of railroad under section 1170 of title 11

(1) Upon the occurrence of an event described in section 920(b) of this title, or on April 1, 1980, whichever first occurs, the bankruptcy court may authorize the abandonment of lines of the

Milwaukee Railroad pursuant to section 1170 of title 11. Pending the expiration of the time for appeal of an abandonment order or the determination of any such appeal, the bankruptcy court may authorize the termination of service on a line to be abandoned, and the order authorizing such termination may not be stayed. In authorizing any abandonment pursuant to this section, the court shall require the carrier to provide a fair arrangement at least as protective of the interests of employees as that required under section 11347 ¹ of title 49.

(2) Prior to the date specified in paragraph (1) of this subsection, the bankruptcy court may hear and consider any request for the abandonment of lines of the Milwaukee Railroad, and may fix the time for the Commission's report on the request, but it may take final action authorizing such abandonment only in accordance with such paragraph (1).

(b) Sale or transfer of lines of railroad

(1) Upon the occurrence of an event described in section 920(b) of this title, or on April 1, 1980, whichever first occurs, the bankruptcy court may authorize the sale or transfer of a line of the Milwaukee Railroad to be used in continued rail operations, subject to the approval of the Commission under paragraph (2) of this subsection. In authorizing any such sale or transfer, the court shall provide a fair arrangement at least as protective of the interest ² of employees as that required under section 11347 ¹ of title 49.

(2) The bankruptcy court may not authorize a sale or transfer pursuant to paragraph (1) of this subsection unless an appropriate application with respect to such sale or transfer is initiated with the Commission and, within such time as the court may fix, not exceeding 180 days, the Commission, with or without a hearing, as the Commission may determine, and with or without modification or condition, approves such application, or does not act on such application. Any action or order of the Commission approving, modifying, conditioning, or disapproving such application is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5. An application may be initiated with the Commission prior to the date specified in paragraph (1) of this subsection.

(3) Pending review of an application by the Commission pursuant to paragraph (2) of this subsection, the bankruptcy court may, on a preliminary basis, authorize the sale or transfer of lines of the Milwaukee Railroad to another rail carrier. The court may permit the purchasing carrier to operate interim service as a common carrier over the lines to be purchased, without regard to section 10901 of title 49. In operating such service, the purchasing carrier shall use employees of the Milwaukee Railroad to the extent necessary for the operation of such service. The bankruptcy court may take final action authorizing any such sale or transfer only in accordance with paragraph (1) of this subsection.

(c) Effect on priorities and timing of employee protection payments

Nothing in this section shall be deemed to affect the priorities or timing of payment of employee protection which might have existed in the absence of this chapter.

(Pub. L. 96-101, §5, Nov. 4, 1979, 93 Stat. 737.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 11347 of title 49, referred to in subsecs. (a)(1) and (b)(1), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804. Provisions similar to those in section 11347 are contained in section 11326(a) of Title 49.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title

49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

¹ *See References in Text note below.*

² *So in original. Probably should be "interests".*

§905. Employee or employee-shipper ownership plan

(a) Submission of plan to Commission; approval; findings

(1) No later than December 1, 1979, an association composed of representatives of national railway labor organizations, employee coalitions, and shippers (or any combination of the foregoing) may submit to the Commission a single plan for converting all or a substantial part of the Milwaukee Railroad into an employee or employee-shipper owned company and a method for implementing such plan. The plan shall include a comprehensive evaluation of the prospects for the financial self-sustainability of the Milwaukee Railroad.

(2) The Commission shall, within 30 days after the date of submission of a plan under paragraph (1) of this subsection, approve the proposed plan if it finds that such plan is feasible. The finding of the Commission with respect to the feasibility of the plan shall be made pursuant to section 554 of title 5.

(3) The Commission shall make a finding that the plan submitted under this section is feasible if it determines that—

(A) adequate public and private financing is available to the proponents of such plan;

(B) such plan is fair and equitable to the estate of the Milwaukee Railroad;

(C) implementation of such plan will occur by April 1, 1980;

(D) the railroad proposed to be operated under the plan can be operated on a self-sustaining basis; and

(E) the plan contains an assessment of all operating practices, and includes agreements by labor and management to make implementing changes designed to achieve labor productivity increases (which may include changes in work rules to increase productivity) consistent with safe operations and adequate service.

For purposes of the determinations under this paragraph, adequate financing shall include all sources of private funds, the probable value and priority of valid claims against the estate, and Federal, State, or local funds available under programs (in existence as of January 1, 1980) which are or will be available to the proponent and which the proponent is likely to obtain.

(b) Submission of findings to bankruptcy court

If the Commission finds that the plan submitted under this section is feasible, it shall submit its finding to the bankruptcy court. Within 10 days after the date of such submission, the bankruptcy court shall, after a hearing, determine whether such plan is fair and equitable to the estate of the Milwaukee Railroad. The Commission's determination with respect to that issue shall be rebutted only by clear and convincing evidence.

(c) Implementation of plan

If the Commission finds that the plan is feasible and the bankruptcy court determines that the plan is fair and equitable to the estate of the Milwaukee Railroad, the proponents of such plan shall implement the plan no later than April 1, 1980.

(d) Judicial review

Except as provided in this section, the findings of the Commission with respect to the plan shall

not be subject to review.

(e) Furnishing of reports and other information for preparation of plan

(1) The trustee of the Milwaukee Railroad shall promptly provide to the person engaged in developing the employee or employee and shipper ownership plan under this section—

(A) its most recent reports on the physical condition of the railroad; and

(B) traffic, revenue, marketing, and other data necessary to determine the amount of the acquisition cost of the railroad or portion of the railroad that would be required to continue rail transportation over the railroad line.

(2) Information provided pursuant to this subsection shall be used only for purposes of preparing a plan and shall not be disclosed to any competitor or, unless necessary in connection with the preparation of the plan, to any customer of the Milwaukee Railroad.

(Pub. L. 96–101, §6, Nov. 4, 1979, 93 Stat. 738.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

§906. Guarantee of trustee certificates

(a) to (c) Omitted

(d) Authorization

The Secretary of Transportation shall, under the authority of the Emergency Rail Services Act of 1970 [45 U.S.C. 661 et seq.], immediately guarantee trustee certificates of the Milwaukee Railroad, on the basis of an estimate of the amount required to be provided under subsection (e) of this section, for purposes of allowing the Milwaukee Railroad, commencing November 1, 1979, to maintain its entire railroad system in accordance with section 920 of this title, and as required to finance operations which the Milwaukee Railroad continues for the 60-day period beginning on the date of the occurrence of an event described in section 920(b) of this title or on April 1, 1980, whichever first occurs. Such guarantee shall be made without regard to the findings set forth in section 3(a) of the Emergency Rail Services Act of 1970 [45 U.S.C. 662(a)], and the provisions of section 3(b)(3) [45 U.S.C. 662(b)(3)] and the last two sentences of section 3(d) of such Act [45 U.S.C. 662(d)] shall not apply to such guarantee.

(e) Amount of guarantee

The Secretary shall guarantee trustee certificates of the Milwaukee Railroad pursuant to this section in an amount equal to the difference between (1) the total expenses incurred by such railroad attributable to the maintenance and the continuation of service in accordance with subsection (d) of this section, and (2) the revenues of such railroad.

(f) Subordination of claims

Notwithstanding the provisions of section 3(c) of the Emergency Rail Services Act of 1970 [45 U.S.C. 662(c)], certificates guaranteed under this chapter shall be subordinated to the claims of any creditors of the Milwaukee Railroad as of November 4, 1979.

(g) Availability of funds

The Commission shall immediately make available to the Secretary of Transportation the sum of

\$10,000,000, out of funds available for directed service under title 49. The Secretary of Transportation shall immediately make such funds available to the trustee of the Milwaukee Railroad for purposes of financing the operations of the Milwaukee Railroad, beginning November 1, 1979, in accordance with section 920 of this title.

(h) Cancellation of United States obligations

(1) All obligations to the United States or any agency or instrumentality of the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and canceled when—

- (A) the Milwaukee Railroad is reorganized as an operating rail carrier; or
- (B) substantially all of the Milwaukee Railroad is purchased.

(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on October 14, 1980, has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on October 14, 1980, have obtained employment with other rail carriers.

(Pub. L. 96–101, §7(less (a)–(c)), Nov. 4, 1979, 93 Stat. 740; Pub. L. 96–448, title VII, §701(c)(1), Oct. 14, 1980, 94 Stat. 1961.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Rail Services Act of 1970, referred to in subsec. (d), is Pub. L. 91–663, Jan. 8, 1971, 84 Stat. 1975, as amended, which is classified generally to chapter 15 (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

Directed service under title 49, referred to in subsec. (g), probably refers to directed service under section 11125 of Title 49, Transportation, prior to the general amendment of subtitle IV of Title 49, by Pub. L. 104–88, §102(a).

CODIFICATION

Subsecs. (a) to (c) of this section amended section 662 of this title.

AMENDMENTS

1980—Subsec. (h). Pub. L. 96–448 added subsec. (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

§907. Railroad hiring

Each person who is an employee of the Milwaukee Railroad on September 30, 1979, and who is separated or furloughed from his employment with such railroad (other than for cause) prior to April 1, 1984, as a result of a reduction of service by such railroad shall, unless found to be less qualified

than other applicants, have the first right of hire by any other rail carrier that is subject to regulation by the Commission for any vacancy that is not covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a rail carrier shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.

(Pub. L. 96–101, §8, Nov. 4, 1979, 93 Stat. 740; Pub. L. 97–468, title II, §236(a), Jan. 14, 1983, 96 Stat. 2547.)

EDITORIAL NOTES

AMENDMENTS

1983—Pub. L. 97–468 substituted "April 1, 1984" for "April 1, 1981".

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

EXEMPTION OF NATIONAL RAILROAD PASSENGER CORPORATION IN HIRING QUALIFIED TRAIN AND ENGINE EMPLOYEES

Section inapplicable to National Railroad Passenger Corporation in hiring of qualified train and engine employees holding seniority rights to work in intercity rail passenger service in connection with the assumption by such Corporation of functions previously performed under contract by other carriers, see section 4011(c) of Pub. L. 99–272, set out as a note under section 797b of this title.

§908. Employee protection agreements

(a) Agreement between Milwaukee Railroad and labor organizations

The Milwaukee Railroad and labor organizations representing the employees of such railroad may, not later than 20 days after November 4, 1979, enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad or a restructuring transaction carried out by such railroad. Such employee protection may include, but need not be limited to, interim employee assistance, moving expenses, employee relocation incentive compensation, and separation allowances.

(b) Submission of matter to National Mediation Board

If the Milwaukee Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 20 days after November 4, 1979, the parties shall immediately submit the matter to the National Mediation Board. The National Mediation Board shall attempt, by mediation, to bring the parties to an agreement with respect to employee protection no later than 40 days after November 4, 1979.

(c) Fair and equitable agreements

(1) If the National Mediation Board is unable to bring the parties to an agreement under subsection (b) of this section within 40 days after November 4, 1979, the Milwaukee Railroad and the labor organizations representing the employees of such railroad shall immediately enter into an employee protection agreement that is fair and equitable.

(2) If an employee protection agreement is entered into under this subsection, any claim of an

employee for benefits and allowances under such agreement shall be filed with the Board in such time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement and shall certify such amount to the Milwaukee Railroad for payment.

(d) Payment of benefits and allowances

Benefits and allowances under an employee protection agreement entered into under this section shall be paid by the Milwaukee Railroad in accordance with section 914 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Milwaukee Railroad.

(Pub. L. 96-101, §9, Nov. 4, 1979, 93 Stat. 741.)

§909. Supplementary unemployment insurance

(a) Eligible employees

Any employee of the Milwaukee Railroad—

(1) who (A) is employed by the restructured Milwaukee Railroad, and (B) is separated from that employment by reason of any reduction in service by such railroad prior to April 1, 1984; or

(2) who (A) is separated from his employment with the Milwaukee Railroad in connection with a restructuring transaction carried out by such railroad, and obtains employment, prior to April 1, 1981, with another rail carrier, and (B) is separated from employment with such other carrier prior to April 1, 1984,

shall be entitled to receive monthly supplementary unemployment insurance in accordance with the provisions of this section.

(b) Period of payment

Each employee described in subsection (a) of this section shall be entitled to receive supplementary unemployment insurance during each month in which such employee is not employed, for all or a portion of such month, by the Milwaukee Railroad or another rail carrier. Each such employee shall be entitled to receive such insurance for a total of not more than 36 months, except that—

(1) the period of entitlement for assistance under this section shall not exceed the employee's total months of service with the Milwaukee Railroad; and

(2) no compensation shall be provided under this section after April 1, 1984, unless it is necessary in order to provide an employee with at least 8 months of such insurance, but after such date, such employee only shall receive such 8-month minimum if such employee is not employed continuously after such date.

(c) Amount of payment

Supplementary unemployment insurance under this section shall be payable to an employee on a monthly basis in an amount equal to—

(1) eighty percent of such employee's average monthly normal compensation from employment with the Milwaukee Railroad during the period beginning June 1, 1977, and ending on November 4, 1979, less

(2) the sum of (A) the amount of any benefits payable to such employee for such month under the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] or under any State unemployment insurance program, and (B) the amount of any earnings of such employee for such month from employment or self-employment of any kind.

(d) Filing of application

An application for supplementary unemployment insurance shall be filed with the Board in such time and manner as the Board by regulation shall prescribe.

(e) Insurance as compensation

Any supplementary unemployment insurance received by any employee pursuant to this section shall be considered to be compensation solely—

(1) for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

(2) for purposes of determining the compensation received by such employee in any base year under the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

(f) Employees not covered

(1) The provisions of this section shall not apply to an employee in the event of his resignation, retirement, or discharge for cause from the employment of any rail carrier.

(2) An employee shall not be entitled to receive supplementary unemployment insurance under this section if he has failed to exhaust all seniority rights or other employment rights under applicable collective bargaining agreements.

(3) An employee shall not be entitled to receive supplementary unemployment insurance under this section for any month or portion of a month in which such employee is unemployed due to normal seasonal unemployment patterns in the railroad industry.

(g) Furloughed employees

For purposes of this section, any employee of the Milwaukee Railroad who is furloughed shall be considered to be separated from his employment.

(Pub. L. 96–101, §10(a)–(g), Nov. 4, 1979, 93 Stat. 741, 742.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in subsecs. (c)(2) and (e)(2), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (e)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

CODIFICATION

Section is comprised of subsecs. (a) to (g) of section 10 of Pub. L. 96–101. Subsec. (h) of section 10 amended section 231f(b)(7) of this title.

§910. Repealed. Pub. L. 97–35, title XI, §1144(b), Aug. 13, 1981, 95 Stat. 669

Section, Pub. L. 96–101, §11, Nov. 4, 1979, 93 Stat. 742, set forth provisions respecting employment of Milwaukee Railroad employees. See section 797c of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as an Effective Date note under section 1101 of this title.

§911. New career training assistance

(a) Eligible employees

Any employee who elects to receive a separation allowance from the Milwaukee Railroad under

an employee protection agreement entered into under section 908 of this title shall be entitled to receive from the Board expenses for training in qualified institutions for new career opportunities.

(b) Commencement of training as condition

To be entitled for assistance under this section, an employee must begin his course of training within two years following the date of his separation from employment with the Milwaukee Railroad.

(c) Filing of application; Board determination

Entitlement to expenses for assistance under this section shall be determined by the Board on the basis of an application therefor filed by an employee with the Board.

(d) Assistance prohibited after April 1, 1984

No assistance may be provided under this section after April 1, 1984.

(e) Definitions

As used in this section—

(1) the term "expenses" means actual expenses paid for room, board, tuition, fees, or educational material in an amount not to exceed \$3,000; and

(2) the term "qualified institution" means an educational institution accredited for payment by the Veterans' Administration under chapter 36 of title 38, or a State-accredited institution which has been in existence for not less than two years.

(Pub. L. 96–101, §12, Nov. 4, 1979, 93 Stat. 743; Pub. L. 96–254, title I, §119(f), May 30, 1980, 94 Stat. 408.)

EDITORIAL NOTES

AMENDMENTS

1980—Subsec. (e)(2). Pub. L. 96–254 inserted reference to State-accredited institutions which have been in existence for not less than two years.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

§912. Election

Any employee who receives any assistance under section 909 or section 911 of this title or under an employee protection agreement entered into under section 908 of this title shall be deemed to waive any employee protection benefits otherwise available to such employee under the Bankruptcy Act, subtitle IV of title 49, or any applicable contract or agreement.

(Pub. L. 96–101, §13, Nov. 4, 1979, 93 Stat. 743.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 909 of this title, referred to in text, was in the original "section 10", meaning section 10 of Pub. L. 96–101, Nov. 4, 1979, 93 Stat. 741. Subsecs. (a) to (g) of section 10 are classified to section 909 of this title. Subsec. (h) of section 10 amended section 231f(b)(7) of this title.

The Bankruptcy Act, referred to in text, is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L.

95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

§913. Authorization of appropriations

(a) There is authorized to be appropriated to provide supplementary unemployment insurance under section 909 of this title not to exceed \$5,000,000.

(b) There is authorized to be appropriated for new career training assistance under section 911 of this title not to exceed \$1,500,000.

(c) There is authorized to be appropriated to the Board to carry out its administrative expenses under this chapter and the Rock Island Railroad Transition and Employee Assistance Act [45 U.S.C. 1001 et seq.] not to exceed \$750,000. Effective October 1, 1980, there is authorized to be appropriated to the Board an additional \$1,000,000 to carry out its administrative expenses under this chapter and the Rock Island Railroad Transition and Employee Assistance Act [45 U.S.C. 1001 et seq.].

(d) There are authorized to be appropriated \$15,000,000 for purposes of providing transaction assistance in accordance with section 825(h)(1)(A) and (B) of this title.

(e) Amounts appropriated under this section are authorized to remain available until expended. (Pub. L. 96–101, §14, Nov. 4, 1979, 93 Stat. 743; Pub. L. 96–254, title I, §109, May 30, 1980, 94 Stat. 403; Pub. L. 96–448, title VII, §701(c)(2), Oct. 14, 1980, 94 Stat. 1961; Pub. L. 97–468, title II, §234(b), Jan. 14, 1983, 96 Stat. 2547.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 909 of this title, referred to in subsec. (a), was in the original "section 10", meaning section 10 of Pub. L. 96–101, Nov. 4, 1979, 93 Stat. 741. Subsecs. (a) to (g) of section 10 are classified to section 909 of this title. Subsec. (h) of section 10 amended section 231f(b)(7) of this title.

The Rock Island Railroad Transition and Employee Assistance Act, referred to in subsec. (c), is title I of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, which is classified principally to chapter 19 (§1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

Section 825 of this title, referred to in subsec. (d), was repealed by Pub. L. 105–178, title VII, §7203(a)(2), June 9, 1998, 112 Stat. 477.

AMENDMENTS

1983—Subsec. (b). Pub. L. 97–468 struck out provision that, effective Oct. 1, 1980, there was authorized to be appropriated an additional \$1,500,000 for new career training assistance under section 911 of this title and section 1014 of this title.

1980—Subsec. (b). Pub. L. 96–254, §109(b), inserted provisions authorizing an appropriation of an additional \$1,500,000, effective Oct. 1, 1980, for career training assistance under section 911 of this title and section 1014 of this title.

Subsec. (c). Pub. L. 96–254, §109(a), inserted provisions authorizing the use of previously appropriated funds to carry out administrative expenses under the Rock Island Railroad Transition and Employee Assistance Act and authorizing an appropriation of an additional \$1,000,000, effective Oct. 1, 1980, to carry out administrative expenses under this chapter and the Rock Island Railroad Transition and Employee Assistance Act.

Subsecs. (d), (e). Pub. L. 96–448 added subsec. (d) and redesignated former subsec. (d) as (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

§914. Obligation guarantees

(a) Authorization

The Secretary of Transportation, under the authority of section 831 of this title, shall guarantee obligations of the Milwaukee Railroad for purposes of providing employee protection in accordance with the terms of the employee protection agreement entered into under section 908 of this title. Guarantees under this section shall be entered into without regard to the requirements of subsection (g) of section 831 of this title.

(b) Obligations as administrative expense

Any obligation guaranteed pursuant to this section shall be treated as an administrative expense of the estate of the Milwaukee Railroad.

(c) Limit on aggregate unpaid principal amount

The aggregate unpaid principal amount of obligations which may be guaranteed by the Secretary pursuant to this section shall not exceed \$75,000,000.

(d) Limit on total liability

The total liability of the Milwaukee Railroad in connection with benefits and allowances provided under an employee protection agreement entered into under section 908 of this title shall not exceed \$75,000,000.

(e) Liability of United States respecting section 908 agreements

Except in connection with obligations guaranteed under this section, the United States shall incur no liability to employees in connection with any employee protection agreement entered into under section 908 of this title.

(f) Applicability of section 836 of this title

Section 836 of this title shall not apply to any obligation guaranteed under this section.

(Pub. L. 96–101, §15, Nov. 4, 1979, 93 Stat. 743; Pub. L. 96–448, title VII, §701(a)(3), Oct. 14, 1980, 94 Stat. 1959.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 831 of this title, referred to in subsec. (a), was repealed by Pub. L. 105–178, title VII, §7203(a)(2), June 9, 1998, 112 Stat. 477, except for subsec. (c) of that section, which was renumbered and transferred to section 823(b) of this title by section 7203(a)(4) of Pub. L. 105–178.

AMENDMENTS

1980—Subsec. (e). Pub. L. 96–448 inserted "to employees" after "no liability".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

§915. Court approved abandonment and sales in pending cases

(a) Abandonment of lines of railroad under Bankruptcy Act

Notwithstanding any other provision of law, in any case pending under section 77 of the Bankruptcy Act on November 4, 1979, the court may authorize the abandonment of lines of railroad

pursuant to section 1170 of title 11. Pending the expiration of the time for appeal of an abandonment order or the determination of any such appeal, the court may authorize the termination of service on a line to be abandoned, and the order authorizing such termination may not be stayed. In authorizing any abandonment pursuant to this section, the court shall require the carrier to provide a fair arrangement at least as protective of the interests of employees as that required under section 11347 ¹ of title 49.

