Public Law 94-210
94th Congress

An Act

To improve the quality of rail services in the United States through regulatory reform, coordination of rail services and facilities, and rehabilitation and improvement financing, and for other purposes.

Feb. 5, 1976
[S. 2718]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles and sections according to the following table of contents, may be cited as the "Railroad Revitalization and Regulatory Reform Act of 1976":

Railroad Revitalization and Regulatory Reform Act of 1976.
45 USC 801 note.

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TITLE I—GENERAL PROVISIONS

DECLARATION OF POLICY

SEC. 101. (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— 45 USC 801.

(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.

DEFINITIONS

SEC. 102. As used in this Act, unless the context otherwise indicates, the term— 45 USC 802.

(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" means a common carrier by railroad or express, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)), and includes the National Railroad Passenger Corporation and the Alaska Railroad; and

(8) "Secretary" means the Secretary of Transportation or his designated representative.

TITLE II—RAILROAD RATES

EXPEDITIOUS DIVISIONS OF REVENUES

SEC. 201. Section 15(6) of the Interstate Commerce Act (49 U.S.C. 15(6)) is amended by (1) inserting "(a)" immediately after "(6)", and (2) adding at the end thereof the following three new subdivisions:

"(b) Notwithstanding any other provision of law, the Commission shall, within 180 days after the date of enactment of this subdivision, establish, by rule, standards and procedures for the conduct of proceedings for the adjustment of divisions of joint rates or fares (whether prescribed by the Commission or otherwise) in accordance with the provisions of this paragraph. The Commission shall issue a final order in all such proceedings within 270 days after the submission to the Commission of a case. If the Commission is unable to issue such a final order within such time, it shall issue a report to the Congress setting forth the reasons for such inability.

Report to Congress.

"(c) All evidentiary proceedings conducted pursuant to this paragraph shall be completed, in a case brought upon a complaint, within 1 year following the filing of the complaint, or, in a case brought upon the Commission's initiative, within 2 years following the commencement of such proceeding, unless the Commission finds that such a proceeding must be extended to permit a fair and expeditious completion of the proceeding. If the Commission is unable to meet any such time requirement, it shall issue a report to the Congress setting forth the reasons for such inability.

Report to Congress.

"(d) Whenever a proceeding for the adjustment of divisions of joint rates or fares (whether prescribed by the Commission or otherwise established) is commenced by the filing of a complaint with the Commission, the complaining carrier or carriers shall (i) attach thereto all of the evidence in support of their position, and (ii) during the course of such proceeding, file only rebuttal or reply evidence unless otherwise directed by order of the Commission. Upon receipt of a notice of intent to file a complaint pursuant to this paragraph, the Commission shall accord, to the party filing such notice, the same right to discovery that would be accorded to a party filing a complaint pursuant to this paragraph.".

RAILROAD RATEMAKING

SEC. 202. (a) Section 1(5) of the Interstate Commerce Act (49 U.S.C. 1(5)) is amended by inserting "(a)" immediately after "(5)" and by adding at the end thereof the following new sentence: "The

provisions of this subdivision shall not apply to common carriers by railroad subject to this part.".

(b) Section 1(5) of the Interstate Commerce Act (49 U.S.C. 1(5)), as amended by subsection (a) of this section, is further amended by adding at the end thereof the following new subdivisions:

"(b) Each rate for any service rendered or to be rendered in the transportation of persons or property by any common carrier by railroad subject to this part shall be just and reasonable. A rate that is unjust or unreasonable is prohibited and unlawful. No rate which contributes or which would contribute to the going concern value of such a carrier shall be found to be unjust or unreasonable, or not shown to be just and reasonable, on the ground that such rate is below a just or reasonable minimum for the service rendered or to be rendered. A rate which equals or exceeds the variable costs (as determined through formulas prescribed by the Commission) of providing a service shall be presumed, unless such presumption is rebutted by clear and convincing evidence, to contribute to the going concern value of the carrier or carriers proposing such rate (hereafter in this paragraph referred to as the 'proponent carrier'). In determining variable costs, the Commission shall, at the request of the carrier proposing the rate, determine only those costs of the carrier proposing the rate and only those costs of the specific service in question, except where such specific data and cost information is not available. The Commission shall not include in variable cost any expenses which do not vary directly with the level of service provided under the rate in question. Notwithstanding any other provision of this part, no rate shall be found to be unjust or unreasonable, or not shown to be just and reasonable, on the ground that such rate exceeds a just or reasonable maximum for the service rendered or to be rendered, unless the Commission has first found that the proponent carrier has market dominance over such service. A finding that a carrier has market dominance over a service shall not create a presumption that the rate or rates for such service exceed a just and reasonable maximum. Nothing in this paragraph shall prohibit a rate increase from a level which reduces the going concern value of the proponent carrier to a level which contributes to such going concern value and is otherwise just and reasonable. For the purposes of the preceding sentence, a rate increase which does not raise a rate above the incremental costs (as determined through formulas prescribed by the Commission) of rendering the service to which such rate applies shall be presumed to be just and reasonable.