(b) Sale or transfer of lines of railroad under Bankruptcy Act

(1) Notwithstanding any other provision of law, in any case pending under section 77 of the Bankruptcy Act on November 4, 1979, the court may authorize the sale or transfer of a line of railroad to be used in continued rail operations, subject to the approval of the Commission under paragraph (2) of this subsection, if the application with respect to such sale or transfer is filed with the Commission on or after November 1, 1979. In authorizing any such sale or transfer, the court shall provide a fair arrangement at least as protective of the interests of employees as that required under section 11347 ¹ of title 49.

(2) The court described in paragraph (1) may not authorize a sale or transfer pursuant to such paragraph unless an appropriate application with respect to such sale or transfer is initiated with the Commission and, within such time as the court may fix, not exceeding 180 days, the Commission, with or without a hearing, as the Commission may determine, and with or without modification or condition, approves such application, or does not act on such application. Any action or order of the Commission approving, modifying, conditioning, or disapproving such application is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5.

(3)(A) If a person has made or makes an offer to acquire from a carrier subject to liquidation a rail line or lines over which no service is provided by that carrier, and that offer has been or is rejected by the trustee in bankruptcy of such carrier, such person may submit an application to the Commission seeking approval of such person's acquisition of such line or lines. A copy of any such application shall be filed simultaneously with the court.

(B) The Commission shall, within 15 days after the filing of an application under subparagraph (A) of this paragraph, determine whether the applicant—

- (i) is a financially responsible person; and
- (ii) has made a bona fide offer to acquire the line or lines under reasonable terms.

(C)(i) If the Commission's determination under subparagraph (B) of this paragraph is affirmative with respect to the matters referred to in clauses (i) and (ii) of such subparagraph, the applicant and the trustee in bankruptcy (hereafter in this paragraph referred to collectively as the "parties") shall enter into negotiations with respect to terms for the acquisition of the line or lines applied for. If the parties at any time agree on such terms, a request for approval of the acquisition shall be filed with the Commission and the court. If the parties are unable to agree to such terms within 30 days after the date of the Commission's determination under subparagraph (B) of this paragraph, either party may, within 60 days after the expiration of such 30-day period, request the Commission to prescribe terms for such acquisition, including compensation for the line or lines to be acquired. The Commission shall prescribe such terms within 60 days after any such request is made. The terms prescribed by the Commission shall be binding upon both parties, subject to court review as provided in subparagraph (D) of this paragraph, except that the applicant may withdraw its offer within 10 days after the Commission prescribes such terms.

(ii) If more than one applicant has requested under this subparagraph that the Commission prescribe the terms of acquisition for the same or overlapping lines or portions of such lines, the Commission shall prescribe terms for such acquisition which it determines best serve the public interest.

(D)(i) Within 15 days after the Commission prescribes terms under subparagraph (C) of this paragraph, the Commission shall transmit such terms to the court, unless the offer is withdrawn

under such subparagraph. Notwithstanding any other provision of law, the court shall, within 60 days after such transmittal, approve the acquisition under terms prescribed by the Commission if the compensation for the line or lines is not less than that required as a constitutional minimum.

(ii) Except as provided in this subparagraph, no action shall be taken by the court which would prejudice the acquisition which is the subject of an application under this paragraph.

(E) The Commission shall require that any person acquiring a line or lines under this paragraph use, to the maximum extent practicable, employees or former employees of the carrier subject to liquidation in the operation of service on such line or lines.

(F) No person acquiring a line under this paragraph may transfer or discontinue service on such line prior to the expiration of 4 years after such acquisition.

(G) The Commission shall, within 45 days after January 14, 1983, prescribe such regulations and procedures as are necessary to carry out the provisions of this paragraph.

(H) As used in this paragraph, the term—

(i) "carrier subject to liquidation" means a carrier which, on January 14, 1983, was the subject of a proceeding pending under section 77 of the Bankruptcy Act or under subchapter IV of chapter 11 of title 11 and which has been ordered by the court to liquidate its properties;

(ii) "the court" means the court having bankruptcy jurisdiction over the carrier subject to liquidation; and

(iii) "financially responsible person" means a person capable of compensating the carrier subject to liquidation for the acquisition of the line or lines proposed to be acquired and able to cover expenses associated with providing service over such line or lines for a period of not less than 4 years.

(4) Pending review of an application by the Commission pursuant to paragraph (2) of this subsection, the court described in paragraph (1) may, on a preliminary basis, authorize the sale or transfer proposed in such application. The court may permit the purchasing carrier to operate interim service over the lines to be purchased, and in operating such service it shall use employees of the carrier subject to the bankruptcy proceeding to the extent such purchasing carrier deems necessary for the operation of such service.

(c) Judicial review

Any action or order of the Commission approving, modifying, conditioning, or disapproving an application for the sale or transfer of rail property that is filed with the Commission before November 1, 1979, in connection with a case pending under section 77 of the Bankruptcy Act on November 4, 1979—

(1) is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5; and

(2) may not be stayed by the Commission.

(d) Authority of bankruptcy court

The authority of the bankruptcy court to authorize abandonments, sales, and transfers of lines of the Milwaukee Railroad shall be governed by the provisions of section 904 of this title, rather than the provisions of this section.

(e) Effect on priorities and timing of employee protection payments

Nothing in this section shall be deemed to affect the priorities or timing of payment of employee protection which might have existed in the absence of this chapter.

(Pub. L. 96–101, §17, Nov. 4, 1979, 93 Stat. 744; Pub. L. 97–468, title II, §213, Jan. 14, 1983, 96 Stat. 2544.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in subsecs. (a), (b)(1), (3)(H)(i), and (c), was classified to

section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

Section 11347 of title 49, referred to in subsecs. (a) and (b)(1), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804. Provisions similar to those in section 11347 are contained in section 11326(a) of Title 49.

AMENDMENTS

1983—Subsec. (b)(3), (4). Pub. L. 97–468 added par. (3) and redesignated former par. (3) as (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

¹ [*See References in Text note below.*](#)

§916. Repealed. Pub. L. 104–88, title III, §328, Dec. 29, 1995, 109 Stat. 952

Section, Pub. L. 96–101, §18, Nov. 4, 1979, 93 Stat. 746; Pub. L. 96–254, title I, §116, May 30, 1980, 94 Stat. 405, provided that this chapter be in lieu of directed service on any line of the Milwaukee Railroad with certain exceptions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

§917. Applicability of National Environmental Policy Act

The provisions of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] shall not apply to transactions carried out pursuant to this chapter.

(Pub. L. 96–101, §19, Nov. 4, 1979, 93 Stat. 746.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act, referred to in text, probably means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§918. Authority of Railroad Retirement Board

(a) The Board may prescribe such regulations as may be necessary to carry out its duties under this chapter.

(b) In carrying out its duties under this chapter, the Board may exercise such of the powers, duties, and remedies provided in subsections (a), (b), and (d) of section 362 of this title as are not inconsistent with the provisions of this chapter.

(Pub. L. 96–101, §20, Nov. 4, 1979, 93 Stat. 746.)

§919. Publications and reports

(a) Within 30 days after November 4, 1979, the Board shall publish, and make available for distribution by the Milwaukee Railroad to all its employees, a document which describes in detail the rights of such employees under sections 907, 908, 909, 910,¹ and 911 of this title.

(b) During the 2-year period beginning on November 4, 1979, the Board shall submit a report to the Congress every 6 months describing its activities under this chapter.

(Pub. L. 96–101, §21, Nov. 4, 1979, 93 Stat. 746.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 909 of this title, referred to in subsec. (a), was in the original "section 10", meaning section 10 of Pub. L. 96–101, Nov. 4, 1979, 93 Stat. 741. Subsecs. (a) to (g) of section 10 are classified to section 909 of this title. Subsec. (h) of section 10 amended section 231f(b)(7) of this title.

Section 910 of this title, referred to in subsec. (a), was repealed by Pub. L. 97–35, title XI, §1144(b), Aug. 13, 1981, 95 Stat. 669.

¹ [*See References in Text note below.*](#)

§920. Continuation of service

(a) Until the occurrence of an event described in subsection (b) of this section, the Milwaukee Railroad (1) shall maintain its entire railroad system, as it existed on October 15, 1979, (2) shall continue no less than the regular level of service provided by it as of that date, and (3) shall not embargo traffic (other than when necessitated by acts of God or safety requirements) or abandon or discontinue service over any part of its railroad system.

(b) The Milwaukee Railroad shall comply with the requirements of subsection (a) of this section until—

(1) an employee or employee-shipper ownership plan is not submitted to the Interstate Commerce Commission within the time period prescribed under section 905(a) of this title;

(2) the proposed plan is found by the Commission not to be feasible or the Commission does not act within 30 days;

(3) the proposed plan is found by the bankruptcy court not to be fair and equitable to the estate of the Milwaukee Railroad; or

(4) the plan is not implemented within the time period prescribed under section 905(c) of this title.

(Pub. L. 96–101, §22, Nov. 4, 1979, 93 Stat. 746.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member

or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

§921. Office of Rail Public Counsel

The Office of Rail Public Counsel may appear and be heard in the case in the bankruptcy court involving the reorganization of the Milwaukee Railroad, for purposes of representing affected shippers, localities, and municipalities with respect to the proposed abandonment of any line of the Milwaukee Railroad.

(Pub. L. 96–101, §25, Nov. 4, 1979, 93 Stat. 747.)

§922. Employee stock ownership plan for surviving portion of Milwaukee Railroad

If an event described in section 920(b) of this title occurs, resulting in the survival of less than the entire Milwaukee Railroad system, then any relief provided for such surviving Milwaukee Railroad system under the Emergency Rail Services Act of 1970 [45 U.S.C. 661 et seq.] or any other Federal legislation shall be conditioned upon good faith efforts by the trustee or the Milwaukee Railroad, or both, to establish an employee stock ownership plan which shall embrace the purchase or acquisition of qualifying employer securities of the Milwaukee Railroad equal in value to 25 per centum of the amount of such relief provided.

(Pub. L. 96–101, §26, Nov. 4, 1979, 93 Stat. 747.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Rail Services Act of 1970, referred to in text, is Pub. L. 91–663, Jan. 8, 1971, 84 Stat. 1975, as amended, which is classified generally to chapter 15 (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

CHAPTER 19—ROCK ISLAND RAILROAD EMPLOYEE ASSISTANCE

Sec.

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§1001. Congressional findings

Congress hereby finds that—

(1) uninterrupted continuation of services over Rock Island lines is dependent on adequate employee protection provisions covering Rock Island Railroad employees who are not hired by other railroads;

(2) for those Rock Island Railroad employees not hired by other rail carriers, there is no other practicable means of obtaining funds to meet the necessary costs of such employee protection that are assumed by the Rock Island Railroad;

(3) a cessation of necessary operations of the Rock Island Railroad would have serious repercussions on the economies of the States in which such railroad principally operates; and

(4) premature cessation of services over lines which are the subject of pending purchase application would result in harm to the shipping public and could imperil continuation of vital commuter service.

(Pub. L. 96–254, title I, §102, May 30, 1980, 94 Stat. 399.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 96–254, title I, §101, May 30, 1980, 94 Stat. 399, provided that: "This title [enacting this chapter, amending sections 231f, 726, 825, 902, 911, 913, and 916 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Rock Island Railroad Transition and Employee Assistance Act'."

SAVINGS PROVISION

Pub. L. 96–254, title I, §125, formerly §124, May 30, 1980, 94 Stat. 409; renumbered §125, Pub. L. 96–448, title VII, §701(a)(1), Oct. 14, 1980, 94 Stat. 1959, provided that: "If any provision of this title [see Short Title note above] or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby."

§1002. Definitions

As used in this chapter, the term—

(1) "bankruptcy court" means the court having jurisdiction over the reorganization of the Rock Island Railroad;

(2) "Board" means the Railroad Retirement Board;

(3) "Commission" means the Interstate Commerce Commission;

(4) "employee" includes any employee of the Rock Island Railroad as of August 1, 1979, but does not include any individual serving as president, vice-president, secretary, treasurer, comptroller, counsel, member of the board of directors, or any other person performing such functions;

(5) the term "Rock Island Railroad" means the Chicago, Rock Island and Pacific Railroad Company, the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding; and

(6) the term "Secretary" means the Secretary of Transportation.

(Pub. L. 96–254, title I, §103, May 30, 1980, 94 Stat. 399; Pub. L. 96–448, title VII, §701(b)(3), Oct. 14, 1980, 94 Stat. 1960.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title I (§101 et seq.) of Pub. L.

96–254, May 30, 1980, 94 Stat. 399, as amended, known as the Rock Island Railroad Transition and Employee Assistance Act, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

1980—Par. (5). Pub. L. 96–448 inserted ", the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding" after "Railroad Company". The amendment was executed by inserting amendatory text preceding the semicolon instead of the period at end of par. (5) as directed to reflect the probable intent of Congress, in view of par. (5) being enacted without a closing period.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

§1003. Service continuation

(a) Situations requiring directed service; time period

Notwithstanding the provisions of Public Law 96–131, the Commission shall order directed service for a period of not to exceed 90 days over any line of the Rock Island Railroad if the Secretary finds and certifies to the Commission that—

(1) a lack of rail service exists which cannot be resolved by a grant of interim operating authority over such line and grains or foods are ready to be shipped to market; or

(2) a lack of rail service exists which cannot be resolved by a grant of interim operating authority over such line and a rail carrier, shipper, State, or other interested party has expressed in writing to the Secretary an interest in purchasing, leasing, or rehabilitating the particular rail line or facility for purposes of providing rail services, and there is a reasonable expectation that such transaction will be consummated.

(b) Availability of funds

(1) Not more than \$15,000,000 of the funds available for expenditure by the Secretary out of the Railroad Rehabilitation and Improvement Fund established under title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) may be made available by the Secretary to the Commission for purposes of providing directed service under this section and section 916(b) ¹ of this title.

(2) Funds may be made available for directed service under this section without regard to the findings of the Secretary required under title V of the Railroad Revitalization and Regulatory Reform Act of 1976 [45 U.S.C. 821 et seq.], and section 516 of such Act (45 U.S.C. 836) shall not apply to any directed service provided with such funds.

(c) Continuation of compensation terms for trackage rights, joint facilities, etc.

The terms of compensation for all trackage rights, joint facilities, and similar arrangements between other rail carriers and the trustee of the Rock Island Railroad which are in effect on or after March 15, 1980, on portions of the lines of the Rock Island Railroad involved in temporary emergency operations shall be continued in effect during the duration of the temporary emergency operating authority with the carrier providing temporary emergency service substituting for the

trustee, except where the Rock Island Railroad has been given more favorable treatment by virtue of its bankruptcy. Such continuation shall not alter or affect the ultimate rights of other rail carriers under trackage rights, joint facilities, or similar arrangements nor prejudice the ultimate determination of any controversy or proceeding concerning rights of the parties with regard to assignment by the trustee of rights in or to the facilities or under the arrangements.

(Pub. L. 96–254, title I, §104, May 30, 1980, 94 Stat. 400; Pub. L. 104–88, title III, §329(1), Dec. 29, 1995, 109 Stat. 952.)

EDITORIAL NOTES

REFERENCES IN TEXT

Public Law 96–131, referred to in subsec. (a), is Pub. L. 96–131, Nov. 30, 1979, 93 Stat. 1023, known as the Department of Transportation and Related Agencies Appropriation Act, 1980, which enacted provisions set out as notes under former section 851 of this title, section 501 of Title 14, Coast Guard, and section 106 and former section 10344 of Title 49, Transportation. For complete classification of this Act to the Code, see Tables.

The Railroad Revitalization and Regulatory Reform Act of 1976, referred to in subsec. (b), is Pub. L. 94–210, Feb. 5, 1976, 90 Stat. 31, as amended. Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 is classified generally to subchapter II (§821 et seq.) of chapter 17 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

Section 916(b) of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 104–88, title III, §328, Dec. 29, 1995, 109 Stat. 952.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–88 substituted "the provisions of Public Law 96–131" for "the provisions of section 11125 of title 49 or Public Law 96–131".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

¹ [*See References in Text note below.*](#)

§1004. Railroad hiring

(a) Each person who is an employee of the Rock Island Railroad on August 1, 1979, and who, prior to January 1, 1984, is separated or furloughed (other than for cause) from his employment with such railroad, or from his employment with another rail carrier providing temporary service over lines of the Rock Island Railroad, as a result of a reduction of service by such railroad or such temporary service carrier shall, unless found to be less qualified than other applicants, have the first right of hire by any other rail carrier that is subject to regulation by the Commission for any vacancy that is not covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulations, or Executive order, or by the order of a Federal or State court or agency, or (2) a permissible voluntary affirmative action plan. For

purposes of this section, a rail carrier shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.

(b) The rights afforded to Rock Island Railroad employees by this section shall be coequal to the rights afforded to Chicago, Milwaukee, Saint Paul and Pacific Railroad Company employees by section 907 of this title.

(Pub. L. 96-254, title I, §105, May 30, 1980, 94 Stat. 400; Pub. L. 97-468, title II, §236(b), Jan. 14, 1983, 96 Stat. 2547.)

EDITORIAL NOTES

AMENDMENTS

1983—Subsec. (a). Pub. L. 97-468 substituted "January 1, 1984" for "January 1, 1981".

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 1301 of Title 49.

EXEMPTION OF NATIONAL RAILROAD PASSENGER CORPORATION IN HIRING QUALIFIED TRAIN AND ENGINE EMPLOYEES

Section inapplicable to National Railroad Passenger Corporation in hiring of qualified train and engine employees holding seniority rights to work in intercity rail passenger service in connection with the assumption by such Corporation of functions previously performed under contract by other carriers, see section 4011(c) of Pub. L. 99-272, set out as a note under section 797b of this title.

§1005. Employee protection agreement

(a) Authorization; time for agreement; use of funds

The Secretary and the representatives of the various classes and crafts of employees of the Rock Island Railroad shall, not later than 90 days after January 14, 1983, enter into an agreement providing protection for employees of the Rock Island Railroad who are adversely affected as a result of a reduction in service by such Railroad. Such agreement may provide for the use of funds described in subsection (c) of this section for the following purposes:

- (1) Subsistence allowances to employees.
- (2) Moving expenses for employees who must make a change in residence.
- (3) Retraining expenses for employees who are seeking employment in new areas.
- (4) Separation allowances for employees.
- (5) Health and welfare insurance premiums.
- (6) Such other purposes as may be agreed upon by the parties.

(b) Failure to reach agreement; benefit schedule

If the parties are unable to reach agreement within the time period specified in subsection (a) of this section, the Secretary shall, within 30 days after the expiration of such time period, prescribe a schedule of benefits for employee protection not inconsistent with the provisions of this chapter.

(c) Limitations on funds

Any agreement entered into under subsection (a) of this section, and any benefit schedule prescribed under subsection (b) of this section, shall not require the expenditure of funds in excess of amounts authorized to be appropriated under section 727(f)(1)(C) of this title, nor shall any

individual employee receive benefits in excess of \$20,000 under such agreement or benefit schedule. No benefits or assistance may be provided under any agreement entered into or benefit schedule prescribed under this section after April 1, 1984.

(d) Administration of funds; promulgation of regulations

The Board shall, in such manner as it shall prescribe by regulation, administer the distribution of funds under any agreement entered into or benefit schedule prescribed under this section, and shall determine the amount for which each employee is eligible under such agreement or benefit schedule. Such regulation shall include procedures to resolve by final and binding arbitration any dispute over an employee's eligibility or claim.

(Pub. L. 96-254, title I, §106, May 30, 1980, 94 Stat. 401; Pub. L. 96-448, title VII, §701(b)(1), Oct. 14, 1980, 94 Stat. 1959; Pub. L. 97-468, title II, §231, Jan. 14, 1983, 96 Stat. 2546.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", which probably was meant to be a reference to "this title", meaning title I (§101 et seq.) of Pub. L. 96-254, May 30, 1980, 94 Stat. 399, as amended, known as the Rock Island Railroad Transition and Employee Assistance Act, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 1001 of this title and Tables.

CODIFICATION

Prior to the general amendment of section 106 of Pub. L. 96-254 by Pub. L. 97-468, section was comprised of subsecs. (a) to (e) of section 106 of Pub. L. 96-254, and subsec. (f) of section 106 amended section 231f(b)(7) of this title.

AMENDMENTS

1983—Subsec. (a). Pub. L. 97-468 substituted provisions relating to an agreement between the Secretary and the employees for provisions relating to an agreement between the Rock Island Railroad and the employees.

Subsec. (b). Pub. L. 97-468 substituted provisions relating to the prescription of benefits by the Secretary if no agreement is reached with the employees, for provisions relating to imposition of agreement by the Interstate Commerce Commission if none was reached between the Rock Island Railroad and the employees.

Subsec. (c). Pub. L. 97-468 added subsec. (c). Former subsec. (c), which related to direction to the bankruptcy trustee to carry out the agreement between the Rock Island Railroad and the employees, was struck out.

Subsec. (d). Pub. L. 97-468 added subsec. (d). Former subsec. (d), which prescribed conditions for appeals from orders of the Commission or bankruptcy court, limiting them to the Seventh Circuit Court of Appeals, was struck out.

Subsec. (e). Pub. L. 97-468 struck out subsec. (e) which related to prescription of regulations by the Board for the filing and payment of benefits and allowances.

1980—Subsec. (a). Pub. L. 96-448 substituted "5 days after October 14, 1980" for "10 days after May 30, 1980".

Subsec. (b). Pub. L. 96-448 substituted "5 days after October 14, 1980" for "10 days after May 30, 1980" and "15 days after October 14, 1980" for "30 days after May 30, 1980".

Subsec. (c). Pub. L. 96-448 reenacted subsec. (c) without change.

Subsec. (d). Pub. L. 96-448 substituted provision that any order of the Commission or bankruptcy court be appealed only to the United States Court of Appeals for the Seventh Circuit for provision that an order of the Commission not be stayed by the Commission or any other court, an order by the bankruptcy court not be stayed by any other court, appeals of Commission or bankruptcy court orders only be made to the court of appeals of the United States having jurisdiction to review decisions and orders of the bankruptcy court, and no determinations of the court of appeals be review in any other court.