"(c) As used in this part, the terms—

"(i) 'market dominance' refers to an absence of effective competition from other carriers or modes of transportation, for the traffic or movement to which a rate applies; and

"Market dominance."

"(ii) 'rate' means any rate or charge for the transportation of persons or property.

"Rate."

"(d) Within 240 days after the date of enactment of this subdivision, the Commission shall establish, by rule, standards and procedures for determining, in accordance with section 15(9) of this part, whether and when a carrier possesses market dominance over a service rendered or to be rendered at a particular rate or rates. Such rules shall be designed to provide for a practical determination without administrative delay. The Commission shall solicit and consider the recommendations of the Attorney General and of the Federal Trade Commission in the course of establishing such rules.".

Standards and procedures.
49 USC 15.

(c) Section 15 of the Interstate Commerce Act (49 U.S.C. 15) is amended by redesignating paragraphs (8) through (14) thereof as

paragraphs (10) through (16) thereof, respectively, and by inserting therein a new paragraph (9) as follows:

"(9) Following promulgation of standards under section 1(5)(d) of this part, whenever a rate of a common carrier by railroad subject to this part is challenged as being unreasonably high, the Commission shall, upon complaint or upon its own initiative and within 90 days after the commencement of a proceeding to investigate the lawfulness of such rate, determine whether the carrier proposing such rate has market dominance, within the meaning of section 1(5)(c)(i) of this part, over the service to which such rate applies. If the Commission finds that such a carrier does not have such market dominance, such finding shall be determinative in all additional or other proceedings under this Act concerning such rate or service, unless (a) such finding is modified or set aside by the Commission, or (b) such finding is set aside by a court of competent jurisdiction. Nothing in this paragraph shall limit the Commission's power to suspend a rate pursuant to this section, except that if the Commission has found that a carrier does not have such market dominance over the service to which a rate applies, the Commission may not suspend any increase in such rate on the ground that such rate as increased exceeds a just or reasonable maximum for such service, unless the Commission specifically modifies or sets aside its prior determination concerning market dominance over the service to which such rate applies.".

(d) Section 15 of the Interstate Commerce Act (49 U.S.C. 15) is amended by adding at the end thereof the following two new paragraphs:

"(17) Within 1 year after the date of enactment of this paragraph, the Commission shall establish, by rule, standards and expeditious procedures for the establishment of railroad rates based on seasonal, regional, or peak-period demand for rail services. Such standards and procedures shall be designed to (a) provide sufficient incentive to shippers to reduce peak-period shipments, through rescheduling and advance planning; (b) generate additional revenues for the railroads; and (c) improve (i) the utilization of the national supply of freight cars, (ii) the movement of goods by rail, (iii) levels of employment by railroads, and (iv) the financial stability of markets served by railroads. Following the establishment of such standards and procedures, the Commission shall prepare and submit to the Congress annual reports on the implementation of such rates, including recommendations with respect to the need, if any, for additional legislation to facilitate the establishment of such demand-sensitive rates.

Annual report to Congress.

"(18) In order to encourage competition, to promote increased reinvestment by railroads, and to encourage and facilitate increased nonrailroad investment in the production of rail services, a carrier by railroad subject to this part may, upon its own initiative or upon the request of any shipper or receiver of freight, file separate rates for distinct rail services. Within 1 year after the date of enactment of this paragraph, the Commission shall establish, by rule, expeditious procedures for permitting publication of separate rates for distinct rail services in order to (a) encourage the pricing of such services in accordance with the carrier's cash-outlays for such services and the demand therefor, and (b) enable shippers and receivers to evaluate all transportation and related charges and alternatives.".

(e) Section 15 of the Interstate Commerce Act (49 U.S.C. 15), as amended by this Act, is further amended—

(1) by adding at the end of paragraph (7) thereof the following new sentence: "This paragraph shall not apply to common carriers by railroad subject to this part."; and

(2) by inserting a new paragraph (8) as follows:

"(8) (a) Whenever a schedule is filed with the Commission by a common carrier by railroad stating a new individual or joint rate, fare, or charge, or a new individual or joint classification, regulation, or practice affecting a rate, fare, or charge, the Commission may, upon the complaint of an interested party or upon its own initiative, order a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice. The hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Such hearing shall be completed and a final decision rendered by the Commission not later than 7 months after such rate, fare, charge, classification, regulation, or practice was scheduled to become effective, unless, prior to the expiration of such 7-month period, the Commission reports in writing to the Congress that it is unable to render a decision within such period, together with a full explanation of the reason for the delay. If such a report is made to the Congress, the final decision shall be made not later than 10 months after the date of the filing of such schedule. If the final decision of the Commission is not made within the applicable time period, the rate, fare, charge, classification, regulation, or practice shall go into effect immediately at the expiration of such time period, or shall remain in effect if it has already become effective. Such rate, fare, charge, classification, regulation, or practice may be set aside thereafter by the Commission if, upon complaint of an interested party, the Commission finds it to be unlawful.

Hearing and notice.

"(b) Pending a hearing pursuant to subdivision (a), the schedule may be suspended, pursuant to subdivision (d), for 7 months beyond the time when it would otherwise go into effect, or for 10 months if the Commission makes a report to the Congress pursuant to subdivision (a), except under the following conditions:

Schedule suspension.

"(i) in the case of a rate increase, a rate may not be suspended on the ground that it exceeds a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this part or, following promulgation of standards and procedures under section 1(5)(d) of this part, if the carrier is found to have market dominance, within the meaning of section 1(5)(c)(i) of this part, over the service to which such rate increase applies; or

"(ii) in the case of a rate decrease, a rate may not be suspended on the ground that it is below a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this part, or for the purposes of investigating such rate change upon a complaint that such rate change constitutes a competitive practice which is unfair, destructive, predatory or otherwise undermines competition which is necessary in the public interest.

"(c) The limitations upon the Commission's power to suspend rate changes set forth in subdivisions (b) (i) and (ii) apply only to rate changes which are not of general applicability to all or substantially all classes of traffic and only if—

"(i) the rate increase or decrease is filed within 2 years after the date of the enactment of this subdivision;

"(ii) the common carrier by railroad notifies the Commission that it wishes to have the rate considered pursuant to this subdivision;

"(iii) the aggregate of increases or decreases in any rate filed pursuant to clauses (i) and (ii) of this subdivision within the first 365 days following such date of enactment is not more than 7 per centum of the rate in effect on January 1, 1976; and

"(iv) the aggregate of the increases or decreases for any rate filed pursuant to clauses (i) and (ii) of this subdivision within the second 365 day-period following such date of enactment is not more than 7 per centum of the rate in effect on January 1, 1977.

"(d) The Commission may not suspend a rate under this paragraph unless it appears from specific facts shown by the verified complaint of any person that—

"(i) without suspension the proposed rate change will cause substantial injury to the complainant or the party represented by such complainant; and

"(ii) it is likely that such complainant will prevail on the merits.

The burden of proof shall be upon the complainant to establish the matters set forth in clauses (i) and (ii) of this subdivision. Nothing in this paragraph shall be construed as establishing a presumption that any rate increase or decrease in excess of the limits set forth in clauses (iii) or (iv) of subdivision (c) is unlawful or should be suspended.

"(e) If a hearing is initiated under this paragraph with respect to a proposed increased rate, fare, or charge, and if the schedule is not suspended pending such hearing and the decision thereon, the Commission shall require the railroads involved to keep an account of all amounts received because of such increase from the date such rate, fare, or charge became effective until the Commission issues an order or until 7 months after such date, whichever first occurs, or, if the hearings are extended pursuant to subdivision (a), until an order issues or until 10 months elapse, whichever first occurs. The account shall specify by whom and on whose behalf the amounts are paid. In its final order, the Commission shall require the common carrier by railroad to refund to the person on whose behalf the amounts were paid that portion of such increased rate, fare, or charge found to be not justified, plus interest at a rate which is equal to the average yield (on the date such schedule is filed) of marketable securities of the United States which have a duration of 90 days. With respect to any proposed decreased rate, fare, or charge which is suspended, if the decrease or any part thereof is ultimately found to be lawful, the common carrier by railroad may refund any part of the portion of such decreased rate, fare, or charge found justified if such carrier makes such a refund available on an equal basis to all shippers who participated in such rate, fare, or charge according to the relative amounts of traffic shipped at such rate, fare, or charge.