Subsec. (e). Pub. L. 96-448 reenacted subsec. (e) without change.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

§1006. Repealed. Pub. L. 97–35, title XI, §1144(b), Aug. 13, 1981, 95 Stat. 669

Section, Pub. L. 96–254, title I, §107, May 30, 1980, 94 Stat. 402, set forth provisions respecting employment of Rock Island Railroad employees. See section 797c of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as an Effective Date note under section 1101 of this title.

§1007. Election

(a) Assistance received under employee protection agreement; waiver of other employee protection benefits; exception

Any employee who receives any assistance under an employee protection agreement entered into or benefit schedule prescribed under section 1005 of this title or any new career training assistance under section 1014 of this title shall be deemed to waive any employee protection benefits otherwise available to such employee under the Bankruptcy Act, subtitle IV of title 49 or any applicable contract or agreement (other than as provided in the agreement entered into in Washington, District of Columbia, on March 4, 1980, entitled "Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association").

(b) Filing of statement

Any employee of the Rock Island Railroad who is entitled to receive assistance under this chapter shall, no later than 120 days after the effective date of any agreement entered into under section 1005(a) of this title or of any benefit schedule prescribed under section 1005(b) of this title, as the case may be, file a statement with the Board indicating whether such employee elects to receive (1) assistance under this chapter; or (2) any employee protection benefits otherwise available to such employee under the Bankruptcy Act, subtitle IV of title 49, or any applicable contract or agreement.

(c) Effect on priority, timing, etc., of employee protection payments

With regard to any employee who elects benefits under subsection (b)(2) of this section, nothing in this chapter shall be deemed to determine or otherwise affect the priority, status, or timing of payment of, or the liability for any claim for, employee protection which might have existed in the absence of this chapter.

(d) Limitation on assistance eligibility

An employee shall not be eligible to receive any assistance (other than moving expenses) under an employee protection agreement entered into or benefit schedule prescribed under section 1005 of this title or any new career training assistance under section 1014 of this title—

(1) during any period in which such employee is employed by any rail carrier providing temporary service over any lines of the Rock Island Railroad; or

(2) at any time after the date such employee receives an offer of employment, in his craft and for which such employee is qualified, from a rail carrier acquiring lines of the Rock Island Railroad.

(Pub. L. 96–254, title I, §108, May 30, 1980, 94 Stat. 402; Pub. L. 96–448, title VII, §701(b)(2), Oct. 14, 1980, 94 Stat. 1960; Pub. L. 97–468, title II, §232, Jan. 14, 1983, 96 Stat. 2547.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsecs. (a) and (b), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

This chapter, referred to in subsecs. (b) and (c), was in the original "this title", meaning title I (§101 et seq.) of Pub. L. 96-254, May 30, 1980, 94 Stat. 399, as amended, known as the Rock Island Railroad Transition and Employee Assistance Act, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

1983—Subsec. (a). Pub. L. 97-468, §232(1), substituted "entered into or benefit schedule prescribed" for "or arrangement entered into".

Subsec. (b). Pub. L. 97-468, §232(2), substituted "120 days after the effective date of any agreement entered into under section 1005(a) of this title or of any benefit schedule prescribed under section 1005(b) of this title, as the case may be" for "April 1, 1981".

Subsec. (d). Pub. L. 97-468, §232(1), substituted "entered into or benefit schedule prescribed" for "or arrangement entered into".

1980—Subsec. (a). Pub. L. 96-448 inserted reference to the agreement entered into in Washington on Mar. 4, 1980, and included the title of the agreement.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96-448, set out as a note under section 1170 of Title 11, Bankruptcy.

§1008. Repealed. Pub. L. 97-468, title II, §234(a), Jan. 14, 1983, 96 Stat. 2547

Section, Pub. L. 96-254, title I, §110, May 30, 1980, 94 Stat. 403; Pub. L. 96-448, title VII, §701(a)(2), Oct. 14, 1980, 94 Stat. 1959, related to authorization, etc., for obligation guarantees.

§1009. Expedited proceedings

(a) The Commission shall give all proceedings involving the Rock Island Railroad preference over all other pending proceedings related to rail carriers and make all of its decisions at the earliest practicable time.

(b) The Commission shall, within 100 days of the filing of an application (or such shorter period as the court may set) pursuant to section 915 of this title, reach a decision on all proceedings filed after January 1, 1980, which involve a sale, transfer or lease of any line of the Rock Island Railroad to a solvent carrier.

(Pub. L. 96-254, title I, §111, May 30, 1980, 94 Stat. 404.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member

or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

§1010. Applicability of National Environmental Policy Act and section 6362(b) of title 42

The provisions of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] and section 6362(b) of title 42 shall not apply to transactions carried out pursuant to this chapter.

(Pub. L. 96–254, title I, §113, May 30, 1980, 94 Stat. 405.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act, referred to in text, probably means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

This chapter, referred to in text, was in the original "this title", meaning title I (§101 et seq.) of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, as amended, known as the Rock Island Railroad Transition and Employee Assistance Act, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 1001 of this title and Tables.

§1011. Authority of Railroad Retirement Board

(a) The Board may prescribe such regulations as may be necessary to carry out its duties under this chapter.

(b) In carrying out its duties under this chapter, the Board may exercise such of the powers, duties, and remedies provided in subsections (a), (b), and (d) of section 362 of this title as are not inconsistent with the provisions of this chapter.

(Pub. L. 96–254, title I, §114, May 30, 1980, 94 Stat. 405.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title I (§101 et seq.) of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, as amended, known as the Rock Island Railroad Transition and Employee Assistance Act, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 1001 of this title and Tables.

§1012. Publications and reports

Within 45 days after May 30, 1980, the Board shall publish, and make available for distribution by the Rock Island Railroad to all eligible employees, a document which describes in detail the rights of such employees under sections 1005, 1006,¹ 1007, and 1014 of this title.

(Pub. L. 96–254, title I, §115, May 30, 1980, 94 Stat. 405.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1006 of this title, referred to in text, was repealed by Pub. L. 97–35, title XI, §1144(b), Aug. 13, 1981, 95 Stat. 669.

¹ [See References in Text note below.](#)

§1013. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 96–254, title I, §117, May 30, 1980, 94 Stat. 406, authorized Secretary of Transportation to exempt from requirements of the Safety Appliance Acts any railroad equipment when such requirements preclude development or implementation of more efficient railroad transportation equipment or other transportation innovations. See section 20306 of Title 49, Transportation.

§1014. New career training assistance

(a) Eligible employees

An employee who elects to receive a separation allowance under an employee protection agreement entered into or a benefit schedule prescribed under section 1005 of this title may, if so provided under such agreement or benefit schedule, receive from the Board reasonable expenses for training in qualified institutions for new career opportunities.

(b) Conditions for assistance

To be eligible for assistance under this section, an employee—

(1) must first exhaust any Federal educational benefits available to such employee under any existing program; and

(2) must begin his course of training within 2 years following the date of such employee's separation from employment with the Rock Island Railroad.

(c) Determination of reasonable expenses by Board

Reasonable expenses for assistance under this section shall be determined by the Board on the basis of an application therefor filed by an employee with the Board.

(d) Assistance prohibited after April 1, 1984

No assistance may be provided under this section after April 1, 1984.

(e) Definitions

As used in this section—

(1) the term "expenses" means actual, reasonable expenses paid for room, board, tuition, fees, or educational material in an amount not to exceed \$3,000; and

(2) the term "qualified institution" means an educational institution accredited for payment by the Veterans' Administration under chapter 36 of title 38, or a State-accredited institution which has been in existence for not less than 2 years.

(Pub. L. 96–254, title I, §119(a)–(e), May 30, 1980, 94 Stat. 408; Pub. L. 97–468, title II, §233, Jan. 14, 1983, 96 Stat. 2547.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of subsecs. (a) to (e) of section 119 of Pub. L. 96–254. Subsec. (f) of section 119 amended section 911 of this title.

AMENDMENTS

1983—Subsec. (a). Pub. L. 97–468 substituted "under an employee protection agreement entered into or a benefit schedule prescribed under section 1005 of this title may, if so provided under such agreement or benefit schedule," for "from the Rock Island Railroad under an employee protection agreement or arrangement entered into under section 1005 of this title may".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

§1015. Repealed. Pub. L. 104–88, title III, §329(2), Dec. 29, 1995, 109 Stat. 952

Section, Pub. L. 96–254, title I, §120, May 30, 1980, 94 Stat. 408; Pub. L. 97–216, title I, §101, July 18, 1982, 96 Stat. 188, related to Interstate Commerce Commission ordering directed service over passenger commuter railroad lines that were in operation on Mar. 1, 1980, and had ceased to be in operation.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

§1016. Temporary rail banking

During the 180-day period beginning on May 30, 1980, no rail line or facility of the Rock Island Railroad which has been approved for abandonment by the Commission or the bankruptcy court may be downgraded, scrapped, or otherwise disposed of without the approval of the Secretary under this section. In no case before abandonment has been approved and before the 180-day period has elapsed shall the Secretary approve a disposition of such portion of the rail line or related facility to any carrier or other entity not engaged in providing railroad services or not formed for the purpose of providing railroad services. The Secretary, upon application by the Rock Island Railroad, shall grant such approval unless he finds that—

(1) a rail carrier, shipper, State, or other interested party has expressed in writing an interest in purchasing, leasing or rehabilitating the particular rail line or facility for purposes of providing rail service; and

(2) there is a reasonable expectation that such purchase transaction will be consummated.

(Pub. L. 96–254, title I, §121, May 30, 1980, 94 Stat. 409.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

§1017. Temporary operating approval

(a) Use of tracks and facilities by other rail carriers; terms of compensation; continuation of service

The Commission may authorize any rail carrier willing to do so voluntarily to use the tracks and facilities of a carrier which, on January 14, 1983, was the subject of a proceeding pending under section 77 of the Bankruptcy Act or under subchapter IV of chapter 11 of title 11. The use of such

tracks and facilities shall be under such terms of compensation as the carriers establish between themselves, or if the carriers are unable to agree, under such terms of compensation as the Commission finds to be reasonable. The Commission shall have authority to authorize continued rail service under this section over the lines of any such carrier which has been ordered by the court having jurisdiction over such a carrier to liquidate its properties until the disposition of the properties of the estate of such carrier.

(b) Use of employees

In carrying out the provisions of this section, the Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with the traffic subject to the action of the Commission.

(Pub. L. 96–254, title I, §122, May 30, 1980, 94 Stat. 409; Pub. L. 97–130, §5(a), Dec. 29, 1981, 95 Stat. 1690; Pub. L. 97–468, title II, §214, Jan. 14, 1983, 96 Stat. 2545.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in subsec. (a), was classified to section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

AMENDMENTS

1983—Subsec. (a). Pub. L. 97–468, §214(a), substituted "a carrier which, on January 14, 1983, was the subject of a proceeding pending under section 77 of the Bankruptcy Act or under subchapter IV of chapter 11 of title 11" for "the Rock Island Railroad or the Milwaukee Railroad", and in last sentence substituted "any such carrier which has been ordered by the court having jurisdiction over such a carrier to liquidate its properties until the disposition of the properties of the estate of such carrier" for "the Rock Island Railroad until the disposition of the properties of the estate of the Rock Island Railroad".

Subsec. (c). Pub. L. 97–468, §214(b), struck out subsec. (c) which defined "Milwaukee Railroad".

1981—Subsec. (a). Pub. L. 97–130 gave the Commission authority to authorize continued rail service under this section over the lines of the Rock Island Railroad until the disposition of the properties of the estate of the Rock Island Railroad.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

TERMINATION OF APPLICABILITY OF AMENDMENT TO INTERSTATE COMMERCE SERVICE ORDER 1498 ON MAY 15, 1982

Pub. L. 97–130, §5(b), Dec. 29, 1981, 95 Stat. 1691, provided that: "The applicability of the amendment made by subsection (a) [amending subsec. (a) of this section] to Interstate Commerce Commission Service Order 1498 shall expire at the end of May 15, 1982."

§1018. Judicial review

(a) Appeals

Notwithstanding any other provision of law, any appeal from—

- (1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this chapter; and
- (2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.),

shall be taken to the United States Court of Appeals for the Seventh Circuit.

(b) Appellate proceedings

If appeals are taken from decisions described in subsection (a) of this section involving section 1005 or 1008 ¹ of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act [45 U.S.C. 908 or 915], the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc.

(c) Action in United States Court of Claims

Nothing in this chapter or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims ¹ under section 1491 of title 28 (commonly referred to as the Tucker Act).

(Pub. L. 96–254, title I, §124, as added Pub. L. 96–448, title VII, §701(a)(1), Oct. 14, 1980, 94 Stat. 1959; amended Pub. L. 98–620, title IV, §402(49), Nov. 8, 1984, 98 Stat. 3361.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (c), was in the original "this title", meaning title I (§101 et seq.) of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, as amended, known as the Rock Island Railroad Transition and Employee Assistance Act, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Milwaukee Railroad Restructuring Act, referred to in subsecs. (a)(2) and (c), is Pub. L. 96–101, Nov. 4, 1979, 93 Stat. 736, as amended, which is classified principally to chapter 18 (§901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

Section 1008 of this title, referred to in subsec. (b), was repealed by Pub. L. 97–468, title II, §234(a), Jan. 14, 1983, 96 Stat. 2547.

The United States Court of Claims, referred to in subsec. (c), and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–620 struck out provision requiring the court to render a final decision no later than 60 days after the filing of the last such appeal.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as an Effective Date of 1980 Amendment note under section 1170 of Title 11, Bankruptcy.

¹ [See References in Text note below.](#)

CHAPTER 20—NORTHEAST RAIL SERVICE

Sec.	
1101.	Congressional findings and declarations.
1102.	Statement of purpose.
1103.	Goals and objectives.
1104.	Definitions.
1105.	Judicial review.
1106.	Exemption from transfer taxes and fees; recordation.
1107.	Repealed.
1108.	Concerted economic action.
1109.	Effectuation of cost reductions.
1110, 1111.	Repealed.
1112.	Interstate Commerce Commission proceedings.
1113.	Intercity passenger service.
1114.	Repealed.
1115.	Redemption of stock.
1116.	Applicability of other laws.

§1101. Congressional findings and declarations

The Congress finds and declares that—

(1) the processes set in motion by the Regional Rail Reorganization Act of 1973 [45 U.S.C. 701 et seq.] have failed to create a self-sustaining railroad system in the Northeast region of the United States and have cost United States taxpayers many billions of dollars over original estimates;

(2) current arrangements for the provision of rail freight and commuter service in the Northeast and Midwest regions of the United States are inadequate to meet the transportation needs of the public and the needs of national security;

(3) although the Federal Government has provided billions of dollars in assistance for Conrail and its employees, the Federal interest in ensuring the flow of interstate commerce through rail service in the private sector has not been achieved, and the protection of interstate commerce requires Federal intervention to preserve essential rail service in the private sector;

(4) the provisions for protection of employees of bankrupt railroads contained in the Regional Rail Reorganization Act of 1973 [45 U.S.C. 701 et seq.] have resulted in the payment of benefits far in excess of levels anticipated at the time of enactment, have imposed an excessive fiscal burden on the Federal taxpayer, and are now an obstacle to the establishment of improved rail service and continued rail employment in the Northeast region of the United States; and

(5) since holding Conrail liable for employee protection payments would destroy its prospects of becoming a profitable carrier and further injure its employees, an alternative employee protection system must be developed and funded.

(Pub. L. 97–35, title XI, §1132, Aug. 13, 1981, 95 Stat. 644.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Regional Rail Reorganization Act of 1973, referred to in pars. (1) and (4), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended, which is classified principally to chapter 16 (§701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 97–35, title XI, §1169, Aug. 13, 1981, 95 Stat. 687, provided that: "Except as otherwise provided, the provisions of and the amendments made by this subtitle [subtitle E (§§1131–1169) of title XI of Pub. L. 97–35, see Short Title note set out below] shall take effect on the date of the enactment of this subtitle [Aug. 13, 1981]."

SHORT TITLE

Pub. L. 97–35, title XI, §1131, Aug. 13, 1981, 95 Stat. 643, provided that: "This subtitle [subtitle E (§§1131–1169) of title XI of Pub. L. 97–35, enacting this chapter, and sections 159a, 581 to 590, 727 to 729, 744a, 748, 761 to 769c, and 797 to 797m of this title, amending sections 601, 702, 711 to 713, 724, 741, 743, 745, 821, 825, and 829 of this title, repealing sections 771 to 780, 910, and 1006 of this title, and enacting provisions set out as notes under sections 744a, 771, and 1101 of this title] may be cited as the 'Northeast Rail Service Act of 1981'."

§1102. Statement of purpose

It is therefore declared to be the purpose of the Congress in this subtitle to provide for—

(1) the removal by a date certain of the Federal Government's obligation to subsidize the freight operations of Conrail;

(2) transfer of Conrail commuter service responsibilities to one or more entities whose principal purpose is the provision of commuter service; and

(3) an orderly return of Conrail freight service to the private sector.

(Pub. L. 97–35, title XI, §1133, Aug. 13, 1981, 95 Stat. 644.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle E (§§1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, as amended, known as the Northeast Rail Service Act of 1981. For complete classification of this subtitle to the Code, see Short Title note set out under section 1101 of this title and Tables.

§1103. Goals and objectives

It is the goal of this subtitle to provide Conrail the opportunity to become profitable through the achievement of the following objectives:

(1) Nonagreement personnel

(A) Employees who are not subject to collective bargaining agreements (hereafter in this section referred to as "nonagreement personnel") should forego wage increases and benefits in an amount proportionately equivalent to the amount foregone by agreement employees pursuant to paragraph (4) of this section, adjusted annually to reflect inflation.

(B) After May 1, 1981, the number of nonagreement personnel should be reduced proportionately to any reduction in agreement employees (excluding reductions pursuant to the termination program under section 797a of this title).

(2) Suppliers

To facilitate the orderly movement of goods in interstate commerce, materials and services should continue to be available to Conrail, under normal business practices, including the provision of credit and normal financing arrangements.

(3) Shippers

Conrail should utilize the revenue opportunities available to it under the Staggers Rail Act of 1980 and subtitle IV of title 49.

(4) Agreement employees

(A) Conrail should enter into collective bargaining agreements with its employees which would reduce Conrail's costs in an amount equal to \$200,000,000 a year, beginning April 1, 1981, adjusted annually to reflect inflation.

(B) Agreements under this subparagraph may provide for reductions in wage increases and for changes in fringe benefits common to agreement employees, including vacations and holidays.

(C) The cost reductions required under this subparagraph in the first year of the agreement may be deferred, but the aggregate cost reductions should be no less than an average of \$200,000,000 per year for each of the first three one-year periods beginning April 1, 1981.

(D) The amount of cost reductions provided under this paragraph shall be calculated by subtracting the cost of an agreement entered into under this paragraph from (i) the cost that would otherwise result from the application of the national agreement reached by railroad industry and its employees, or (ii) until such national agreement is reached, the cost which the United States Railway Association estimates would result from the application of such a national agreement.

(Pub. L. 97-35, title XI, §1134, Aug. 13, 1981, 95 Stat. 645.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle E (§§1131-1169) of title XI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 643, as amended, known as the Northeast Rail Service Act of 1981. For complete classification of this subtitle to the Code, see Short Title note set out under section 1101 of this title and Tables.

The Staggers Rail Act of 1980, referred to in par. (3), is Pub. L. 96-448, Oct. 14, 1980, 94 Stat. 1895, as amended. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 10101 of Title 49, Transportation, and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

§1104. Definitions

As used in this subtitle, unless the context otherwise requires, the term:

(1) "Amtrak" means the National Railroad Passenger Corporation created under chapter 243 of title 49.

(2) "Commission" means the Interstate Commerce Commission.

(3) "Commuter authority" means any State, local, or regional authority, corporation, or other entity established for purposes of providing commuter service, and includes the Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, any successor agencies, and any entity created by one or more such agencies for the purpose of operating, or contracting for the operation of, commuter service.

(4) "Commuter service" means short-haul rail passenger service operated in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, usually characterized by reduced fare, multiple-ride, and commutation tickets, and by morning and evening peak period operations.

(5) "Conrail" means the Consolidated Rail Corporation created under title III of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 741 et seq.).

(6) "Rail carrier" means a common carrier engaged in interstate or foreign commerce by rail subject to subtitle IV of title 49.

(7) "Secretary" means the Secretary of Transportation.

(8) "Special court" means the judicial panel established under section 209(b)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719(b)(1)) or, with respect to any proceedings that arise or continue after the panel is abolished pursuant to section 209(b)(2) of such Act [45 U.S.C. 719(b)(2)], the United States District Court for the District of Columbia.
(Pub. L. 97–35, title XI, §1135(a), Aug. 13, 1981, 95 Stat. 645; Pub. L. 104–317, title VI, §605(c)(3), Oct. 19, 1996, 110 Stat. 3859.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle E (§§1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, as amended, known as the Northeast Rail Service Act of 1981. For complete classification of this subtitle to the Code, see Short Title note set out under section 1101 of this title and Tables.