"(f) In any hearing under this section, the burden of proof is on the common carrier by railroad to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable. The Commission shall specifically consider, in any such hearing, proof that such proposed changed rate, fare, charge, classification, rule, regulation, or practice will have a significantly adverse effect (in violation of section 2 or 3 of this part) on the competitive posture of shippers or consignees affected thereby. The Commission shall give such hearing and decision preference over all other matters relating to railroads pending before the Commission and shall make its decision at the earliest practicable time.".

(f) Nothing in the amendments made by this section shall be construed— 49 USC 1 note.

(1) to modify the application of section 2, 3, or 4 of the Interstate Commerce Act (49 U.S.C. 2, 3, or 4) in determining the lawfulness of any rate or practice;

(2) to make lawful any competitive practice which is unfair, destructive, predatory, or otherwise undermines competition which is necessary in the public interest;

(3) to affect the existing law or the authority of the Commission with respect to rate relationships between ports; or

(4) to affect the authority and responsibility of the Commission to guarantee the equalization of rates within the same port.

(g) The Secretary and the Commission shall separately study the effect of the amendments made by this section on the development of an efficient and financially stable railway system in the United States. Such studies shall include (1) an analysis of the effect of such provisions upon shippers and upon carriers in all modes of transportation, and (2) proposals for further regulatory and legislative changes, if necessary. The Commission shall gather all data relating to such studies as requested by the Secretary, and shall make such data available to the Secretary. The Secretary and the Commission shall transmit the results of their respective studies to each House of Congress within 20 months after the date of the enactment of this Act. Study. 49 USC 1 note. Transmittal to Congress.

TARIFF MODIFICATIONS

SEC. 203. (a) Section 15(3) of the Interstate Commerce Act (49 U.S.C. 15(3)) is amended by adding at the end thereof the following new sentence: "With respect to carriers by railroad, in determining whether any such cancellation or proposed cancellation involving any common carrier by railroad is consistent with the public interest, the Commission shall, to the extent applicable, (a) compare the distance traversed and the average transportation time and expense required using the through route, and the distance traversed and the average transportation time and expense required using alternative routes, between the points served by such through route, (b) consider any reduction in energy consumption which may result from such cancellation, and (c) take into account the overall impact of such cancellation on the shippers and carriers who are affected thereby.".

(b) Section 15a of the Interstate Commerce Act (49 U.S.C. 15a) is amended by adding at the end thereof the following new paragraph:

"(5) The Commission shall, in any proceeding which involves a proposed increase or decrease in railroad rates, specifically consider allegations that such increase or decrease would change the rate relationships between commodities, ports, points, regions, territories, or other particular descriptions of traffic (whether or not such relationships were previously considered or approved by the Commission) and allegations that such increase or decrease would have a significantly adverse effect on the competitive position of shippers or consignees served by the railroad proposing such increase or decrease. If the Commission finds that such allegations as to change or effect are substantially supported on the record, it shall take such steps as are necessary, either before or after such proposed increase or decrease becomes effective and either within or outside such proceeding, to investigate the lawfulness of such change or effect.".

INVESTIGATION OF DISCRIMINATORY FREIGHT RATES FOR THE TRANSPORTATION OF RECYCLABLE OR RECYCLED MATERIALS

45 USC 793 note.

SEC. 204. (a) INVESTIGATION.—The Commission, within 12 months after the date of enactment of this Act, and thereafter as appropriate, shall—

(1) conduct an investigation of (A) the rate structure for the transportation, by common carriers by railroad subject to part I of the Interstate Commerce Act, of recyclable or recycled materials and competing virgin natural resource materials, and (B) the manner in which such rate structure has been affected by successive general rate increases approved by the Commission for such common carriers by railroad;

49 USC 1.

Public hearing.

(2) determine, after a public hearing during which the burden of proof shall be upon such common carriers by railroad to show that such rate structure, as affected by rate increases applicable to the transportation of such competing materials, is just, reasonable, and nondiscriminatory, whether such rate structure is, in whole or in part, unjustly discriminatory or unreasonable;

(3) issue, in all cases in which such transportation rate structure is determined to be, in whole or in part, unjustly discriminatory or unreasonable, orders requiring the removal from such rate structure of such unreasonableness or unjust discrimination; and

Report to President and Congress.

(4) report to the President and the Congress, in the annual report of the Commission for each of the 3 years following the date of enactment of this Act, and in such other reports as may be appropriate, all actions commenced or completed under this section to eliminate unreasonable and unjustly discriminatory rates for the transportation of recyclable or recycled materials.

(b) PARTICIPATION.—The Administrator of the Environmental Protection Agency shall take such steps as are necessary to assure that the Commission carries out the requirements set forth in subsection (a) of this section as expeditiously as possible. Such Administrator is authorized to participate as a party in the investigation to be commenced by the Commission under such subsection (a).

(c) RESEARCH, DEVELOPMENT, AND DEMONSTRATION.—The Secretary, in cooperation with the Commission, shall establish a research, development, and demonstration program to develop and improve transport terminal operations, transport service characteristics, transport equipment, and collection and processing methods for the purpose of facilitating the competitive and efficient transportation of recyclable or recycled materials by common carriers by railroad subject to part I of the Interstate Commerce Act.

(d) REVIEW.—Orders issued by the Commission pursuant to this section shall be subject to judicial review or enforcement in the same manner as other orders issued by the Commission under the Interstate Commerce Act. In all proceedings under this section, the Commission shall comply fully with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) DEFINITIONS.—As used in this section, the term—

(1) "recyclable material" means any material which has been collected or recovered from waste for a commercial or industrial use, whether or not such collection or recovery follows end usage as a product; and

(2) "virgin natural resource material" and "virgin material" mean any raw material, including previously unused metal or metal ore, woodpulp or pulpwood, textile fiber or material, or

other resource which is, or which will become (through the application of technology), a source of raw material for commercial or industrial use.

ADEQUATE REVENUE LEVELS

SEC. 205. Section 15a of the Interstate Commerce Act (49 U.S.C. 15a) is amended—

(1) by adding at the end of paragraph (2) and at the end of paragraph (3) the following new sentence: "This paragraph shall not apply to common carriers by railroad subject to this part."; and

(2) by redesignating paragraph (4) as paragraph (6), and by inserting immediately after paragraph (3) the following new paragraph:

"(4) With respect to common carriers by railroad, the Commission shall, within 24 months after the date of enactment of this paragraph, after notice and an opportunity for a hearing, develop and promulgate (and thereafter revise and maintain) reasonable standards and procedures for the establishment of revenue levels adequate under honest, economical, and efficient management to cover total operating expenses, including depreciation and obsolescence, plus a fair, reasonable, and economic profit or return (or both) on capital employed in the business. Such revenue levels should (a) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation and (b) insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States. The Commission shall make an adequate and continuing effort to assist such carriers in attaining such revenue levels. No rate of a common carrier by railroad shall be held up to a particular level to protect the traffic of any other carrier or mode of transportation, unless the Commission finds that such rate reduces or would reduce the going concern value of the carrier charging the rate.".

Notice and hearing.
Standards and procedures.

RATE INCENTIVES FOR CAPITAL INVESTMENT

SEC. 206. Section 15 of the Interstate Commerce Act (49 U.S.C. 15), as amended by section 202 of this Act, is amended by adding at the end thereof the following new paragraph:

"(19) Notwithstanding any other provision of law, a common carrier by railroad subject to this part may file with the Commission a notice of intention to file a schedule stating a new rate, fare, charge, classification, regulation, or practice whenever the implementation of the proposed schedule would require a total capital investment of $1,000,000 or more, individually or collectively, by such carrier, or by a shipper, receiver, or agent thereof, or an interested third party. The filing shall be accompanied by a sworn affidavit setting forth in detail the anticipated capital investment upon which such filing is based. Any interested person may request the Commission to investigate the schedule proposed to be filed, and upon such request the Commission shall hold a hearing with respect to such schedule. Such hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Unless, prior to the 180-day period following the filing of such notice of intention, the Commission determines, after a hearing, that the proposed schedule, or any part thereof, would be unlawful, such carrier may file the schedule at any time within 180 days thereafter to become effective after 30

Notice.
Hearing.
Notice.

days' notice. Such a schedule may not, for a period of 5 years after its effective date, be suspended or set aside as unlawful under section 2, 3, or 4 of this part, except that the Commission may at any time order such schedule to be revised to a level equaling the variable costs of providing the service, if the rate stated therein is found to reduce the going concern value of the carrier.".