The Regional Rail Reorganization Act of 1973, referred to in par. (5), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended. Title III of the Regional Rail Reorganization Act of 1973 is classified generally to subchapter III (§741 et seq.) of chapter 16 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

CODIFICATION

In par. (1), "chapter 243 of title 49" substituted for "title III of the Rail Passenger Service Act (45 U.S.C. 541 et seq.)" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1996—Par. (8). Pub. L. 104–317 amended par. generally. Prior to amendment, par. read as follows:
" 'Special court' means the judicial panel established under section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719)."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–317 effective 90 days after Oct. 19, 1996, and except as otherwise provided, applicable proceedings that arise or continue after such effective date, see section 605(e) of Pub. L. 104–317, set out as a note under section 719 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

§1105. Judicial review

(a) Special court; exclusive jurisdiction for civil actions

Notwithstanding any other provision of law, the special court shall have original and exclusive jurisdiction over any civil action—

(1) for injunctive, declaratory, or other relief relating to the enforcement, operation, execution, or interpretation of any provision of or amendment made by this subtitle or part 2 of the Conrail Privatization Act [45 U.S.C. 1311 et seq.], or administrative action taken thereunder to the extent such action is subject to judicial review;

(2) challenging the constitutionality of any provision of or amendment made by this subtitle or part 2 of the Conrail Privatization Act [45 U.S.C. 1311 et seq.];

(3) to obtain, inspect, copy, or review any document in the possession or control of the Secretary, Conrail, the United States Railway Association, or Amtrak that would be discoverable in litigation under any provision of or amendment made by this subtitle or part 2 of the Conrail Privatization Act [45 U.S.C. 1311 et seq.]; or

(4) seeking judgment upon any claim against the United States founded upon the Constitution and resulting from the operation of any provision of or amendment made by this subtitle or part 2 of the Conrail Privatization Act [45 U.S.C. 1311 et seq.].

(b) Appeal

An order or judgment of the United States District Court for the District of Columbia in any action referred to in this section shall be reviewable in accordance with sections 1291, 1292, and 1294 of title 28.

(c) Scope of review of administrative actions

Administrative action under the provisions of or amendments made by this subtitle or part 2 of the Conrail Privatization Act [45 U.S.C. 1311 et seq.] which is subject to review shall be upheld unless such action is found to be unlawful under standards established for review of informal agency action under paragraphs (2)(A), (B), (C), and (D) of section 706 of title 5. The requirements of this subtitle or part 2 of the Conrail Privatization Act [45 U.S.C. 1311 et seq.], as the case may be, shall constitute the exclusive procedures required by law for such administrative action.

(Pub. L. 97–35, title XI, §1152, Aug. 13, 1981, 95 Stat. 676; Pub. L. 99–509, title IV, §4033(c)(1)(A), Oct. 21, 1986, 100 Stat. 1908; Pub. L. 100–352, §6(f), June 27, 1988, 102 Stat. 664; Pub. L. 104–317, title VI, §605(b)(3), (c)(4), Oct. 19, 1996, 110 Stat. 3859.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in subsecs. (a) and (c), is subtitle E (§§1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, as amended, known as the Northeast Rail Service Act of 1981. For complete classification of this subtitle to the Code, see Short Title note set out under section 1101 of this title and Tables.

The Conrail Privatization Act, referred to in subsecs. (a) and (c), is subtitle A (§§4001–4052) of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1892. Part 2 of that Act is classified principally to subchapter II (§1311 et seq.) of chapter 22 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–317, §605(b)(3), added heading and text of subsec. (b) and struck out former subsec. (b) which read as follows: "A judgment of the special court in any action referred to in this section shall be reviewable only upon petition for a writ of certiorari to the Supreme Court of the United States. Such review is exclusive and any such petition shall be filed in the Supreme Court not more than 20 days after entry of such order or judgment."

Subsec. (d). Pub. L. 104–317, §605(c)(4), struck out subsec. (d) which read as follows: "If the volume of civil actions under subsection (a) of this section so requires, the United States Railway Association shall apply to the judicial panel on multi-district litigation authorized by section 1407 of title 28 for the assignment of additional judges to the special court. Within 30 days after the date of such application, the panel shall assign to the special court such additional judges as may be necessary to exercise the jurisdiction described in subsection (a) of this section."

1988—Subsec. (b). Pub. L. 100–352 struck out ", except that any order or judgment enjoining the enforcement, or declaring or determining the unconstitutionality or invalidity, of any provision of this subtitle shall be reviewable by direct appeal to the Supreme Court of the United States" at end of first sentence and substituted "such petition shall be filed in the Supreme Court" for "petition or appeal shall be filed" in second sentence.

1986—Subsecs. (a), (b). Pub. L. 99–509, §4033(c)(1)(A)(i), inserted "or part 2 of the Conrail Privatization Act" after "subtitle" wherever appearing.

Subsec. (c). Pub. L. 99–509, §4033(c)(1)(A), inserted "or part 2 of the Conrail Privatization Act" after

"subtitle" in first sentence and "or part 2 of the Conrail Privatization Act, as the case may be," after "subtitle" in second sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–317 effective 90 days after Oct. 19, 1996, and except as otherwise provided, applicable to proceedings that arise or continue after such effective date, see section 605(e) of Pub. L. 104–317, set out as a note under section 719 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of Title 28, Judiciary and Judicial Procedure.

CASES PENDING IN SPECIAL COURT

For applicability of amendment by Pub. L. 104–317 to cases pending in special court established under section 719(b) of this title, see section 605(d) of Pub. L. 104–317, set out as a note under section 719 of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

§1106. Exemption from transfer taxes and fees; recordation

(a)(1) All transfers or conveyances of any interest in rail property (whether real, personal, or mixed) which are made under any provision of or amendment made by this subtitle shall be exempt from any taxes, imposts, or levies now or hereby imposed, by the United States or by any State or any political subdivision of a State, on or in connection with such transfers or conveyances or on the recording of deeds, bills of sale, liens, encumbrances, easements, or other instruments evidencing, effectuating, or incident to any such transfers or conveyances, whether imposed on the transferor or on the transferee. Such transferors and transferees shall be entitled to record any such deeds, bills of sale, liens, encumbrances,¹ easements, or other instruments, and to record the release or removal of any preexisting liens or encumbrances of record with respect to properties so transferred or conveyed, upon payment of any appropriate and generally applicable charges to compensate for the cost of the service performed.

(2) This section shall not apply to Federal income tax laws.

(b) Transfer of designated real property (including any interest in real property) authorized by the amendments made by part 2 of this subtitle shall have the same effect for purposes of rights and priorities with respect to such property as recordation on the transfer date of appropriate deeds, or other appropriate instruments, in offices appointed under State law for such recordation, except that acquiring rail carriers and other entities shall proffer such deeds or other instruments for recordation within 36 months after the transfer date as a condition of preserving such rights and priorities beyond the expiration of that period. Conrail shall cooperate in effecting the timely preparation, execution, and proffering for recordation of such deeds and other instruments.

(Pub. L. 97–35, title XI, §1153, Aug. 13, 1981, 95 Stat. 677.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in subsecs. (a)(1) and (b), is subtitle E (§§1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, as amended, known as the Northeast Rail Service Act of 1981. Part 2

(§§1136–1142) of subtitle E enacted sections 581 to 587, 727, 744a, and 761 to 769a of this title, amended sections 601 and 741 of this title, and enacted provisions set out as a note under section 744a of this title. For complete classification of this subtitle to the Code, see Short Title note set out under section 1101 of this title and Tables.

¹ So in original. Probably should be "encumbrances."

§1107. Repealed. Pub. L. 99–509, title IV, §4033(c)(1)(C)(i)(I), Oct. 21, 1986, 100 Stat. 1908

Section, Pub. L. 97–35, title XI, §1154, Aug. 13, 1981, 95 Stat. 677, provided that no distribution of assets of Conrail could be made with respect to any claims of United States until all other valid claims against Conrail were satisfied or until arrangements had been made for their satisfaction.

§1108. Concerted economic action

(a) Strikes interfering with rail freight service of Conrail

Any person engaging in concerted economic action over disputes with Amtrak Commuter or any commuter authority shall not be entitled to engage in any strike against, or otherwise to induce any employee of, Conrail, where an effect thereof is to interfere with rail freight service provided by Conrail.

(b) Strikes interfering with Amtrak Commuter's rail passenger service

Any person engaging in concerted economic action over disputes arising out of freight operations provided by Conrail shall not be entitled to engage in any strike against, or otherwise to induce any employee of, Amtrak Commuter or any commuter authority, where an effect thereof is to interfere with rail passenger service.

(c) Railway Labor Act deemed violated

Any concerted action in violation of this section shall be deemed to be a violation of the Railway Labor Act [45 U.S.C. 151 et seq.].

(Pub. L. 97–35, title XI, §1158, Aug. 13, 1981, 95 Stat. 682.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (c), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

§1109. Effectuation of cost reductions

Any cost reductions resulting from the provisions of or the amendments made by this subtitle shall not be used to limit the maximum level of any rate charged by Conrail for the provision of rail service, to limit the amount of any increase in any such rate (including rates maintained jointly by Conrail and other rail carriers), or to limit a surcharge or cancellation otherwise lawful under chapter 107 ¹ of title 49.

(Pub. L. 97–35, title XI, §1159, Aug. 13, 1981, 95 Stat. 682.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle E (§§1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, as amended, known as the Northeast Rail Service Act of 1981. For complete classification of this subtitle to the Code, see Short Title note set out under section 1101 of this title and Tables.

Chapter 107 of title 49, referred to in text, was omitted and a new chapter 107 enacted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804, 809.

¹ [*See References in Text note below.*](#)

§1110. Repealed. Pub. L. 99–509, title IV, §4033(c)(1)(C)(i)(II), Oct. 21, 1986, 100 Stat. 1908

Section, Pub. L. 97–35, title XI, §1161, Aug. 13, 1981, 95 Stat. 682, related to transfer of Conrail light density rail service lines.

§1111. Repealed. Pub. L. 105–134, title IV, §408, Dec. 2, 1997, 111 Stat. 2586

Section, Pub. L. 97–35, title XI, §1163, Aug. 13, 1981, 95 Stat. 685; Pub. L. 99–272, title IV, §4017(a)(1), Apr. 7, 1986, 100 Stat. 110, related to Northeast Corridor cost dispute.

§1112. Interstate Commerce Commission proceedings

(a) Final decisions involving railroads in bankruptcy

Notwithstanding any other provision of subtitle IV of title 49, in any proceeding before the Commission under section 11324 or 11325 of title 49 involving a railroad in the Region, as defined in section 702 of this title, which was in a bankruptcy proceeding under section 77 of the Bankruptcy Act on November 4, 1979, the Commission shall, with or without a hearing, issue a final decision within a period not to exceed 180 days after receipt of an application under either such section.

(b) Final decisions involving profitable railroads

Notwithstanding any other provision of subtitle IV of title 49, in any proceeding before the Commission under section 11324 or 11325 of title 49 involving a profitable railroad in the Region, as defined in section 702 of this title, which received a loan under section 721(a) of this title, the Commission shall, with or without a hearing, issue a final decision within a period not to exceed 180 days after receipt of an application under either such section.

(c) Interest of United States attaching in bankruptcy, liquidation, abandonment, etc.

(1) If the Secretary determines under subsection (b) that there is an agreement between a profitable railroad in the Region (as defined in section 702 of this title) which received a loan under section 721(a) of this title and a prospective purchaser for the sale of such railroad, the Secretary shall limit the interest of the United States in any debt of such a railroad to an interest which attaches to such debt in the event of bankruptcy or substantial sale or liquidation of the assets of the railroad. The Secretary may substitute for the evidence of such debt contingency notes payable solely from the railroad operating assets then securing such debt, including reinvestments thereof, or such other contingency notes as the Secretary deems appropriate and which conform to the terms set forth in this subsection.

(2) If the interest of the United States is limited under paragraph (1), any new debt issued by such a railroad subsequent to the issuance of the debt described in paragraph (1) may have such higher priority in the event of bankruptcy, liquidation, or abandonment of the assets of such a railroad than the debt described in such paragraph as the Secretary and the railroad may agree.

(3) In carrying out the duties under this subsection, the Secretary may (A) enter into such

agreements, (B) in accordance with any such agreements, cancel or cause to be cancelled or amend or cause to be amended any notes or securities currently held by agencies or instrumentalities of the United States, and (C) accept in exchange as substitution therefor such instruments evidencing the indebtedness owed to such agencies or instrumentalities as, in the Secretary's judgment, will effectuate the purposes of this subsection.

(Pub. L. 97–35, title XI, §1164, Aug. 13, 1981, 95 Stat. 685; Pub. L. 97–468, title V, §510, Jan. 14, 1983, 96 Stat. 2554; Pub. L. 104–88, title III, §331, Dec. 29, 1995, 109 Stat. 953.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in subsec. (a), was classified to section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

AMENDMENTS

1995—Subsecs. (a), (b). Pub. L. 104–88 substituted "section 11324 or 11325" for "section 11344 or 11345".

1983—Subsec. (c)(1). Pub. L. 97–468, §510(1), substituted "bankruptcy or substantial sale" for "bankruptcy, substantial sale," after "in the event of", and in last sentence substituted permission for the Secretary to substitute contingency notes for evidence of the debt for the requirement that the Secretary substitute contingency notes for evidence of the debt and inserted provision that the contingency notes be payable solely from the railroad operating assets then securing such debt, including reinvestments thereof, or be other contingency notes as the Secretary deems appropriate.

Subsec. (c)(2). Pub. L. 97–468, §510(2), substituted permission that new debt may have such higher priority in the event of bankruptcy, liquidation, or abandonment of the assets of such a railroad than the debt described in par. (1) as the Secretary and the railroad may agree for the requirement that such debt have higher priority in the event of bankruptcy, liquidation, or abandonment of the assets of Conrail than the debt described in par. (1).

Subsec. (c)(3). Pub. L. 97–468, §510(3), added par. (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

§1113. Intercity passenger service

(a) Responsibility of Conrail to provide crews terminated; negotiations for employee transfers

After January 1, 1983, Conrail shall be relieved of the responsibility to provide crews for intercity passenger service on the Northeast Corridor. Amtrak, Amtrak Commuter, and Conrail, and the employees with seniority in both freight and passenger service shall commence negotiations not later than 120 days after August 13, 1981, for the right of such employees to move from one service to the other once each six-month period. Such agreement shall ensure that Conrail, Amtrak, and Amtrak

Commuter have the right to furlough one employee in the same class or craft for each employee who returns through the exercise of seniority rights. If agreement is not reached within 360 days, such matter shall be submitted to binding arbitration.

(b) Eligibility of employees for employee protection benefits

Conrail employees who are deprived of employment by an assumption or discontinuance of intercity passenger service by Amtrak shall be eligible for employee protection benefits under section 797 ¹ of this title, notwithstanding any other provision of law, agreement, or arrangement, and notwithstanding the inability of such employees otherwise to meet the eligibility requirements of such section. Such protection shall be the exclusive protection applicable to Conrail employees deprived of employment or adversely affected by any such assumption or discontinuance.

(Pub. L. 97–35, title XI, §1165, Aug. 13, 1981, 95 Stat. 686; Pub. L. 97–468, title V, §505(a), Jan. 14, 1983, 96 Stat. 2553.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 797 of this title, referred to in subsec. (b), was repealed by Pub. L. 99–509, title IV, §4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

CODIFICATION

"August 13, 1981", referred to in subsec. (a), was in the original "the date of the enactment", which was editorially translated as the date of the enactment of this section, as the probable intent of Congress.

AMENDMENTS

1983—Pub. L. 97–468, §505(a), designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONRAIL EMPLOYEES ELIGIBLE FOR EMPLOYEE PROTECTION BENEFITS UNDER REGIONAL RAIL REORGANIZATION ACT OF 1973

Pub. L. 97–377, title I, §137, Dec. 21, 1982, 96 Stat. 1915, provided that: "Conrail employees who are deprived of employment by assumption or discontinuance of intercity passenger service by Amtrak shall hereafter be eligible for employee protection benefits under section 701 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797), notwithstanding any other provision of law, agreement, or arrangement, and notwithstanding the inability of such employees otherwise to meet the eligibility requirements of such section. Such protection shall be the exclusive protection applicable to Conrail employees deprived of employment or adversely affected by any such assumption or discontinuance."

¹ [*See References in Text note below.*](#)

§1114. Repealed. Pub. L. 99–509, title IV, §4033(c)(1)(C)(i)(III), Oct. 21, 1986, 100 Stat. 1908

Section, Pub. L. 97–35, title XI, §1166, Aug. 13, 1981, 95 Stat. 686, related to grant of trackage rights to any terminal railroad operating primarily in Philadelphia.

§1115. Redemption of stock

For the purpose of computing the amount for which certificates of value shall be redeemable under section 746 of this title, the series B preferred stock and the common stock conveyed to the Secretary under section 1107 ¹ of this title shall be deemed to be without fair market value unless in a proceeding brought under section 1105(a)(4) of this title the special court shall have determined that

such securities had a value and shall have entered a judgment against the United States for that value. In such an event, the securities shall for purposes of section 746 of this title be deemed to have that value found by the special court.

(Pub. L. 97–35, title XI, §1167(b), Aug. 13, 1981, 95 Stat. 686.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1107 of this title, referred to in text, was repealed by Pub. L. 99–509, title IV, §4033(c)(1)(C)(i)(I), Oct. 21, 1986, 100 Stat. 1908.

CODIFICATION

Section is comprised of subsec. (b) of section 1167 of Pub. L. 97–35. Subsec. (a) of section 1167 amended section 743 of this title. Subsec. (c) of section 1167, which was set out as subsec. (b) of this section and which provided that the clerk of the special court convey to the Secretary certain series B preferred stock and common stock of Conrail on deposit with the court, and authorized the Secretary to hold and exercise all rights to such Conrail securities, was repealed by Pub. L. 99–509, title IV, §4033(c)(1)(C)(i)(IV), Oct. 21, 1986, 100 Stat. 1908.

¹ See References in Text note below.

§1116. Applicability of other laws

(a) The provisions of chapters 5 and 7 of title 5 (popularly known as the Administrative Procedure Act and including provisions popularly known as the Government in the Sunshine Act), the Federal Advisory Committee Act, section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)], division A of subtitle III of title 54, and section 303 of title 49 are inapplicable to actions taken in negotiating, approving, or implementing service transfers under title IV of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 761 et seq.] ¹ and to the implementation of the sale of the interest of the United States in Conrail under the Conrail Privatization Act [45 U.S.C. 1301 et seq.].

(b) The operation of trains by Conrail shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members who must be employed in connection with the operation of such trains.

(Pub. L. 97–35, title XI, §1168, Aug. 13, 1981, 95 Stat. 687; Pub. L. 99–509, title IV, §4033(c)(1)(B), Oct. 21, 1986, 100 Stat. 1908; Pub. L. 113–287, §5(m)(1), Dec. 19, 2014, 128 Stat. 3271.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Administrative Procedure Act, referred to in subsec. (a), is act June 11, 1946, ch. 324, 60 Stat. 237, as amended, which was classified to sections 1001 to 1011 of former title 5 and which was repealed and reenacted as subchapter II (§551 et seq.) of chapter 5, and chapter 7 (§701 et seq.), of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

The Government in the Sunshine Act, referred to in subsec. (a), is Pub. L. 94–409, Sept. 13, 1976, 90 Stat. 1241, which enacted section 552b of Title 5, amended sections 551, 552, 556, and 557 of Title 5, section 10 of Pub. L. 92–463, set out in the Appendix to Title 5, and section 410 of Title 39, Postal Service, and enacted provisions set out as notes under section 552b of Title 5. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 552b of Title 5 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (a), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

The Regional Rail Reorganization Act of 1973, referred to in subsec. (a), is Pub. L. 93–236, Jan. 2, 1974,

87 Stat. 985, as amended. Title IV of the Regional Rail Reorganization Act of 1973 was classified generally to subchapter IV (§761 et seq.) of chapter 16 of this title, and was repealed by Pub. L. 99–509, title IV, §4033(a)(1), Oct. 21, 1986, 100 Stat. 1908. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The Conrail Privatization Act, referred to in subsec. (a), is subtitle A (§§4001–4052) of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1892, which is classified principally to chapter 22 (§1301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

CODIFICATION

In subsec. (a), "section 303 of title 49" substituted for "section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 1653(f)]" on authority of Pub. L. 97–449, §6(b), Jan. 12, 1983, 96 Stat. 2443, the first section of which enacted subtitle I (§101 et seq.) and chapter 31 (§3101 et seq.) of subtitle II of Title 49, Transportation.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–287, which directed substitution of "division A of subtitle III of title 54" for "the National Historic Preservation Act", was executed by making the substitution for "the National Historic Preservation Act of 1966" to reflect the probable intent of Congress.

1986—Subsec. (a). Pub. L. 99–509 inserted "and to the implementation of the sale of the interest of the United States in Conrail under the Conrail Privatization Act".

¹ See References in Text note below.

CHAPTER 21—ALASKA RAILROAD TRANSFER

Sec.

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§1201. Findings

The Congress finds that—

(1) the Alaska Railroad, which was built by the Federal Government to serve the transportation and development needs of the Territory of Alaska, presently is providing freight and passenger services that primarily benefit residents and businesses in the State of Alaska;

(2) many communities and individuals in Alaska are wholly or substantially dependent on the Alaska Railroad for freight and passenger service and provision of such service is an essential governmental function;

(3) continuation of services of the Alaska Railroad and the opportunity for future expansion of those services are necessary to achieve Federal, State, and private objectives; however, continued Federal control and financial support are no longer necessary to accomplish these objectives;

(4) the transfer of the Alaska Railroad and provision for its operation by the State in the manner contemplated by this chapter is made pursuant to the Federal goal and ongoing program of transferring appropriate activities to the States;

(5) the State's continued operation of the Alaska Railroad following the transfer contemplated by this chapter, together with such expansion of the railroad as may be necessary or convenient in the future, will constitute an appropriate public use of the rail system and associated properties, will provide an essential governmental service, and will promote the general welfare of Alaska's residents and visitors; and

(6) in order to give the State government the ability to determine the Alaska Railroad's role in serving the State's transportation needs in the future, including the opportunity to extend rail service, and to provide a savings to the Federal Government, the Federal Government should offer to transfer the railroad to the State, in accordance with the provisions of this chapter, in the same manner in which other Federal transportation functions (including highways and airports) have been transferred since Alaska became a State in 1959.

(Pub. L. 97-468, title VI, §602, Jan. 14, 1983, 96 Stat. 2556.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in pars. (4) to (6), was in the original "this title", meaning title VI (§601 et seq.) of Pub. L. 97-468, Jan. 14, 1983, 96 Stat. 2556, known as the Alaska Railroad Transfer Act of 1982, which is classified principally to this chapter (§1201 et seq.). For complete classification of title VI to the Code, see Short Title note below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 97-468, title VI, §601, Jan. 14, 1983, 96 Stat. 2556, provided that: "This title [enacting this chapter, amending sections 231, 712, and 802 of this title, sections 305, 3401, 5102, 5342, and 7327 of Title 5, Government Organization and Employees, section 410hh-1 of Title 16, Conservation, section 251 of Title 42, The Public Health and Welfare, section 10749 of Title 49, Transportation, and section 1655 of the Appendix to Title 49, repealing section 353a of Title 16, section 208a of Title 30, Mineral Lands and Mining, sections 975, 975a, and 975c to 975g of Title 43, Public Lands, and section 301a of Title 48, Territories and Insular Possessions, and amending provisions set out as a note under section 1611 of Title 43] may be cited as the 'Alaska Railroad Transfer Act of 1982'."

§1202. Definitions

As used in this chapter, the term—

(1) "Alaska Railroad" means the agency of the United States Government that is operated by the Department of Transportation as a rail carrier in Alaska under authority of the Act of March 12, 1914 (43 U.S.C. 975 et seq.) (popularly referred to as the "Alaska Railroad Act") and section 6(i) ¹ of the Department of Transportation Act, or, as the context requires, the railroad operated by that agency;

(2) "Alaska Railroad Revolving Fund" means the public enterprise fund maintained by the Department of the Treasury into which revenues of the Alaska Railroad and appropriations for the Alaska Railroad are deposited, and from which funds are expended for Alaska Railroad operation, maintenance and construction work authorized by law;

(3) "claim of valid existing rights" means any claim to the rail properties of the Alaska Railroad on record in the Department of the Interior as of January 13, 1983;

(4) "date of transfer" means the date on which the Secretary delivers to the State the four documents referred to in section 1203(b)(1) of this title;

(5) "employees" means all permanent personnel employed by the Alaska Railroad on the date of

transfer, including the officers of the Alaska Railroad, unless otherwise indicated in this chapter;

(6) "exclusive-use easement" means an easement which affords to the easement holder the following:

(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(C) subjacent and lateral support of the lands subject to the easement; and

(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

(7) "Native Corporation" has the same meaning as such term has under section 102(6) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(6));

(8) "officers of the Alaska Railroad" means the employees occupying the following positions at the Alaska Railroad as of the day before the date of transfer: General Manager; Assistant General Manager; Assistant to the General Manager; Chief of Administration; and Chief Counsel;

(9) "public lands" has the same meaning as such term has under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e));

(10) "rail properties of the Alaska Railroad" means all right, title, and interest of the United States to lands, buildings, facilities, machinery, equipment, supplies, records, rolling stock, trade names, accounts receivable, goodwill, and other real and personal property, both tangible and intangible, in which there is an interest reserved, withdrawn, appropriated, owned, administered or otherwise held or validly claimed for the Alaska Railroad by the United States or any agency or instrumentality thereof as of January 14, 1983, but excluding any such properties disposed of, and including any such properties acquired, in the ordinary course of business after that date but before the date of transfer, and also including the exclusive-use easement within the Denali National Park and Preserve conveyed to the State pursuant to this chapter and also excluding the following:

(A) the unexercised reservation to the United States for future rights-of-way required in all patents for land taken up, entered, or located in Alaska, as provided by the Act of March 12, 1914 (43 U.S.C. 975 et seq.);

(B) the right of the United States to exercise the power of eminent domain;

(C) any moneys in the Alaska Railroad Revolving Fund which the Secretary demonstrates, in consultation with the State, are unobligated funds appropriated from general tax revenues or are needed to satisfy obligations incurred by the United States in connection with the operation of the Alaska Railroad which would have been paid from such Fund but for this chapter and which are not assumed by the State pursuant to this chapter;

(D) any personal property which the Secretary demonstrates, in consultation with the State, prior to the date of transfer under section 1203 of this title, to be necessary to carry out functions of the United States after the date of transfer; and

(E) any lands or interest therein (except as specified in this chapter) within the boundaries of the Denali National Park and Preserve;

(11) "right-of-way" means, except as used in section 1208 of this title—

(A) an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

(B) an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph;

(12) "Secretary" means the Secretary of Transportation;

(13) "State" means the State of Alaska or the State-owned railroad, as the context requires;

(14) "State-owned railroad" means the authority, agency, corporation or other entity which the State of Alaska designates or contracts with to own, operate or manage the rail properties of the Alaska Railroad or, as the context requires, the railroad owned, operated, or managed by such authority, agency, corporation, or other entity; and

(15) "Village Corporation" has the same meaning as such term has under section 3(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(j)).

(Pub. L. 97-468, title VI, §603, Jan. 14, 1983, 96 Stat. 2556.)

EDITORIAL NOTES

REFERENCES IN TEXT

Act of March 12, 1914 (43 U.S.C. 975 et seq.) (popularly referred to as the "Alaska Railroad Act"), referred to in pars. (1) and (10)(A), is act Mar. 12, 1914, ch. 37, 38 Stat. 305, as amended, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97-468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title.

Section 6(i) of the Department of Transportation Act, referred to in par. (1), is section 6(i) of Pub. L. 89-670, which was classified to section 1655(i) of former Title 49, Transportation, prior to repeal by Pub. L. 97-468, title VI, §615(a)(4), Jan. 14, 1983, 96 Stat. 2578.

[¹ See References in Text note below.](#)

§1203. Transfer authorization

(a) Authority of Secretary; time, manner, etc., of transfer

Subject to the provisions of this chapter, the United States, through the Secretary, shall transfer all rail properties of the Alaska Railroad to the State. Such transfer shall occur as soon as practicable after the Secretary has made the certifications required by subsection (d) of this section and shall be accomplished in the manner specified in subsection (b) of this section.

(b) Simultaneous and interim transfers, conveyances, etc.

(1) On the date of transfer, the Secretary shall simultaneously:

(A) deliver to the State a bill of sale conveying title to all rail properties of the Alaska Railroad except any interest in real property;

(B) deliver to the State an interim conveyance of the rail properties of the Alaska Railroad that are not conveyed pursuant to subparagraph (A) of this paragraph and are not subject to unresolved claims of valid existing rights;

(C) deliver to the State an exclusive license granting the State the right to use all rail properties of the Alaska Railroad not conveyed pursuant to subparagraphs (A) or (B) of this paragraph pending conveyances in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights;

(D) convey to the State a deed granting the State (i) an exclusive-use easement for that portion of the right-of-way of the Alaska Railroad within the Denali National Park and Preserve extending not less than one hundred feet on either side of the main or branch line tracks, and eight feet on either side of the centerline of the "Y" track connecting the main line of the railroad to the power station at McKinley Park Station and (ii) title to railroad-related improvements within such right-of-way.

Prior to taking the action specified in subparagraphs (A) through (D) of this paragraph, the Secretary shall consult with the Secretary of the Interior. The exclusive-use easement granted pursuant to subparagraph (D) of this paragraph and all rights afforded by such easement shall be

exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which lands subject to such easement were utilized as of January 14, 1983.

(2) The Secretary shall deliver to the State an interim conveyance of rail properties of the Alaska Railroad described in paragraph (1)(C) of this subsection that become available for conveyance to the State after the date of transfer as a result of settlement, relinquishment, or final administrative adjudication pursuant to section 1205 of this title. Where the rail properties to be conveyed pursuant to this paragraph are surveyed at the time they become available for conveyance to the State, the Secretary shall deliver a patent therefor in lieu of an interim conveyance.

(3) The force and effect of an interim conveyance made pursuant to paragraphs (1)(B) or (2) of this subsection shall be to convey to and vest in the State exactly the same right, title, and interest in and to the rail properties identified therein as the State would have received had it been issued a patent by the United States. The Secretary of the Interior shall survey the land conveyed by an interim conveyance to the State pursuant to paragraphs (1)(B) or (2) of this subsection and, upon completion of the survey, the Secretary shall issue a patent therefor.

(4) The license granted pursuant to paragraph (1)(C) of this subsection shall authorize the State to use, occupy, and directly receive all benefits of the rail properties described in the license for the operation of the State-owned railroad in conformity with the Memorandum of Understanding referred to in section 1205(b)(3) of this title. The license shall be exclusive, subject only to valid leases, permits, and other instruments issued before the date of transfer and easements reserved pursuant to subsection (c)(2) of this section. With respect to any parcel conveyed pursuant to this chapter, the license shall terminate upon conveyance of such parcel.

(c) Reservations to United States in interim conveyances and patents

(1) Interim conveyances and patents issued to the State pursuant to subsection (b) of this section shall confirm, convey and vest in the State all reservations to the United States (whether or not expressed in a particular patent or document of title), except the unexercised reservations to the United States for future rights-of-way made or required by the first section of the Act of March 12, 1914 (43 U.S.C. 975d). The conveyance to the State of such reservations shall not be affected by the repeal of such Act under section 615 of this title.¹

(2) In the license granted under subsection (b)(1)(C) of this section and in all conveyances made to the State under this chapter, there shall be reserved to the Secretary of the Interior, the Secretary of Defense and the Secretary of Agriculture, as appropriate, existing easements for administration (including agency transportation and utility purposes) that are identified in the report required by section 1204(a) of this title. The appropriate Secretary may obtain, only after consent of the State, such future easements as are necessary for administration. Existing and future easements and use of such easements shall not interfere with operations and support functions of the State-owned railroad.

(3) There shall be reserved to the Secretary of the Interior the right to use and occupy, without compensation, five thousand square feet of land at Talkeetna, Alaska, as described in ARR lease numbered 69-25-0003-5165 for National Park Service administrative activities, so long as the use or occupation does not interfere with the operation of the State-owned railroad. This reservation shall be effective on the date of transfer under this section or the expiration date of such lease, whichever is later.

(d) Certifications by Secretary; scope, subject matter, etc.

(1) Prior to the date of transfer, the Secretary shall certify that the State has agreed to operate the railroad as a rail carrier in intrastate and interstate commerce.

(2)(A) Prior to the date of transfer, the Secretary shall also certify that the State has agreed to assume all rights, liabilities, and obligations of the Alaska Railroad on the date of transfer, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, and accounts payable, except as otherwise provided by this chapter.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the United States shall be solely responsible for—

(i) all claims and causes of action against the Alaska Railroad that accrue on or before the date

of transfer, regardless of the date on which legal proceedings asserting such claims were or may be filed, except that the United States shall, in the case of any tort claim, only be responsible for any such claim against the United States that accrues before the date of transfer and results in an award, compromise, or settlement of more than \$2,500, and the United States shall not compromise or settle any claim resulting in State liability without the consent of the State, which consent shall not be unreasonably withheld; and

(ii) all claims that resulted in a judgment or award against the Alaska Railroad before the date of transfer.

(C) For purposes of subparagraph (B) of this paragraph, the term "accrue" shall have the meaning contained in section 2401 of title 28.

(D) Any hazardous substance, petroleum or other contaminant release at or from the State-owned rail properties that began prior to January 5, 1985, shall be and remain the liability of the United States for damages and for the costs of investigation and cleanup. Such liability shall be enforceable under 42 U.S.C. 9601 et seq.¹ for any release described in the preceding sentence.

(3)(A) Prior to the date of transfer, the Secretary shall also certify that the State-owned railroad has established arrangements pursuant to section 1206 of this title to protect the employment interests of employees of the Alaska Railroad during the two-year period commencing on the date of transfer. These arrangements shall include provisions—

(i) which ensure that the State-owned railroad will adopt collective bargaining agreements in accordance with the provisions of subparagraph (B) of this paragraph;

(ii) for the retention of all employees, other than officers of the Alaska Railroad, who elect to transfer to the State-owned railroad in their same positions for the two-year period commencing on the date of transfer, except in cases of reassignment, separation for cause, resignation, retirement, or lack of work;

(iii) for the payment of compensation to transferred employees (other than employees provided for in subparagraph (E) of this paragraph), except in cases of separation for cause, resignation, retirement, or lack of work, for two years commencing on the date of transfer at or above the base salary levels in effect for such employees on the date of transfer, unless the parties otherwise agree during that two-year period;

(iv) for priority of reemployment at the State-owned railroad during the two-year period commencing on the date of transfer for transferred employees who are separated for lack of work, in accordance with subparagraph (C) of this paragraph (except for officers of the Alaska Railroad, who shall receive such priority for one year following the date of transfer);

(v) for credit during the two-year period commencing on the date of transfer for accrued annual and sick leave, seniority rights, and relocation and turnaround travel allowances which have been accrued during their period of Federal employment by transferred² employees retained by the State-owned railroad (except for officers of the Alaska Railroad, who shall receive such credit for one year following the date of transfer);

(vi) for payment to transferred employees retained by the State-owned railroad during the two-year period commencing on the date of transfer, including for one year officers retained or separated under subparagraph (E) of this paragraph, of an amount equivalent to the cost-of-living allowance to which they are entitled as Federal employees on the day before the date of transfer, in accordance with the provisions of subparagraph (D) of this paragraph; and

(vii) for health and life insurance programs for transferred employees retained by the State-owned railroad during the two-year period commencing on the date of transfer, substantially equivalent to the Federal health and life insurance programs available to employees on the day before the date of transfer (except for officers of the Alaska Railroad, who shall receive such credit for one year following the date of transfer).

(B) The State-owned railroad shall adopt all collective bargaining agreements which are in effect on the date of transfer. Such agreements shall continue in effect for the two-year period commencing on the date of transfer, unless the parties agree to the contrary before the expiration of that two-year

period. Such agreements shall be renegotiated during the two-year period, unless the parties agree to the contrary. Any labor-management negotiation impasse declared before the date of transfer shall be settled in accordance with chapter 71 of title 5. Any impasse declared after the date of transfer shall be subject to applicable State law.

(C) Federal service shall be included in the computation of seniority for transferred employees with priority for reemployment, as provided in subparagraph (A)(iv) of this paragraph.

(D) Payment to transferred employees pursuant to subparagraph (A)(vi) of this paragraph shall not exceed the percentage of any transferred employee's base salary level provided by the United States as a cost-of-living allowance on the day before the date of transfer, unless the parties agree to the contrary.

(E) Prior to the date of transfer, the Secretary shall also certify that the State-owned railroad has agreed to the retention, for at least one year from the date of transfer, of the offices of the Alaska Railroad, except in cases of separation for cause, resignation, retirement, or lack of work, at or above their base salaries in effect on the date of transfer, in such positions as the State-owned railroad may determine; or to the payment of lump-sum severance pay in an amount equal to such base salary for one year to officers not retained by the State-owned railroad upon transfer or, for officers separated within one year on or after the date of transfer, of a portion of such lump-sum severance payment (diminished pro rata for employment by the State-owned railroad within one year of the date of transfer prior to separation).

(4) Prior to the date of transfer, the Secretary shall also certify that the State has agreed to allow representatives of the Secretary adequate access to employees and records of the Alaska Railroad when needed for the performance of functions related to the period of Federal ownership.

(5) Prior to the date of transfer, the Secretary shall also certify that the State has agreed to compensate the United States at the value, if any, determined pursuant to section 1204(d) of this title. (Pub. L. 97-468, title VI, §604, Jan. 14, 1983, 96 Stat. 2559; Pub. L. 108-7, div. I, title III, §345(5), Feb. 20, 2003, 117 Stat. 418; Pub. L. 108-447, div. H, title I, §152(3), Dec. 8, 2004, 118 Stat. 3222.)

EDITORIAL NOTES

REFERENCES IN TEXT

Act of March 12, 1914, and such Act, referred to in subsec. (c)(1), is act Mar. 12, 1914, ch. 37, 38 Stat. 305, as amended, popularly known as the Alaska Railroad Act, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97-468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to this section.

Section 615 of this title, referred to in subsec. (c)(1), means section 615 of title VI of Pub. L. 97-468, Jan. 14, 1983, 96 Stat. 2577. Title VI of Pub. L. 97-468 is known as the Alaska Railroad Transfer Act of 1982 and is classified principally to this chapter. Under section 615, the repeal is effective on the date of transfer to the State of Alaska (pursuant to section 1203 of this title) or other disposition (pursuant to section 1210 of this title), whichever first occurs.

42 U.S.C. 9601 et seq., referred to in subsec. (d)(2)(D), probably means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (d)(2)(D). Pub. L. 108-447 added subpar. (D).

2003—Subsec. (b)(1). Pub. L. 108-7 struck out at end: "In the event of reversion to the United States, pursuant to section 1209 of this title, of the State's interests in all or part of the lands subject to such easement, such easement shall terminate with respect to the lands subject to such reversion, and no new exclusive-use easement with respect to such reverted lands shall be granted except by Act of Congress."

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF ALASKA RAILROAD TO STATE OF ALASKA

The State of Alaska accepted the certification requirements of the Alaska Railroad Transfer Act [this chapter] by 1984 SLA ch. 54, eff. May 19, 1984. Thereafter, by 1984 SLA ch. 153, eff. July 6, 1984, the Alaska Railroad Corporation was established to manage and operate the Alaska Railroad. The transfer of the Alaska Railroad to the State of Alaska was carried out on January 5, 1985.

DENALI NATIONAL PARK AND ALASKA RAILROAD CORPORATION EXCHANGE

Pub. L. 110–229, title III, §351, May 8, 2008, 122 Stat. 800, provided that:

"(a) DEFINITIONS.—In this section:

"(1) CORPORATION.—The term 'Corporation' means the Alaska Railroad Corporation owned by the State of Alaska.

"(2) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(b) EXCHANGE.—

"(1) IN GENERAL.—

"(A) EASEMENT EXPANDED.—The Secretary is authorized to grant to the Alaska Railroad Corporation an exclusive-use easement on land that is identified by the Secretary within Denali National Park for the purpose of providing a location to the Corporation for construction, maintenance, and on-going operation of track and associated support facilities for turning railroad trains around near Denali Park Station.

"(B) EASEMENT RELINQUISHED.—In exchange for the easement granted in subparagraph (A), the Secretary shall require the relinquishment of certain portions of the Corporation's existing exclusive use easement within the boundary of Denali National Park.

"(2) CONDITIONS OF THE EXCHANGE.—

"(A) EQUAL EXCHANGE.—The exchange of easements under this section shall be on an approximately equal-acre basis.

"(B) TOTAL ACRES.—The easement granted under paragraph (1)(A) shall not exceed 25 acres.

"(C) INTERESTS CONVEYED.—The easement conveyed to the Alaska Railroad Corporation by the Secretary under this section shall be under the same terms as the exclusive use easement granted to the Railroad in Denali National Park in the Deed for Exclusive Use Easement and Railroad Related Improvements filed in Book 33, pages 985–994 of the Nenana Recording District, Alaska, pursuant to the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1201 et seq.). The easement relinquished by the Alaska Railroad Corporation to the United States under this section shall, with respect to the portion being exchanged, be the full title and interest received by the Alaska Railroad in the Deed for Exclusive Use Easement and Railroad Related Improvements filed in Book 33, pages 985–994 of the Nenana Recording District, Alaska, pursuant to the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1201 et seq.).

"(D) COSTS.—The Alaska Railroad shall pay all costs associated with the exchange under this section, including the costs of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the costs of any surveys, and other reasonable costs.

"(E) LAND TO BE PART OF WILDERNESS.—The land underlying any easement relinquished to the United States under this section that is adjacent to designated wilderness is hereby designated as wilderness and added to the Denali Wilderness, the boundaries of which are modified accordingly, and shall be managed in accordance with applicable provisions of the Wilderness Act (78 Stat. 892) [16 U.S.C. 1131 et seq.] and the Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2371) [see Tables for classification].

"(F) OTHER TERMS AND CONDITIONS.—The Secretary shall require any additional terms and conditions under this section that the Secretary determines to be appropriate to protect the interests of the United States and of Denali National Park."

¹ [*See References in Text note below.*](#)

² [*So in original.*](#)

§1204. Transition period

(a) Joint report by Secretary and Governor of Alaska; contents, preparation, etc.

Within 6 months after January 14, 1983, the Secretary and the Governor of Alaska shall jointly

prepare and deliver to the Congress of the United States and the legislature of the State a report that describes to the extent possible the rail properties of the Alaska Railroad, the liabilities and obligations to be assumed by the State, the sum of money, if any, in the Alaska Railroad Revolving Fund to be withheld from the State pursuant to section 1202(10)(C) ¹ of this title, and any personal property to be withheld pursuant to section 1202(10)(D) ¹ of this title. The report shall separately identify by the best available descriptions (1) the rail properties of the Alaska Railroad to be transferred pursuant to section 1203(b)(1)(A), (B), and (D) of this title; (2) the rail properties to be subject to the license granted pursuant to section 1203(b)(1)(C) of this title; and (3) the easements to be reserved pursuant to section 1203(c)(2) of this title. The Secretaries of Agriculture, Defense, and the Interior and the Administrator of the General Services Administration shall provide the Secretary with all information and assistance necessary to allow the Secretary to complete the report within the time required.

(b) Inspection, etc., of rail properties and records; terms and conditions; restrictions

During the period from January 14, 1983, until the date of transfer, the State shall have the right to inspect, analyze, photograph, photocopy and otherwise evaluate all of the rail properties of the Alaska Railroad and all records related to the rail properties of the Alaska Railroad maintained by any agency of the United States under conditions established by the Secretary to protect the confidentiality of proprietary business data, personnel records, and other information, the public disclosure of which is prohibited by law. During that period, the Secretary and the Alaska Railroad shall not, without the consent of the State and only in conformity with applicable law and the Memorandum of Understanding referred to in section 1205(b)(3) of this title—

- (1) make or incur any obligation to make any individual capital expenditure of money from the Alaska Railroad Revolving Fund in excess of \$300,000;
- (2) (except as required by law) sell, exchange, give, or otherwise transfer any real property included in the rail properties of the Alaska Railroad; or
- (3) lease any rail property of the Alaska Railroad for a term in excess of five years.

(c) Format for accounting practices and systems

Prior to transfer of the rail properties of the Alaska Railroad to the State, the Alaska Railroad's accounting practices and systems shall be capable of reporting data to the Interstate Commerce Commission in formats required of comparable rail carriers subject to the jurisdiction of the Interstate Commerce Commission.