EXEMPTIONS FROM INTERSTATE COMMERCE ACT

SEC. 207. Paragraph (1) of section 12 of the Interstate Commerce Act (49 U.S.C. 12(1)) is amended by inserting "(a)" immediately before "The Commission" and by adding at the end thereof the following new subdivision:

"(b) Whenever the Commission determines, upon petition by the Secretary or an interested party or upon its own initiative, in matters relating to a common carrier by railroad subject to this part, after notice and reasonable opportunity for a hearing, that the application of the provisions of this part (i) to any person or class of persons, or (ii) to any services or transactions by reason of the limited scope of such services or transactions, is not necessary to effectuate the national transportation policy declared in this Act, would be an undue burden on such person or class of persons or on interstate and foreign commerce, and would serve little or no useful public purpose, it shall, by order, exempt such persons, class of persons, services, or transactions from such provisions to the extent and for such period of time as may be specified in such order. The Commission may, by order, revoke any such exemption whenever it finds, after notice and reasonable opportunity for a hearing, that the application of the provisions of this part to the exempted person, class of persons, services, or transactions, to the extent specified in such order, is necessary to effectuate the national transportation policy declared in this Act and to achieve effective regulation by the Commission, and would serve a useful public purpose.".

Notice and hearing.

RATE BUREAUS

SEC. 208. (a) Effective 270 days after the date of enactment of this Act, section 5a of the Interstate Commerce Act (49 U.S.C. 5b) is amended in paragraph (1)(A) thereof by striking out "part I, II, or III" and inserting in lieu thereof "part I (other than a common carrier by railroad), part II, or part III".

49 USC 1, 301, 901.

(b) Part I of the Interstate Commerce Act is amended by inserting after section 5a thereof a new section 5b as follows:

"AGREEMENTS BETWEEN CARRIERS SUBJECT TO PART I

Definitions. 49 USC 5c.

"SEC. 5b. (1) As used in this section, the term—

"(a) 'affiliate' means any person directly or indirectly controlling, controlled by, or under common control or ownership with, any other person, and as used in this subdivision, the term (i) 'control' has the same meaning as in section 1(3)(b) of this part; and (ii) 'ownership' refers to equity holdings of 5 per centum or more in any business entity;

"(b) 'antitrust laws' means the Act of July 2, 1890, as amended (15 U.S.C. 1, et seq.), the Act of October 15, 1914, as amended (15 U.S.C. 12, et seq.), the Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 73 and 74 of the Act of August 27, 1894, as amended (15 U.S.C. 8 and 9), and chapter 592 of the Act of June 19, 1936, as amended (15 U.S.C. 13, 13a, 13b, 21a); and

"(c) 'carrier' means any common carrier by railroad subject to part I of this Act.

"(2) Any carrier which is a party to an agreement, between or among two or more carriers, relating to rates, fares, classification, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation, or establishment thereof, shall, under such rules and regulations as the Commission shall prescribe, apply to the Commission for approval of such agreement. The Commission shall, by order, approve any such agreement if approval thereof is not prohibited by paragraph (4) or (5) and if it finds that, by reason of furtherance of the national transportation policy declared in this Act, the relief provided in paragraph (8) should apply with respect to the making and carrying out of such agreement; otherwise the application shall be denied. No such approval shall be granted or continued (a) if any of the terms and conditions which are prescribed under the last sentence of this paragraph are violated or not complied with, or (b) unless the Commission receives a verified written statement (and any written supplement or addendum thereto requested by the Commission) setting forth, with respect to each carrier which is a party to such agreement (i) its name, (ii) the mailing address and telephone number of its headquarter's office, (iii) the names of each of its affiliates, (iv) the names, addresses, and affiliations of each of its officers and directors and of each person who, together with any affiliate, owns or controls any debt, equity, or security interest in it having a value of $1,000,000 or more, and (v) such other information as the Commission directs to be included. The approval of the Commission shall be granted only upon such terms and conditions as the Commission determines are necessary to enable its approval to be granted in accordance with the standard set forth in this paragraph.