(d) Fair market value; determination, terms and conditions, etc.

(1) Within nine months after January 14, 1983, the United States Railway Association (hereinafter in this section referred to as the "Association") shall determine the fair market value of the Alaska Railroad under the terms and conditions of this chapter, applying such procedures, methods and standards as are generally accepted as normal and common practice. Such determination shall include an appraisal of the real and personal property to be transferred to the State pursuant to this chapter. Such appraisal by the Association shall be conducted in the usual manner in accordance with generally accepted industry standards, and shall consider the current fair market value and potential future value if used in whole or in part for other purposes. The Association shall take into account all obligations imposed by this chapter and other applicable law upon operation and ownership of the State-owned railroad. In making such determination, the Association shall use to the maximum extent practicable all relevant data and information, including, if relevant, that contained in the report prepared pursuant to subsection (a) of this section.

(2) The determination made pursuant to paragraph (1) of this subsection shall not be construed to affect, enlarge, modify, or diminish any inventory, valuation, or classification required by the Interstate Commerce Commission pursuant to subchapter V ² of chapter 107 of title 49.

(Pub. L. 97-468, title VI, §605(a)-(d), Jan. 14, 1983, 96 Stat. 2562, 2563.)

REFERENCES IN TEXT

Subchapter V of chapter 107 of title 49, referred to in subsec. (d)(2), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804.

CODIFICATION

In subsec. (a), references to section 1202(10)(C) and (D) of this title were in the original references to section 603(8)(C) and (D) of title VI of Pub. L. 97–468, and were editorially translated as section 1202(10)(C) and (D), as the probable intent of Congress, in view of section 1202(8) containing no subpars. (C) and (D) and the subject matter of section 1202(10)(C), which relates to money in the Alaska Railroad Revolving Fund being withheld from the State, and section 1202(10)(D), which relates to personal property being withheld.

Section is comprised of subsecs. (a) to (d) of section 605 of Pub. L. 97–468. Subsec. (e) of section 605 of Pub. L. 97–468 amended section 712 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

¹ [*See Codification note below.*](#)

² [*See References in Text note below.*](#)

§1205. Lands to be transferred

(a) Availability of lands among rail properties

Lands among the rail properties of the Alaska Railroad shall not be—

(1) available for selection under section 12 of the Act of January 2, 1976, as amended (43 U.S.C. 1611, note), subject to the exception contained in section 12(b)(8)(i)(D) of such Act, as amended by subsection (d)(5) of this section;

(2) available for conveyance under section 1425 of the Alaska National Interest Lands Conservation Act (Public Law 96–487; 94 Stat. 2515);

(3) available for conveyance to Chugach Natives, Inc., under sections 1429 or 1430 of the Alaska National Interest Lands Conservation Act (Public Law 96–487; 94 Stat. 2531) or under sections 12(c) or 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1611(c) and 1613(h)(8), respectively); or

(4) available under any law or regulation for entry, location, or for exchange by the United States, or for the initiation of a claim or selection by any party other than the State or other transferee under this chapter, except that this paragraph shall not prevent a conveyance pursuant to section 12(b)(8)(i)(D) of the Act of January 2, 1976 (43 U.S.C. 1611, note), as amended by subsection (d)(5) of this section.

(b) Review and settlement of claims; administrative adjudication; management of lands; procedures applicable

(1)(A) During the ten months following January 14, 1983, so far as practicable consistent with the priority of preparing the report required pursuant to section 1204(a) of this title, the Secretary of the

Interior, Village Corporations with claims of valid existing rights, and the State shall review and make a good faith effort to settle as many of the claims as possible. Any agreement to settle such claims shall take effect and bind the United States, the State, and the Village Corporation only as of the date of transfer of the railroad.

(B) At the conclusion of the review and settlement process provided in subparagraph (A) of this paragraph, the Secretary of the Interior shall prepare a report identifying lands to be conveyed in accordance with settlement agreements under this chapter or applicable law. Such settlement shall not give rise to a presumption as to whether a parcel of land subject to such agreement is or is not public land.

(2) The Secretary of the Interior shall have the continuing jurisdiction and duty to adjudicate unresolved claims of valid existing rights pursuant to applicable law and this chapter. The Secretary of the Interior shall complete the final administrative adjudication required under this subsection not later than three years after January 14, 1983, and shall complete the survey of all lands to be conveyed under this chapter not later than five years after January 14, 1983, and after consulting with the Governor of the State of Alaska to determine priority of survey with regard to other lands being processed for patent to the State. The Secretary of the Interior shall give priority to the adjudication of Village Corporation claims as required in this section. Upon completion of the review and settlement process required by paragraph (1)(A) of this subsection, with respect to lands not subject to an agreement under such paragraph, the Secretary of the Interior shall adjudicate which lands subject to claims of valid existing rights filed by Village Corporations, if any, are public lands and shall complete such final administrative adjudication within two years after January 14, 1983.

(3) Pending settlement or final administrative adjudication of claims of valid existing rights filed by Village Corporations prior to the date of transfer or while subject to the license granted to the State pursuant to section 1203(b)(1)(C) of this title, lands subject to such claims shall be managed in accordance with the Memorandum of Understanding among the Federal Railroad Administration, the State, Eklutna, Incorporated, Cook Inlet Region, Incorporated (as that term is used in section 12 of the Act of January 2, 1976 (Public Law 94–204; 89 Stat. 1150)), and Toghothle Corporation, executed by authorized officers or representatives of each of these entities. Duplicate originals of the Memorandum of Understanding shall be maintained and made available for public inspection and copying in the Office of the Secretary, at Washington, District of Columbia, and in the Office of the Governor of the State of Alaska, at Juneau, Alaska.

(4) The following procedures and requirements are established to promote finality of administrative adjudication of claims of valid existing rights filed by Village Corporations, to clarify and simplify the title status of lands subject to such claims, and to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way:

(A)(i) Prior to final administrative adjudication of Village Corporation claims of valid existing rights in land subject to the license granted under section 1203(b)(1)(C) of this title, the Secretary of the Interior may, notwithstanding any other provision of law, accept relinquishment of so much of such claims as involved lands within the right-of-way through execution of an agreement with the appropriate Village Corporation effective on or after the date of transfer. Upon such relinquishment, the interest of the United States in the right-of-way shall be conveyed to the State pursuant to section 1203(b)(1)(B) or (2) of this title.

(ii) With respect to a claim described in clause (i) of this subparagraph that is not settled or relinquished prior to final administrative adjudication, the Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad. Upon failure of the interested Village Corporation to relinquish so much of its claims as involve lands within the right-of-way prior to final adjudication of valid existing rights, the Secretary shall convey to the State pursuant to section 1203(b)(1)(B) or (2) of this title all right, title and interest of the United States in and to the right-of-way free and clear of such Village Corporation's claim to and interest in lands within such right-of-way.

(B) Where lands within the right-of-way, or any interest in such lands, have been conveyed

from Federal ownership prior to January 14, 1983, or is subject to a claim of valid existing rights by a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties pursuant to section 1203(b)(1)(B) or (2) of this title shall grant not less than an exclusive-use easement in such properties. The foregoing requirements shall not be construed to permit the conveyance to the State of less than the entire Federal interest in the rail properties of the Alaska Railroad required to be conveyed by section 1203(b) of this title. If an action is commenced against the State or the United States contesting the validity or existence of a reservation of right-of-way for the use or benefit of the Alaska Railroad made prior to January 14, 1983, the Secretary of the Interior, through the Attorney General, shall appear in and defend such action.

(c) Judicial review; remedies available; standing of State

(1) The final administrative adjudication pursuant to subsection (b) of this section shall be final agency action and subject to judicial review only by an action brought in the United States District Court for the District of Alaska.

(2) No administrative or judicial action under this chapter shall enjoin or otherwise delay the transfer of the Alaska Railroad pursuant to this chapter, or substantially impair or impede the operations of the Alaska Railroad or the State-owned railroad.

(3) Before the date of transfer, the State shall have standing to participate in any administrative determination or judicial review pursuant to this chapter. If transfer to the State does not occur pursuant to section 1203 of this title, the State shall not thereafter have standing to participate in any such determination or review.

(d) Omitted

(e) Liability of State for damage to land while used under license

The State shall be liable to a party receiving a conveyance of land among the rail properties of the Alaska Railroad subject to the license granted pursuant to section 1203(b)(1)(C) of this title for damage resulting from use by the State of the land under such license in a manner not authorized by such license.

(Pub. L. 97–468, title VI, §606(a)–(c), (e), Jan. 14, 1983, 96 Stat. 2564–2566, 2571; Pub. L. 98–620, title IV, §402(52), Nov. 8, 1984, 98 Stat. 3361.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 12 of the Act of January 2, 1976, as amended, referred to in subsecs. (a)(1), (4) and (b)(3), is section 12 of Pub. L. 94–204, Jan. 2, 1976, 89 Stat. 1150, as amended, which is set out as a note under section 1611 of Title 43, Public Lands. Section 12(b)(8)(i)(D) of such Act as amended by subsection (d)(5) of this section is the amendment of subsection (b)(8)(i)(D) of section 12 of Pub. L. 94–204 by section 606(d)(5) of Pub. L. 97–468, title VI, Jan. 14, 1983, 96 Stat. 2566.

The Alaska National Interest Lands Conservation Act, referred to in subsecs. (a)(2) and (c), is Pub. L. 96–497, Dec. 2, 1980, 94 Stat. 2371, as amended. Sections 1425, 1429, and 1430 of the Act (94 Stat. 2515, 2531) were not classified to the Code. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 16, Conservation, and Tables.

CODIFICATION

Section is comprised of subsecs. (a)–(c) and (e) of section 606 of Pub. L. 97–468. Subsec. (d) of section 606 of Pub. L. 97–468 amended section 12 of Pub. L. 94–204, which is set out as a note under section 1611 of Title 43, Public Lands.

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98–620 struck out provision that required review of agency action pursuant to this chapter to be expedited to same extent as expedited review provided by section 1108 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3168).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§1206. Employees of Alaska Railroad

(a) Coverage under Federal civil service retirement laws; election, funding, nature of benefits, etc., for employees transferring to State-owned railroad; voluntary separation incentives

(1) Any employees who elect to transfer to the State-owned railroad and who on the day before the date of transfer are subject to the civil service retirement law (subchapter III of chapter 83 of title 5) shall, so long as continually employed by the State-owned railroad without a break in service, continue to be subject to such law, except that the State-owned railroad shall have the option of providing benefits in accordance with the provisions of paragraph (2) of this subsection.

Employment by the State-owned railroad without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5. The State-owned railroad shall be the employing agency for purposes of section 8334(a) of title 5 and shall contribute to the Civil Service Retirement and Disability Fund a sum as provided by such section, except that such sum shall be determined by applying to the total basic pay (as defined in section 8331(3) of title 5) paid to the employees of the State-owned railroad who are covered by the civil service retirement law, the per centum rate determined annually by the Director of the Office of Personnel Management to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of title 5. The State-owned railroad shall pay into the Federal Civil Service Retirement and Disability Fund that portion of the cost of administration of such Fund which is demonstrated by the Director of the Office of Personnel Management to be attributable to its employees.

(2) At any time during the two-year period commencing on the date of transfer, the State-owned railroad shall have the option of providing to transferred employees retirement benefits, reflecting prior Federal service, in or substantially equivalent to benefits under the retirement program maintained by the State for State employees. If the State decides to provide benefits under this paragraph, the State shall provide such benefits to all transferred employees, except those employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5 within five years after the date of transfer and who elect to remain participants in the Federal retirement program.

(3) If the State provides benefits under paragraph (2) of this subsection—

(A) the provisions of paragraph (1) of this subsection regarding payments into the Civil Service Retirement and Disability Fund for those employees who are transferred to the State program shall have no further force and effect (other than for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5 within five years after the date of transfer and who elect to remain participants in the Federal retirement program); and

(B) all of the accrued employee and employer contributions and accrued interest on such contributions made by and on behalf of the transferred employees during their prior Federal service (other than amounts for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5 within five years after the date of transfer and who elect to remain participants in the Federal retirement program) shall be withdrawn from the Federal Civil Service Retirement and Disability Fund and shall be paid into the retirement fund utilized by the State-owned railroad for the transferred employees, in accordance with the provisions of paragraph (2) of this subsection. Upon such payment, credit for prior Federal service under the Federal civil service retirement system shall be forever barred, notwithstanding the provisions of section 8334 of title 5.

(4)(A) The State-owned railroad shall be included in the definition of "agency" for purposes of

section 3(a), (b), (c), and (e) of the Federal Workforce Restructuring Act of 1994 and may elect to participate in the voluntary separation incentive program established under such Act. Any employee of the State-owned railroad who meets the qualifications as described under the first sentence of paragraph (1) shall be deemed an employee under such Act.

(B) An employee who has received a voluntary separation incentive payment under this paragraph and accepts employment with the State-owned railroad within 5 years after the date of separation on which payment of the incentive is based shall be required to repay the entire amount of the incentive payment unless the head of the State-owned railroad determines that the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(b) Coverage for employees not transferring to State-owned railroad

Employees of the Alaska Railroad who do not transfer to the State-owned railroad shall be entitled to all of the rights and benefits available to them under Federal law for discontinued employees.

(c) Rights and benefits of transferred employees whose employment with State-owned railroad is terminated

Transferred employees whose employment with the State-owned railroad is terminated during the two-year period commencing on the date of transfer shall be entitled to all of the rights and benefits of discontinued employees that such employees would have had under Federal law if their termination had occurred immediately before the date of the transfer, except that financial compensation paid to officers of the Alaska Railroad shall be limited to that compensation provided pursuant to section 1203(d)(3)(E) of this title. Such employees shall also be entitled to seniority and other benefits accrued under Federal law while they were employed by the State-owned railroad on the same basis as if such employment had been Federal service.

(d) Lump-sum payment for unused annual leave for employees transferring to State-owned railroad

Any employee who transfers to the State-owned railroad under this chapter shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, but shall be credited by the State with the unused annual leave balance at the time of transfer.

(e) Continued coverage for certain employees and annuitants in Federal health benefits plans and life insurance plans

(1) Any person described under the provisions of paragraph (2) may elect life insurance coverage under chapter 87 of title 5 and enroll in a health benefits plan under chapter 89 of title 5 in accordance with the provisions of this subsection.

(2) The provisions of paragraph (1) shall apply to any person who—

(A) on March 30, 1994, is an employee of the State-owned railroad;

(B) has 20 years or more of service (in the civil service as a Federal employee or as an employee of the State-owned railroad, combined) on the date of retirement from the State-owned railroad; and

(C)(i) was covered under a life insurance policy pursuant to chapter 87 of title 5 on January 4, 1985, for the purpose of electing life insurance coverage under the provisions of paragraph (1); or

(ii) was enrolled in a health benefits plan pursuant to chapter 89 of title 5 on January 4, 1985, for the purpose of enrolling in a health benefits plan under the provisions of paragraph (1).

(3) For purposes of this section, any person described under the provisions of paragraph (2) shall be deemed to have been covered under a life insurance policy under chapter 87 of title 5 and to have been enrolled in a health benefits plan under chapter 89 of title 5 during the period beginning on January 5, 1985, through the date of retirement of any such person.

(4) The provisions of paragraph (1) shall not apply to any person described under paragraph (2) until the date such person retires from the State-owned railroad.

(Pub. L. 97-468, title VI, §607, Jan. 14, 1983, 96 Stat. 2571; Pub. L. 100-238, title I, §136(a), Jan. 8, 1988, 101 Stat. 1766; Pub. L. 103-226, §10, Mar. 30, 1994, 108 Stat. 122.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Workforce Restructuring Act of 1994, referred to in subsec. (a)(4)(A), is Pub. L. 103–226, Mar. 30, 1994, 108 Stat. 111. Section 3 of the Act is set out as a note under section 5597 of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 2101 of Title 5 and Tables.

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103–226, §10(a), added par. (4).

Subsec. (e). Pub. L. 103–226, §10(b), added subsec. (e) and struck out former subsec. (e) which related to continued coverage for certain employees and annuitants in Federal health benefits and life insurance plans.

1988—Subsec. (e). Pub. L. 100–238 added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

ADMINISTRATIVE PROVISION

Pub. L. 100–238, title I, §136(b), Jan. 8, 1988, 101 Stat. 1767, provided that: "Within 180 days after the date of enactment of this section [Jan. 8, 1988], the Director of the Office of Personnel Management shall notify any person described under the provisions of section 607(e)(2)(A) of such Act [45 U.S.C. 1206(e)(2)(A)], for the purpose of the election of a life insurance policy or the enrollment in a health benefits plan pursuant to the provisions of section 607(e)(1) of the Alaska Railroad Transfer Act of 1982 [45 U.S.C. 1206(e)(1)] (as amended by subsection (a) of this section)."

§1207. State operation

(a) Laws, authorities, etc., applicable to State-owned railroad with status as rail carrier engaged in interstate and foreign commerce

(1) After the date of transfer to the State pursuant to section 1203 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to part A of subtitle IV of title 49 and all other Acts applicable to rail carriers subject to that chapter,¹ including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), the Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). Nothing in this chapter shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

(2) The transfer to the State authorized by section 1203 of this title and the conferral of jurisdiction to the Interstate Commerce Commission pursuant to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713² of title 49, notwithstanding any participation in such agreements by connecting water carriers.

(3) All memoranda which sanction noncompliance with Federal railroad safety regulations contained in 49 CFR Parts 209–236, and which are in effect on the date of transfer, shall continue in effect according to their terms as "waivers of compliance" (as that term is used in section 20103(d) of title 49).

(4) The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

(5) Revenues generated by the State-owned railroad, including any amount appropriated or otherwise made available to the State-owned railroad, shall be retained and managed by the State-owned railroad for railroad and related purposes.

(6)(A) After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of title 26. Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1) ² of title 26, but not obligations within the meaning of section 103(b)(2) ² of title 26.

(B) Nothing in this chapter shall be deemed or construed to affect customary tax treatment of private investment in the equipment or other assets that are used or owned by the State-owned railroad.

(b) Procedures for issuance of certificate of public convenience and necessity; inventory, valuation, or classification of property; additional laws, authorities, etc., applicable

As soon as practicable after January 14, 1983, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V ² of chapter 107 of title 49 shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 382(b) of the Energy Policy and Conservation Act (42 U.S.C. 6362(b)) shall not apply to actions of the Commission under this subsection.

(c) Eligibility for participation in Federal railroad assistance programs

The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to part A of subtitle IV of title 49.

(d) Laws and regulations applicable to national forest and park lands; limitations on Federal actions

After the date of transfer to the State pursuant to section 1203 of this title, the portion of the rail properties within the boundaries of the Chugach National Forest and the exclusive-use easement within the boundaries of the Denali National Park and Preserve shall be subject to laws and regulations for the protection of forest and park values. The right to fence the exclusive-use easement within Denali National Park and Preserve shall be subject to the concurrence of the Secretary of the Interior. The Secretary of the Interior, or the Secretary of Agriculture where appropriate, shall not act pursuant to this subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under this chapter.

(e) Preservation and protection of rail properties

The State-owned railroad may take any necessary or appropriate action, consistent with Federal railroad safety laws, to preserve and protect its rail properties in the interests of safety.

(Pub. L. 97-468, title VI, §608, Jan. 14, 1983, 96 Stat. 2573; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104-88, title III, §326, Dec. 29, 1995, 109 Stat. 951; Pub. L. 108-447, div. H, title I, §152(1), (2), Dec. 8, 2004, 118 Stat. 3222.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

The Railroad Retirement Tax Act, referred to in subsec. (a)(1), is act Aug. 16, 1954, ch. 736, §§3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, as amended, which is classified generally to chapter 22

(§3201 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

The Railway Labor Act, referred to in subsec. (a)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), referred to in subsec. (a)(1), is act Apr. 22, 1908, ch. 149, 35 Stat. 65, as amended, and is classified generally to chapter 2 (§51 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 51 of this title and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (a)(1), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

Section 10713 of title 49, referred to in subsec. (a)(2), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804. Provisions similar to those in section 10713 are contained in section 10709 of Title 49.

Section 103, referred to in subsec. (a)(6)(A), which related to interest on certain governmental obligations was amended generally by Pub. L. 99–514, title XIII, §1301(a), Oct. 22, 1986, 100 Stat. 2602, and as so amended relates to interest on State and local bonds. Section 103(b)(2), which prior to the general amendment defined industrial development bond, relates to the applicability of the interest exclusion to arbitrage bonds.

Subchapter V of chapter 107 of title 49, referred to in subsec. (b), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804.

The National Environmental Policy Act of 1969, referred to in subsec. (b), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

CODIFICATION

In subsec. (a)(3), "section 20103(d) of title 49" substituted for "section 202(c) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(c))" on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

2004—Subsec. (a)(5). Pub. L. 108–447, §152(1), inserted ", including any amount appropriated or otherwise made available to the State-owned railroad," before "shall be retained".

Subsec. (e). Pub. L. 108–447, §152(2), added subsec. (e).

1995—Subsecs. (a)(1), (c). Pub. L. 104–88 substituted "part A" for "the jurisdiction of the Interstate Commerce Commission under chapter 105".

1986—Subsec. (a)(6)(A). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

ALASKA RAILROAD

Pub. L. 109–59, title IX, §9006, Aug. 10, 2005, 119 Stat. 1925, provided that:

"(a) GRANTS.—The Secretary [of Transportation] shall make grants to the Alaska Railroad for capital

rehabilitation and improvements benefiting its passenger operations.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary."

Similar provisions were contained in Pub. L. 105–178, title VII, §7204, June 9, 1998, 112 Stat. 477.

¹ *So in original. Probably should be "that part."*

² *See References in Text note below.*

§1208. Future rights-of-way

(a) Access across Federal lands; application approval

After January 14, 1983, the State or State-owned railroad may request the Secretary of the Interior or the Secretary of Agriculture, as appropriate under law, to expeditiously approve an application for a right-of-way in order that the Alaska Railroad or State-owned railroad may have access across Federal lands for transportation and related purposes. The State or State-owned railroad may also apply for a lease, permit, or conveyance of any necessary or convenient terminal and station grounds and material sites in the vicinity of the right-of-way for which an application has been submitted.

(b) Consultative requirements prior to approval of application; conformance of rights-of-way, etc.

Before approving a right-of-way application described in subsection (a) of this section, the Secretary of the Interior or the Secretary of Agriculture, as appropriate, shall consult with the Secretary. Approval of an application for a right-of-way, permit, lease, or conveyance described in subsection (a) of this section shall be pursuant to applicable law. Rights-of-way, grounds, and sites granted pursuant to this section and other applicable law shall conform, to the extent possible, to the standards provided in the Act of March 12, 1914 (43 U.S.C. 975 et seq.) and section 1202(6) of this title. Such conformance shall not be affected by the repeal of such Act under section 615 of this title.

¹

(Pub. L. 97–468, title VI, §609, Jan. 14, 1983, 96 Stat. 2574; Pub. L. 108–7, div. I, title III, §345(5), Feb. 20, 2003, 117 Stat. 418.)

EDITORIAL NOTES

REFERENCES IN TEXT

Act of March 12, 1914 (43 U.S.C. 975 et seq.), referred to in subsec. (b), is act Mar. 12, 1914, ch. 37, 38 Stat. 305, as amended, popularly known as the Alaska Railroad Act, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97–468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title.

Section 615 of this title, referred to in subsec. (b), means section 615 of title VI of Pub. L. 97–468, Jan. 14, 1983, 96 Stat. 2577. Title VI of Pub. L. 97–468 is known as the Alaska Railroad Transfer Act of 1982 and is classified principally to this chapter. Under section 615, the repeal is effective on the date of transfer to the State of Alaska (pursuant to section 1203 of this title) or other disposition (pursuant to section 1210 of this title), whichever first occurs.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–7 struck out subsec. (c) which read as follows: "Reversion to the United States of any portion of any right-of-way or exclusive-use easement granted to the State or State-owned railroad shall occur only as provided in section 1209 of this title. For purposes of such section, the date of the approval of any such right-of-way shall be deemed the 'date of transfer'."

¹ *See References in Text note below.*

§1209. Repealed. Pub. L. 108–7, div. I, title III, §345(5), Feb. 20, 2003, 117 Stat. 418

Section, Pub. L. 97–468, title VI, §610, Jan. 14, 1983, 96 Stat. 2575, related to reversion from the State of railroad property to the United States.

§1210. Other disposition

If the Secretary has not certified that the State has satisfied the conditions under section 1203 of this title within one year after the date of delivery of the report referred to in section 1204(a) of this title, the Secretary may dispose of the rail properties of the Alaska Railroad. Any disposal under this section shall give preference to a buyer or transferee who will continue to operate rail service, except that—

(1) such preference shall not diminish or modify the rights of the Cook Inlet Region, Incorporated (as that term is used in section 12 of the Act of January 2, 1976 (Public Law 94–204; 89 Stat. 1150)), pursuant to such section, as amended by section 606(d) of this title; ¹ and

(2) this section shall not be construed to diminish or modify the powers of consent of the Secretary or the State under section 12(b)(8) of such Act, as amended by section 606(d)(5) of this title.¹

Any disposal under this section shall be subject to valid existing rights.

(Pub. L. 97–468, title VI, §611, Jan. 14, 1983, 96 Stat. 2576.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 12 of the Act of January 2, 1976, referred to in pars. (1) and (2), is section 12 of Pub. L. 94–204, Jan. 2, 1976, 89 Stat. 1150, as amended, which is set out as a note under section 1611 of Title 43, Public Lands.

Section 606(d) of this title, referred to in pars. (1) and (2), means section 606(d) of title VI of Pub. L. 97–468, Jan. 14, 1983, 96 Stat. 2566.

¹ [*See References in Text note below.*](#)

§1211. Denali National Park and Preserve lands

On the date of transfer to the State (pursuant to section 1203 of this title) or other disposition (pursuant to section 1210 of this title), that portion of rail properties of the Alaska Railroad within the Denali National Park and Preserve shall, subject to the exclusive-use easement granted pursuant to section 1203(b)(1)(D) of this title, be transferred to the Secretary of the Interior for administration as part of the Denali National Park and Preserve, except that a transferee under section 1210 of this title shall receive the same interest as the State under section 1203(b)(1)(D) of this title.

(Pub. L. 97–468, title VI, §612, Jan. 14, 1983, 96 Stat. 2576.)

§1212. Applicability of other laws

(a) Actions subject to other laws

The provisions of chapter 5 of title 5 (popularly known as the Administrative Procedure Act, and including provisions popularly known as the Government in the Sunshine Act), the Federal Advisory

Committee Act (5 U.S.C. App. 1 et seq.), division A of subtitle III of title 54, section 303 of title 49, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to actions taken pursuant to this chapter, except to the extent that such laws may be applicable to granting of rights-of-way under section 1208 of this title.

(b) Federal surplus property disposal; withdrawal or reservation of land for use of Alaska Railroad

The enactment of this chapter, actions taken during the transition period as provided in section 1204 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this chapter shall be deemed not to be the disposal of Federal surplus property under sections 541 to 555 of title 40 or the Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944" (50 U.S.C. App. 1622).¹ Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.), the Alaska Statehood Act (note preceding 48 U.S.C. 21), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), the Act of January 2, 1976 (Public Law 94–204; 89 Stat. 1145), the Alaska National Interest Lands Conservation Act (Public Law 96–487; 94 Stat. 2371), and the general land and land management laws of the United States.

(c) Ceiling on Government contributions for Federal employees health benefits insurance premiums

Beginning on January 14, 1983, the ceiling on Government contributions for Federal employees health benefits insurance premiums under section 8906(b)(2) of title 5 shall not apply to the Alaska Railroad.

(d) Acreage entitlement of State or Native Corporation

Nothing in this chapter is intended to enlarge or diminish the acreage entitlement of the State or any Native Corporation pursuant to existing law.

(e) Judgments involving interests, etc., of Native Corporations

With respect to interests of Native Corporations under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), except as provided in this chapter, nothing contained in this chapter shall be construed to deny, enlarge, grant, impair, or otherwise affect any judgment heretofore entered in a court of competent jurisdiction, or valid existing right or claim of valid existing right.

(Pub. L. 97–468, title VI, §613, Jan. 14, 1983, 96 Stat. 2577; Pub. L. 113–287, §5(m)(2), Dec. 19, 2014, 128 Stat. 3271.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Administrative Procedure Act, referred to in subsec. (a), is act June 11, 1946, ch. 324, 60 Stat. 237, as amended, which was classified to sections 1001 to 1011 of former title 5 and which was repealed and reenacted as subchapter II (§551 et seq.) of chapter 5, and chapter 7 (§701 et seq.), of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

The Government in the Sunshine Act, referred to in subsec. (a), is Pub. L. 94–409, Sept. 13, 1976, 90 Stat. 1241, which enacted section 552b of Title 5, Government Organization and Employees, amended sections 551, 552, 556, and 557 of Title 5, section 10 of Pub. L. 92–463, set out in the Appendix to Title 5, and section 410 of Title 39, Postal Service, and enacted provisions set out as notes under section 552b of Title 5. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 552b of Title 5 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (a), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

Act of October 3, 1944, popularly referred to as the "Surplus Property Act of 1944", referred to in subsec. (b), is act Oct. 3, 1944, ch. 479, 58 Stat. 765, known as the Surplus Property Act of 1944, which was classified principally to sections 1611 to 1646 of the former Appendix to Title 50, War and National Defense, and was repealed effective July 1, 1949, with the exception of sections 1622, 1631, 1637, and 1641 of the former Appendix to Title 50 by act June 30, 1949, ch. 288, title VI, §602(a)(1), 63 Stat. 399, renumbered Sept. 5, 1950, ch. 849, §6(a), (b), 64 Stat. 583. Sections 1622 and 1641 were partially repealed by the 1949 act, and section 1622 was editorially reclassified and is set out as a note under section 545 of Title 40, Public Buildings, Property, and Works. Section 1622(g) was repealed and reenacted as sections 47151 to 47153 of Title 49, Transportation, by Pub. L. 103–272, §§1(e), 7(b), July 5, 1994, 108 Stat. 1278–1280, 1379. Section 1631 was repealed by act June 7, 1939, ch. 190, §6(e), as added by act July 23, 1946, ch. 590, 60 Stat. 599, and is covered by sections 98 et seq. of Title 50. Section 1637 was repealed by act June 25, 1948, ch. 645, §21, 62 Stat. 862, eff. Sept. 1, 1948, and is covered by section 3287 of Title 18, Crimes and Criminal Procedure. Provisions of section 1641 not repealed by the 1949 act were repealed by Pub. L. 87–256, §111(a)(1), Sept. 21, 1961, 75 Stat. 538, and are covered by chapter 33 (§2451 et seq.) of Title 22, Foreign Relations and Intercourse.

Act of March 12, 1914, referred to in subsec. (b), is act Mar. 12, 1914, ch. 37, 38 Stat. 305, as amended, popularly known as the Alaska Railroad Act, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97–468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title.

The Alaska Statehood Act, referred to in subsec. (b), is Pub. L. 85–508, July 7, 1958, 72 Stat. 339, as amended, which is set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For complete classification of this Act to the Code, see Tables.

The Alaska Native Claims Settlement Act, referred to in subsecs. (b) and (e), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Act of January 2, 1976 (Public Law 94–204; 89 Stat. 1145), referred to in subsec. (b), amended the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). For complete classification of this Act to the Code, see Tables.

The Alaska National Interest Lands Conservation Act, referred to in subsecs. (b) and (e), is Pub. L. 96–487, Dec. 2, 1980, 94 Stat. 2371, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 16, Conservation, and Tables.

CODIFICATION

In subsec. (a), "section 303 of title 49" substituted for "section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f))" on authority of Pub. L. 97–449, §6(b), Jan. 12, 1983, 96 Stat. 2443, the first section of which enacted subtitle I (§101 et seq.) and chapter 31 (§3101 et seq.) of subtitle II of Title 49, Transportation.

In subsec. (b), "sections 541 to 555 of title 40" substituted for "the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–287 substituted "division A of subtitle III of title 54" for "the National Historic Preservation Act (16 U.S.C. 470 et seq.)".

¹ [*See References in Text note below.*](#)

§1213. Conflict with other laws

The provisions of this chapter shall govern if there is any conflict between this chapter and any other law.

(Pub. L. 97–468, title VI, §614, Jan. 14, 1983, 96 Stat. 2577.)

§1214. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Pub. L. 97-468, title VI, §616, Jan. 14, 1983, 96 Stat. 2578.)

CHAPTER 22—CONRAIL PRIVATIZATION

SUBCHAPTER I—GENERAL PROVISIONS

Sec.

- 1301. Findings.
- 1302. Purposes.
- 1303. Definitions.

SUBCHAPTER II—CONRAIL

PART A—SALE OF CONRAIL

- 1311. Preparation for public offering.
- 1312. Public offering.
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- 1321. Rail service obligations.
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- 1341. Abolition of United States Railway Association.
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SUBCHAPTER I—GENERAL PROVISIONS

§1301. Findings

The Congress finds that—

(1) the bankruptcy of the Penn Central and other railroads in the Northeast and Midwest resulted in a transportation emergency which required the intervention of the Federal Government;

(2) the United States Government created the Consolidated Rail Corporation, which provides essential rail service to the Northeast and Midwest;

(3) the future of rail service in the Northeast and Midwest is essential and must be protected through rail service obligations, consistent with the transfer of the Corporation to the private sector;

(4) the Northeast Rail Service Act of 1981 has achieved its purpose in allowing the Corporation to become financially self-sustaining;

(5) the Federal Government has invested over \$7,000,000,000 in providing rail service to the Northeast and Midwest;

(6) the Government, as a result of its ownership and investment of taxpayer dollars in the Corporation, controls substantial assets, including cash of approximately \$1,000,000,000;

(7) the Corporation's viability and sound performance allow it to be sold to the American public for a substantial sum through a public offering;

(8) a public offering of the Corporation's stock will preserve competitive rail service in the region, provide a reasonable return to the Government, and protect employment;

(9) the Corporation's employees contributed significantly to the turnaround in the Corporation's financial performance and they should share in the Corporation's success through a settlement of their claims for reimbursement for wages below industry standard, and a share in the common equity of the Corporation;

(10) the requirements of section 761(e) ¹ of this title are met by this chapter; and

(11) the Secretary of Transportation has discharged the responsibilities of the Department of Transportation under the Northeast Rail Service Act of 1981 with respect to the sale of the Corporation as a single entity.

(Pub. L. 99–509, title IV, §4002, Oct. 21, 1986, 100 Stat. 1893.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Northeast Rail Service Act of 1981, referred to in pars. (4) and (11), is subtitle E of title XI of Pub. L. 97–35, §§1131–1169, Aug. 13, 1981, 95 Stat. 643, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Section 761 of this title, referred to in par. (10), was repealed by Pub. L. 99–509, title IV, §4033(a)(1), Oct. 21, 1986, 100 Stat. 1908.

This chapter, referred to in par. (10), was in the original "this subtitle" meaning subtitle A (§§4001–4052) of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1892, known as the Conrail Privatization Act, which is classified principally to this chapter. For complete classification of subtitle A to the Code, see Short Title note set out below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Section 4001(a) of subtitle A (§§4001–4052) of title IV of Pub. L. 99–509 provided that: "This subtitle [enacting this chapter, amending sections 702, 726, 727, 741, 797, 821, 825, 829, 831, 1105, 1115, and 1116 of this title and sections 10362 and 10713 of Title 49, Transportation, repealing sections 761 to 769c, 797l, 825a, 1107, 1110, and 1114 of this title, and enacting provisions set out as a note under section 797 of this title] may be cited as the 'Conrail Privatization Act'."

¹ [*See References in Text note below.*](#)

§1302. Purposes

The purposes of this chapter are to transfer the interest of the United States in the common stock of the Corporation to the private sector in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of its rail service in the Northeast and Midwest, provides for the protection of the public interest in a sound rail transportation system, and, to the extent not inconsistent with such purposes, secures the maximum proceeds to the United States.

(Pub. L. 99–509, title IV, §4003, Oct. 21, 1986, 100 Stat. 1893.)

§1303. Definitions

For the purposes of this chapter—

(1) the term "capital expenditures" means amounts expended by the Corporation and its subsidiaries for replacement or rehabilitation of, or enhancements to, the railroad plant, property, trackage, and equipment of the Corporation and its subsidiaries, as determined in accordance with

generally accepted accounting principles, and in interpreting generally accepted accounting principles, no amount spent on normal repair, maintenance, and upkeep of such railroad plant, property, trackage, and equipment in the ordinary course of business shall constitute capital expenditures;

(2) the term "Commission" means the Interstate Commerce Commission;

(3) the term "consolidated funded debt" means the aggregate, after eliminating intercompany items, of all funded debt of the Corporation and its consolidated subsidiaries, consolidated in accordance with generally accepted accounting principles;

(4) the term "consolidated tangible net worth" means the market value of the common equity of the Corporation as of the sale date, plus or minus the change from the sale date to the date of measurement in the excess, after making appropriate deductions for any minority interest in the net worth of subsidiaries, of—

(A) the assets of the Corporation and its subsidiaries (excluding intercompany items) which, in accordance with generally accepted accounting principles, are tangible assets, after deducting adequate reserves in each case where, in accordance with generally accepted accounting principles, a reserve is proper, over

(B) all liabilities of the Corporation and its subsidiaries (excluding intercompany items),

taking into account inventory and securities on the basis of the cost or current market value, whichever is lower, and not taking into account patents, trademarks, trade names, copyrights, licenses, goodwill, treasury stock, or any write-up in the book value of any assets;

(5) the term "Corporation" means the Consolidated Rail Corporation;

(6) the term "cumulative net income" means, for any period, the net income of the Corporation and its consolidated subsidiaries as determined in accordance with generally accepted accounting principles, before provision for expenses (net of income tax effect) related to—

(A) amounts paid by the Corporation under section 4024(e), and comparable payments made to present and former employees of the Corporation not covered by such section; and

(B) the aggregate value of any shares and cash distributed by the Corporation under section 4024(f);

(7) the term "debt" means (A) indebtedness, whether or not represented by bonds, debentures, notes, or other securities, for the repayment of money borrowed, (B) deferred indebtedness for the payment of the purchase price of property or assets purchased, (C) guarantees, endorsements, assumptions, and other contingent obligations in respect of, or to purchase or to otherwise acquire, indebtedness of others, and (D) indebtedness secured by any mortgage, pledge, or lien existing on property owned, subject to such mortgage, pledge, or lien, whether or not indebtedness secured thereby shall have been assumed;

(8) the term "funded debt" means all debt created, assumed, or guaranteed, directly or indirectly, by the Corporation and its subsidiaries which matures by its terms, or is renewable at the option of the Corporation or any such subsidiary to a date, more than 1 year after the date of the original creation, assumption, or guarantee of such debt by the Corporation or such subsidiary;

(9) the term "liabilities" means all items of indebtedness or liability which, in accordance with generally accepted accounting principles, would be included in determining total liabilities as shown on the liabilities side of a balance sheet as at the date as of which liabilities are to be determined;

(10) the term "person" means an individual, corporation, partnership, association, trust, or other entity or organization, including a government or political subdivision thereof or a governmental body;

(11) the term "preferred stock" means any class or series of preferred stock, and any class or series of common stock having liquidation and dividend rights and preferences superior to the common stock of the Corporation offered for sale under section 1312 of this title;

(12) the term "public offering" means an underwritten offering to the public of such common stock of the Corporation as the Secretary of Transportation determines to sell under section 1312

of this title;

(13) the term "sale date" means the date on which the initial public offering is closed;

(14) the term "subsidiary" means any corporation more than 50 percent of whose outstanding voting securities are directly or indirectly owned by the Corporation; and

(15) the term "United States share" means a share of common stock of the Corporation held by the United States Government on October 21, 1986, or as a result of any split required pursuant to section 1312(d) of this title.

(Pub. L. 99–509, title IV, §4004, Oct. 21, 1986, 100 Stat. 1894.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4024(e) and section 4024(f), referred to in par. (6), are section 4024(e) and (f) of Pub. L. 99–509, and are set out as a note under section 797 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

SUBCHAPTER II—CONRAIL

PART A—SALE OF CONRAIL

§1311. Preparation for public offering

(a) Public offering managers

(1) Not later than 30 days after October 21, 1986, the Secretary of Transportation, in consultation with the Secretary of the Treasury and the Chairman of the Board of Directors of the Corporation, shall retain the services of investment banking firms to serve jointly and be compensated equally as co-lead managers of the public offering (hereafter in this part referred to as the "co-lead managers") and to establish a syndicate to underwrite the public offering. The total number of co-lead managers shall be no fewer than 4 nor greater than 6. The Secretary shall designate one co-lead manager to coordinate and administer the public offering.

(2) In selecting the investment banking firms to serve as co-lead managers of the public offering under paragraph (1), consideration shall be given to the firm's institutional and retail distribution capabilities, financial strength, knowledge of the railroad industry, experience in large scale public offerings, research capability, and reputation. In addition, recognition shall also be given to contributions made by particular investment banking firms before October 21, 1986, in demonstrating and promoting the long-term financial viability of the Corporation.

(b) Payment to United States

(1) Not later than 30 days after October 21, 1986, the Corporation shall transfer to the Secretary of the Treasury \$200,000,000.

(2) On or before February 1, 1987, or 30 days before the sale date, whichever occurs first, the Secretary of Transportation shall determine whether to require the Corporation to transfer to the Secretary of the Treasury, in addition to amounts transferred under paragraph (1), not to exceed \$100,000,000, taking into account the viability of the Corporation. The Corporation shall transfer such funds as are required to be transferred under this paragraph.

(c) Registration statement

The Corporation shall prepare and cause to be filed with the Securities and Exchange Commission a registration statement with respect to the securities to be offered and sold in accordance with the securities laws and the rules and regulations thereunder in connection with the initial and any subsequent public offering.

(d) Omitted

(Pub. L. 99–509, title IV, §4011, Oct. 21, 1986, 100 Stat. 1895.)

EDITORIAL NOTES

REFERENCES IN TEXT

This part, referred to in subsec. (a), was in the original "this subpart" meaning subpart A (§§4011–4013) of part 2 of subtitle A of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1895, which enacted this part and amended section 726 of this title. For complete classification of subpart A to the Code, see Tables.

CODIFICATION

Subsec. (d) of this section amended section 726 of this title.

§1312. Public offering

(a) Structure of public offering

(1) After the registration statement referred to in section 1311(c) of this title is declared effective by the Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-lead managers, shall offer the United States shares for sale in a public offering, except as provided in paragraphs (2) and (3).

(2) The Secretary of Transportation, after such consultation, may elect to offer less than all of the United States shares for sale at the time of the initial sale.

(3) Under no circumstances shall the Secretary of Transportation offer any of the United States shares for sale unless, before the sale date, the Secretary determines, after such consultation, that the estimated sum of the gross proceeds from the sale of all the United States shares will be an adequate amount. A determination by the Secretary under this paragraph shall not be reviewable.

(4) In making a determination under paragraph (3), the Secretary shall have the goal of obtaining at least \$2,000,000,000 in aggregate gross proceeds for the United States from the public offering and any payments made under section 1311(b) of this title.

(b) Subsequent sales

If the Secretary of Transportation elects to offer for sale less than all the United States shares, the Secretary shall sell the remaining United States shares in subsequent public offerings.

(c) Consent of Corporation not required

Any public offering under this section may be made without the consent of the Corporation.

(d) Authority to require stock splits

(1) The Secretary of Transportation, in consultation with the co-lead managers and the Chairman of the Board of Directors of the Corporation, may, in connection with the initial public offering described in subsection (a), before the filing of the registration statement referred to in section 1311(c) of this title, require the Corporation to declare a stock split or reverse stock split.

(2) The Corporation shall take such action as may be necessary to comply with the Secretary's requirements under this subsection.