"(3) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the Commission such reports, as may be prescribed by the Commission. All such accounts, records, files, and memoranda shall be subject to inspection by the Commission or its duly authorized representatives. The Commission may conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, copy and verify the correctness of information subject to inspection, and take depositions (a) to determine whether any such conference, bureau, committee, or other organization, or any carrier which is a party to any such agreement, has acted or is acting in compliance with the provisions of this section, regulations issued under this section, and the public interest, (b) to determine whether any such organization or carrier is inhibiting an efficient utilization of transportation resources or has established practices which are inconsistent with efficient, flexible, and economic operation, and (c) for such other purposes as the Commission considers appropriate.

Recordkeeping.

"(4) The Commission shall not approve under this section any agreement which it finds is an agreement with respect to a pooling, division, or other matter or transaction to which section 5 of this part is applicable.

49 USC 5.

"(5)(a) The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration, unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action, without fear of any sanction or retal-

iatory action, at any time before or after any determination arrived at through such procedure. In no event shall any conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section—

"(i) permit participation in agreements with respect to, or any voting on, single-line rates, allowances, or charges established by any carrier;

"(ii) permit any carrier to participate in agreements with respect to, or to vote on, rates, allowances, or charges relating to any particular interline movement, unless such carrier can practicably participate in such movement; or

"(iii) permit, provide for, or establish any procedure for joint consideration or any joint action to protest or otherwise seek the suspension of any rate or classification filed by a carrier of the same mode pursuant to section 15(7) of this part where such rate or classification is established by independent action.

49 USC 15.

As used in clause (i) of this subdivision, a single-line rate, allowance, or charge is one that is proposed by a single carrier applicable only over its own line and as to which the service (exclusive of terminal services provided by switching, drayage, or other terminal carriers or agencies) can be performed by such carrier.

"(b) The limitations set forth in subdivision (a) shall not be applicable to—

"(i) general rate increases or decreases, if the agreements accord the shipping public, under specified procedures, adequate notice of at least 15 days of such proposals and an opportunity to present comments thereon, in writing or otherwise, prior to the filing with the Commission of the tariffs containing such increases or decreases, or

"(ii) broad tariff changes if such changes are of general application or substantially general application throughout a territory or territories within which such changes are to be applicable.

In any proceeding in which it is alleged that a carrier voted or agreed upon a rate, allowance, or charge, in violation of the provisions of this section, the party alleging such violation shall have the burden of showing that such vote or agreement occurred. A showing of parallel behavior is not, by itself, sufficient to satisfy such burden.

Investigation.

"(6)(a) The Commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which such approval was granted, is not or are not in conformity with the standards set forth in paragraph (2) and with the public interest, and whether any such terms and conditions are not necessary or whether any additional or modified terms and conditions are necessary for purposes of conformity with such standard. After any such investigation the Commission shall, by order, terminate or modify its approval of such an agreement if it finds such action necessary to insure conformity with such standard, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standard or to the extent to which it finds such terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the Commission determines to be reasonably necessary to avoid undue hardship.

"(b) The Commission shall periodically, but not less than once every 3 years, review each agreement which the Commission has by order approved under this section to determine whether such agreement, or any conference, bureau, committee, or other organization established or continued pursuant to such agreement, still conforms with the standard set forth in paragraph (2) and the public interest, and to evaluate the success and effect upon the consuming public and the national rail freight transportation system of such agreement and organization. The Commission shall report to the President and to the Congress on the results of such reviews, as part of its annual report pursuant to section 21. If the Commission makes a determination that any such agreement or organization is no longer in conformity with such standard, the Commission shall by order terminate or suspend its approval thereof.

Review.

Report to President and Congress. 49 USC 21.

"(7) No order shall be entered under this section except after interested parties have been afforded a reasonable opportunity for a hearing.

Hearing.

"(8) Parties to any agreement approved by the Commission under this section and other persons are, if the approval of such agreement is no prohibited by paragraph (4) or (5), hereby relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission.

"(9) Any action of the Commission under this section (a) in approving an agreement, (b) in denying an application for such approval, (c) in terminating or modifying such approval, (d) in prescribing the terms and conditions upon which such approval is to be granted, or (e) in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of the relief provisions of paragraph (8).