(e) Cancellation of other securities held by United States

(1) In consideration for amounts transferred to the United States under section 1311(b) of this title, the Secretary of Transportation shall, concurrent with the initial public offering described in subsection (a), deliver to the Corporation all preferred stock, 7.5 percent debentures, and contingent interest notes of the Corporation. The Corporation shall immediately cancel such debentures, preferred stock, and contingent interest notes, and any interest of the United States in such debentures, preferred stock, and contingent interest notes shall be thereby extinguished.

(2) For purposes of regulation by the Commission and State public utility regulation, the actions authorized by this subsection, the public offering, and the value of the consideration received therefor shall not change the value of the Corporation's assets net of depreciation and shall not be used to alter the calculation of the Corporation's stock or asset values, rate base, expenses, costs, returns, profits, or revenues, or otherwise affect or be the basis for a change in the regulation of any railroad service, rate, or practice provided or established by the Corporation, or any change in the financial reporting practice of the Corporation.

(f) Minority investment banking firms

The Secretary of Transportation shall ensure that minority owned or controlled investment banking firms shall have an opportunity to participate to a significant degree in any public offering under this subchapter.

(g) Investment banking firm requirements

(1) The level of any investment banking firm's participation in the public offering shall be consistent with that firm's financial capabilities.

(2) No investment banking firm which was not in existence on September 1, 1986, shall participate in the public offering.

(h) Government Accountability Office authority to conduct audits

The Government Accountability Office may make such audits as may be deemed appropriate by the Comptroller General of the United States of all accounts, books, records, memoranda, correspondence, and other documents and transactions of the Corporation and the co-lead managers associated with the public offering. The co-lead managers shall agree, in writing, to allow the Government Accountability Office to make such audits. The Government Accountability Office shall report the results of all such audits to the Congress.

(Pub. L. 99–509, title IV, §4012, Oct. 21, 1986, 100 Stat. 1896; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsec. (f), was in the original "this part" meaning part 2 (§§4011–4038) of subtitle A of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1895, which enacted this subchapter, amended sections 702, 726, 727, 741, 797, 821, 825, 829, 831, 1105, 1115, and 1116 of this title and section 10362 of Title 49, Transportation, repealed sections 761 to 769c, 797l, 825a, 1107, 1110, and 1114 of this title, and enacted provisions set out as a note under section 797 of this title. For complete classification of part 2 to the Code, see Tables.

AMENDMENTS

2004—Subsec. (h). Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office" in heading and wherever appearing in text.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

§1313. Fees

(a) Investment banking firm fees

The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall agree to pay to investment banking firms and other persons participating with such firms in the public offering the absolute minimum amount in fees necessary to carry out the public offering.

(b) Costs of public offering

All costs of the public offering payable by the Secretary of Transportation shall be paid from the proceeds of the public offering.

(Pub. L. 99–509, title IV, §4013, Oct. 21, 1986, 100 Stat. 1897.)

PART B—OTHER MATTERS RELATING TO SALE

§1321. Rail service obligations

(a) Obligations of Corporation

During a period of 5 years beginning on October 21, 1986, the following obligations shall apply to the Corporation:

(1) The Corporation shall spend in each fiscal year the greater of (A) an amount equal to the Corporation's depreciation for financial reporting purposes for such year or (B) \$500,000,000, in capital expenditures. With respect to any fiscal year, the Corporation's Board of Directors may reduce the required capital expenditures for such year to an amount which the Board determines is justified by prudent business and engineering practices, except that the Corporation's capital expenditures shall not be less than \$350,000,000 for its first fiscal year beginning after the sale date, a total of \$700,000,000 for its first two fiscal years beginning after the sale date, a total of \$1,050,000,000 for its first three fiscal years beginning after the sale date, a total of \$1,400,000,000 for its first four fiscal years beginning after the sale date, and a total of \$1,750,000,000 for its first five fiscal years beginning after the sale date.

(2) Repealed. Pub. L. 101–213, §2(b)(3), Dec. 11, 1989, 103 Stat. 1843.

(3) The Corporation shall continue its affirmative action program and its minority vendor program, substantially as such programs were being conducted by the Corporation as of February 8, 1985, subject to any provisions of applicable law.

(4) The Corporation shall not permit to occur any transaction or series of transactions (other than in the ordinary course of business of the Corporation and its subsidiaries) whereby all or any substantial part of the railroad assets and business of the Corporation and its subsidiaries taken as a whole are sold, leased, transferred, or otherwise disposed of to any corporation or entity other than to a wholly owned subsidiary of the Corporation.

(5) The Corporation shall offer any line for which an abandonment certificate is issued by the Commission to a purchaser who agrees to provide interconnecting rail service. Such offer shall

last for the 120-day period following the date of issuance of the abandonment certificate and the price for such abandoned line shall be equal to 75 percent of net liquidation value as determined by the Commission, pursuant to regulations that had been issued under section 748 of this title.

(6) The Corporation and its subsidiaries shall maintain, preserve, protect, and keep their respective properties in good repair, working order, and condition, and shall not permit deferral of normal and prudent maintenance necessary to provide and maintain rail service.

(b) Compliance certificates

(1) Within 90 days after the close of each of its fiscal years, or at the time its financial statements have been audited, whichever occurs later, the Corporation shall deliver to the Secretary of Transportation a certificate executed by an executive officer of the Corporation. Such certificate shall certify that, as of such date, the Corporation is in compliance with all requirements (other than the requirement regarding a common stock dividend or a preferred stock dividend) set forth in this section. Such certificate shall include audited consolidated financial statements.

(2) Within 5 days after the declaration of any common stock dividend or preferred stock dividend, the Corporation shall deliver to the Secretary of Transportation a certificate executed by an executive officer of the Corporation. Such certificate shall certify that, after giving effect to any such dividend, the Corporation shall be in compliance with any requirement regarding a common stock dividend or a preferred stock dividend set forth in this section. Such certificate shall include—

(A) quarterly financial statements; and

(B) a report of the Corporation's total capital expenditures,

for the period with respect to which the dividend has been declared, and the fiscal year to date, and shall compare such capital expenditures to the budgeted capital expenditures and to the capital expenditures during the comparable periods of the previous fiscal year.

(Pub. L. 99–509, title IV, §4021, Oct. 21, 1986, 100 Stat. 1898; Pub. L. 101–213, §2(b)(3), Dec. 11, 1989, 103 Stat. 1843.)

EDITORIAL NOTES

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101–213 struck out par. (2) which set forth circumstances under which Corporation could declare or pay a common or preferred stock dividend and defined terms "common stock dividend" and "preferred stock dividend".

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

§1322. Ownership limitations

(a) General

(1) During a period of 3 years beginning on the sale date, no person, directly or indirectly, may acquire or hold securities representing more than 10 percent of the total votes of all outstanding voting securities of the Corporation.

(2) This subsection shall not apply—

(A) to the employee stock ownership plan (or successor plans) of the Corporation,

- (B) to the Secretary of Transportation,
- (C) to a railroad as described under subsection (b),
- (D) to underwriting syndicates holding shares for resale, or
- (E) in the case of shares beneficially held for others, to commercial banks, broker-dealers, clearing corporations, or other nominees.

(b) Railroads

(1) During a period of 1 year beginning on the sale date, no railroad may purchase or hold, directly or indirectly, more than 10 percent of any class of stock of the Corporation. During such period, no railroad may file an application with the Commission for a merger or consolidation with the Corporation or the acquisition of control of the Corporation under section 11344 ¹ of title 49.

(2) During a period of 3 years beginning on the sale date, any railroad which purchases or holds any stock of the Corporation shall vote such stock in the same proportion as all other common stock of the Corporation is voted. After the expiration of 1 year after the sale date, the preceding sentence shall not apply to any railroad with respect to which the Commission has approved an application for a merger or consolidation with the Corporation or the acquisition of control of the Corporation under section 11344 ¹ of title 49.

(3) As used in this subsection, the term "railroad" means a class I railroad as determined by the Commission under the definition in effect on October 21, 1986, and includes any entity controlling, controlled by, or under common control with any railroad (other than the Corporation or its subsidiaries).

(Pub. L. 99-509, title IV, §4022, Oct. 21, 1986, 100 Stat. 1900.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 11344 of title 49, referred to in subsec. (b)(1), (2), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804. Provisions similar to those in section 11344 are contained in sections 11324 and 14303 of Title 49.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 1301 of Title 49.

¹ [*See References in Text note below.*](#)

§1323. Board of Directors

The Board of Directors of the Corporation shall be comprised as follows:

(1) Except as provided in paragraph (3), with respect to the period ending June 30, 1987, the board shall remain as it exists on October 21, 1986, with any vacancies being filled by directors nominated and elected by the remainder of the members of the board.

(2)(A) Except as provided in paragraph (3), with respect to the period beginning July 1, 1987, the board shall consist of—

- (i) 3 directors appointed by the Secretary of Transportation;
- (ii) the Chief Executive Officer and the Chief Operating Officer of the Corporation; and

(iii) 8 directors appointed from among persons knowledgeable in business affairs by the special court trustees named under subparagraph (C), in consultation with the Secretary of Transportation and the Chairman of the Board of Directors of the Corporation, and recognizing the need for and importance of—

- (I) continuity in the direction of the Corporation's business and affairs;
- (II) preserving the value of the investment of the United States in the Corporation;
- (III) preserving essential rail service provided by the Corporation; and
- (IV) providing for the sale of the United States shares.

(B) The Secretary of Transportation and the special court trustees may appoint directors under subparagraph (A) from among existing directors of the Corporation.

(C)(i) If more than 50 percent of the interest of the United States in the Corporation has not been sold before June 1, 1987, the special court established under section 719 of this title shall, on that date, name 3 trustees from among persons knowledgeable in business affairs to make the appointments required by subparagraph (A)(iii). The Corporation shall compensate the special court trustees in an amount to be specified by the special court, not to exceed the amount paid by the Corporation to its directors for comparable services.

(ii) No person shall be eligible to be appointed as a special court trustee under this subparagraph who, at any time during the 30 months immediately preceding such appointment, was an officer, employee, or director of the United States Railway Association, the Corporation, or the Department of Transportation.

(3)(A) After the sale date, one director shall be elected by the public shareholders of the Corporation for each increment of 12.5 percent of the interest of the United States in the Corporation that has been sold through public offering.

(B) With respect to the period ending June 30, 1987—

(i) the first director elected under this paragraph shall replace the member of the board who became a director most recently from among—

(I) directors appointed by the United States Railway Association, or elected under paragraph (1) to replace such a director, and

(II) directors appointed by the Secretary of Transportation, or elected under paragraph (1) to replace such a director;

(ii) the second director elected under this paragraph shall replace the member of the Board who became a director most recently from among directors described in clause (i)(I) or (II), whichever group the first director replaced under this subparagraph was not a member of; and

(iii) subsequent directors elected under this paragraph shall replace members alternately from the groups described in clause (i)(I) and (II).

(C) With respect to the period beginning July 1, 1987, directors elected under this paragraph shall replace directors appointed by the special court trustees under paragraph (2)(A)(iii), in the order designated by the special court trustees in a list to be issued at the time of such original appointments.

(D) With respect to the period beginning on the first date more than 50 percent of the interest of the United States in the Corporation has been sold through public offering and ending when 100 percent of such interest has been sold—

(i) all remaining members of the board referred to in paragraph (2)(A)(iii), and

(ii) with respect to the period ending June 30, 1987, all remaining members of the board, except 3 members appointed by the Secretary of Transportation and the Chief Executive Officer and the Chief Operating Officer of the Corporation,

shall be replaced by directors elected by the public shareholders of the Corporation.

(E) After 100 percent of the interest of the United States in the Corporation has been sold, any remaining directors appointed by the Secretary of Transportation, the United States Railway

Association, or the special court trustees referred to under paragraph (2)(A)(iii), shall be replaced by directors elected by the public shareholders of the Corporation.

(F) Nothing in this paragraph shall be construed to prohibit any director referred to in this section from being elected as a director by the public shareholders of the Corporation.

(4)(A) No director appointed or elected under this section shall be a special court trustee or an employee of the United States, except as elected by the public shareholders of the Corporation.

(B) No director appointed or elected under this section shall be an employee of the Corporation, except as provided in paragraph (2)(A)(ii) or as elected by the public shareholders of the Corporation.

(Pub. L. 99–509, title IV, §4023, Oct. 21, 1986, 100 Stat. 1901.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND TRANSFER OF FUNCTIONS

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

§1324. Certain enforcement relief

(a) Enforcement actions

The Secretary of Transportation, with respect to any provision of section 1321 or 1322 of this title, and any person who suffers direct and substantial economic injury as a result of an alleged violation by the Corporation, with respect to the provisions of section 1321(a)(1) and (2) ¹ of this title, and section 1322 of this title, may bring an action to require compliance with such provision.

(b) Special court

Any action brought under this subchapter shall be brought before the special court established under section 719 of this title. Such special court may limit the enforcement of a restriction under section 1321 of this title, if the effect of such restriction would be to substantially impair the continued viability of the Corporation.

(Pub. L. 99–509, title IV, §4025, Oct. 21, 1986, 100 Stat. 1905.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1321(a)(2) of this title, referred to in subsec. (a), was repealed by Pub. L. 101–213, §2(b)(3), Dec. 11, 1989, 103 Stat. 1843.

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND TRANSFER OF FUNCTIONS

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

¹ [*See References in Text note below.*](#)

PART C—MISCELLANEOUS PROVISIONS

§1341. Abolition of United States Railway Association

(a) Abolition and termination

(1) Effective April 1, 1987, the United States Railway Association is abolished.

(2) On January 1, 1987, all powers, duties, rights, and obligations of such association relating to the Corporation under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) shall be transferred to the Secretary of Transportation.

(3) The sole function of the United States Railway Association after January 1, 1987, shall be the termination of its affairs and the liquidation of its assets.

(b) Transfer of securities and responsibilities

(1) Any securities of the Corporation held by the United States Railway Association shall, upon ¹ October 21, 1986, be transferred to the Secretary of Transportation.

(2) If, on the date the United States Railway Association is abolished under subsection (a), such association shall not have completed the termination of its affairs and the liquidation of its assets, the duty of completing such winding up of its affairs and liquidation shall be transferred to the Secretary of Transportation, who for such purposes shall succeed to all remaining powers, duties, rights, and obligations of such association.

(c) Financing agreement

(1) On January 1, 1987, the Amended and Restated Financing Agreement, dated May 10, 1979, between the United States Railway Association and the Corporation, together with any and all rights and obligations of or on behalf of any person with respect to such agreement, shall terminate and be of no further force or effect, except for those provisions specifying terms and conditions for payments made to the United States with respect to debentures, preferred stock, and contingent interest notes.

(2) Effective as of the sale date, those provisions of the Financing Agreement referred to in paragraph (1) shall terminate.

(Pub. L. 99-509, title IV, §4031, Oct. 21, 1986, 100 Stat. 1906.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Regional Rail Reorganization Act of 1973, referred to in subsec. (a)(2), is Pub. L. 93-236, Jan. 2, 1974, 87 Stat. 985, as amended, which is classified principally to chapter 16 (§701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

¹ *So in original. Probably should be "on".*

§1342. Exemption from liability

(a) In general

No person referred to in section 726(f)(8)(C)(i), (ii), or (iii) of this title shall be liable, for money damages or otherwise, to any party if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty, in connection with any action taken under this subchapter, which such person in good faith reasonably believed to be required by law or vested in such person.

(b) Exception

This section shall not apply to claims arising out of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities, which claims

are in connection with a public offering under section 1312 of this title.
(Pub. L. 99–509, title IV, §4034, Oct. 21, 1986, 100 Stat. 1909.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

§1343. Charter amendment

Within 60 days after October 21, 1986, the Corporation shall amend its Articles of Incorporation to contain the following provision, which provision shall not be subject to amendment or repeal:

"It shall be a fundamental purpose of the Corporation to maintain continued rail service in its service area."

(Pub. L. 99–509, title IV, §4035, Oct. 21, 1986, 100 Stat. 1909.)

§1344. Status of Conrail after sale

The Corporation shall be a rail carrier as defined in section 10102 of title 49, notwithstanding this subchapter.

(Pub. L. 99–509, title IV, §4036, Oct. 21, 1986, 100 Stat. 1909; Pub. L. 104–88, title III, §332, Dec. 29, 1995, 109 Stat. 953.)

EDITORIAL NOTES

AMENDMENTS

1995—Pub. L. 104–88 substituted "section 10102" for "section 10102(19)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

§1345. Effect on contracts

Nothing in this subchapter shall affect any obligation of the Corporation to carry out its transportation contracts and equipment leases, equipment trusts, and conditional sales agreements, in accordance with their terms.

(Pub. L. 99–509, title IV, §4037, Oct. 21, 1986, 100 Stat. 1909.)

§1346. Resolution of certain issues

(a) Employee issues

Section 4024 completely and finally—

(1) extinguishes all employee rights, and any obligation of the United States, under section 761(e) ¹ of this title as in effect immediately before October 21, 1986;

(2) resolves any and all claims against the Corporation or any other person arising under the Definitive Agreement referred to in section 4024(d)(1) or any other agreement containing similar terms and conditions;

(3) resolves all claims to pay entitlements arising out of the pay increase deferrals by present and former employees of the Corporation under the Agreement of May 5, 1981, between Conrail and Certain Labor Organizations for Labor Contributions to Self-Sufficiency for Conrail;

(4) resolves all issues raised by notices served by representatives of such employees under section 156 of this title proposing repayment of or compensation for such deferrals; and

(5) resolves all claims against the Railway Labor Executives' Association or the Corporation by any adviser, consultant, or other person who has provided services to such association in connection with any matter referred to in this subchapter.

(b) Corporation actions

The Corporation shall not be considered to be in breach, default, or violation of any agreement to which it is a party, notwithstanding any provision of such agreement, because of any provision of this subchapter or any action the Corporation is required to take under this subchapter.

(c) Right to sue withdrawn

The United States hereby withdraws any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person for any legal, equitable, or other relief with respect to any claim arising out of, or resulting from, acts or omissions under this subchapter, except actions brought to require the Secretary of Transportation to perform duties or acts required under part A of this subchapter.

(Pub. L. 99-509, title IV, §4038, Oct. 21, 1986, 100 Stat. 1909.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4024, referred to in subsec. (a), is section 4024 of Pub. L. 99-509, which amended section 797 of this title, provided for repeal of section 797 of this title effective on the sale date of the Consolidated Rail Corporation, and enacted provisions set out as a note under section 797 of this title. Section 4024(d)(1) is set out as a note under section 797 of this title.

Section 761 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 99-509, title IV, §4033(a)(1), Oct. 21, 1986, 100 Stat. 1908.

Part A of this subchapter, referred to in subsec. (c), was in the original "subpart A" meaning subpart A (§§4011-4013) of part 2 of subtitle A of title IV of Pub. L. 99-509, Oct. 21, 1986, 100 Stat. 1895, which enacted part A of this subchapter and amended section 726 of this title. For complete classification of this Act to the Code, see Tables.

¹ [*See References in Text note below.*](#)

§1347. Tax treatment of Conrail public sale

(a) Treatment as new corporation

(1) In general

For periods after the public sale, for purposes of title 26, Conrail shall be treated as a new corporation which purchased all of its assets as of the beginning of the day after the date of the public sale for an amount equal to the deemed purchase price.

(2) Allocation among assets

The deemed purchase price shall be allocated among the assets of Conrail in accordance with

the temporary regulations prescribed under section 338 of title 26 (as such regulations were in effect on October 21, 1986). The Secretary shall establish specific guidelines for carrying out the preceding sentence so that the basis of each asset will be clearly ascertainable. For purposes of applying the regulations referred to in the first sentence, accounts receivable and materials and supplies shall be treated as cash equivalents.

(3) Deemed purchase price

For purposes of this subsection, the deemed purchase price is an amount equal to the gross amount received pursuant to the public sale, multiplied by a fraction—

(A) the numerator of which is 100 percent, and

(B) the denominator of which is the percentage (by value) of the stock of Conrail sold in the public sale.

The amount determined under the preceding sentence shall be adjusted under regulations prescribed by the Secretary for liabilities of Conrail and other relevant items.

(b) No income from cancellation of debt or preferred stock

No amount shall be included in the gross income of any person by reason of any cancellation of any obligation (or preferred stock) of Conrail in connection with the public sale.

(c) Disallowance of certain deductions

No deduction shall be allowed to Conrail for any amount which is paid after the date of the public sale to employees of Conrail for services performed on or before the date of the public sale.

(d) Waiver of certain employee stock ownership plan provisions

For purposes of determining whether the employee stock ownership plans of Conrail meet the qualifications of sections 401 and 501 of title 26—

(1) the limits of section 415 of such title (relating to limitations on benefits and contributions under qualified plans) shall not apply with respect to interests in stock transferred pursuant to this Act or a law heretofore enacted, and

(2) the 2-year waiting period for withdrawals shall not apply to withdrawals of amounts (or shares) in participants accounts in connection with the public sale.

(e) Definitions

For purposes of this section—

(1) Conrail

The term "Conrail" means the Consolidated Rail Corporation. Such term includes any corporation which was a subsidiary of Conrail immediately before the public sale.

(2) Public sale

The term "public sale" means the sale of stock in Conrail pursuant to a public offering under the Conrail Privatization Act [45 U.S.C. 1301 et seq.]. If there is more than 1 public offering under such Act, such term means the sale pursuant to the initial public offering under such Act.

(3) Secretary

The term "Secretary" means the Secretary of the Treasury or his delegate.

(Pub. L. 99-509, title VIII, §8021, Oct. 21, 1986, 100 Stat. 1954; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(1), is Pub. L. 99-509, Oct. 21, 1986, 100 Stat. 1874, as amended, known as the Omnibus Budget Reconciliation Act of 1986. For complete classification of this Act to the Code, see Tables.

The Conrail Privatization Act, referred to in subsec. (e)(2), is subtitle A (§§4001–4052) of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1892, which is classified principally to this chapter (§1301 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

CODIFICATION

This section was enacted as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of subtitle A of title IV of that Act, known as the Conrail Privatization Act, which comprises this chapter.

AMENDMENTS

1986—Subsecs. (a)(1), (2), (d). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.