"(10) The Federal Trade Commission, in consultation with the Antitrust Division of the Department of Justice, shall periodically prepare an assessment of, and shall report to the Commission on (a) any possible anticompetitive features of (i) any agreements approved or submitted for approval under this section, and (ii) any conferences, bureaus, committees, or other organizations operating under such agreements, and (b) possible ways to eliminate or alleviate any such anticompetitive features, effects, or aspects in a manner that will further the goals of the national transportation policy and this Act. The Commission shall make such reports available to the public.

Report to Interstate Commerce Commission.

"(11) Any conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under this section shall make a final disposition with respect to any rule, rate, or charge docketed with such organization within 120 days after such proposal is docketed.".

Final disposition.

FILING PROCEDURES

SEC. 209. Section 6(6) of the Interstate Commerce Act (49 U.S.C. 6(6)) is amended by striking out "shall prescribe; and the" and inserting in lieu thereof the following: "shall prescribe. The Commission shall, beginning 2 years after the date of enactment of this sentence, require (a) that all rates shall be incorporated into the individual tariffs of each common carrier by railroad subject to this part or rail ratemaking association within 2 years after the initial publication of the rate, or within 2 years after a change in any rate is approved by the Commission, whichever is later, and (b) that any rate shall be null and void with respect to any such carrier or association which

does not so incorporate such rate into its individual tariff. The Commission may, upon good cause shown, extend such period of time. Notice of any such extension and a statement of the reasons therefor shall be promptly transmitted to the Congress. The".

INTRASTATE RAILROAD RATE PROCEEDINGS

SEC. 210. Section 13 of the Interstate Commerce Act (49 U.S.C. 13) is amended by striking out ": *Provided*, That" and all that follows through "hearing and decision therein" in paragraph (4) thereof, and by adding at the end thereof the following new paragraph:

"(5) The Commission shall have exclusive authority, upon application to it, to determine and prescribe intrastate rates if—

"(a) a carrier by railroad has filed with an appropriate administrative or regulatory body of a State, a change in an intrastate rate, fare, or charge, or a change in a classification, regulation, or practice that has the effect of changing such a rate, fare, or charge, for the purpose of adjusting such rate, fare, or charge to the rate charged on similar traffic moving in interstate or foreign commerce; and

"(b) the State administrative or regulatory body has not, within 120 days after the date of such filing, acted finally on such change.

Application.

Notice of the application to the Commission shall be served on the appropriate State administrative or regulatory body. Upon the filing of such an application, the Commission shall determine and prescribe, according to the standards set forth in paragraph (4) of this section, the rate thereafter to be charged. The provisions of this paragraph shall apply notwithstanding the laws or constitution of any State, or the pendency of any proceeding before any State court or other State authority.".

DEMURRAGE CHARGES

SEC. 211. Section 1(6) of the Interstate Commerce Act (49 U.S.C. 1(6)) is amended by inserting at the end thereof the following new sentence: "Demurrage charges shall be computed, and rules and regulations relating to such charges shall be established, in such a manner as to fulfill the national needs with respect to (a) freight car utilization and distribution, and (b) maintenance of an adequate freight car supply available for transportation of property.".

Rules and regulations.

CAR SERVICE COMPENSATION AND PRACTICES

SEC. 212. (a) Section 1(14)(a) of the Interstate Commerce Act (49 U.S.C. 1(14)(a)) is amended to read as follows:

"(14)(a) It is the intent of the Congress to encourage the purchase, acquisition, and efficient utilization of freight cars. In order to carry out such intent, the Commission may, upon complaint of an interested party or upon its own initiative without complaint, and after notice and an opportunity for a hearing, establish reasonable rules, regulations, and practices with respect to car service by common carriers by railroad subject to this part, including (i) the compensation to be paid for the use of any locomotive, freight car, or other vehicle, (ii) the other terms of any contract, agreement, or arrangement for the use of any locomotive or other vehicle not owned by the carrier by which it is used (and whether or not owned by another carrier, shipper, or third party), and (iii) the penalties or other sanctions for nonobservance of

Notice and hearing.
Rules and regulations.

such rules, regulations, or practices. In determining the rates of compensation to be paid for each type of freight car, the Commission shall give consideration to the transportation use of each type of freight car, to the national level of ownership of each such type of freight car, and to other factors affecting the adequacy of the national freight car supply. Such compensation shall be fixed on the basis of the elements of ownership expense involved in owning and maintaining each such type of freight car, including a fair return on the cost of such type of freight car (giving due consideration to current costs of capital, repairs, materials, parts, and labor). Such compensation may be increased by any incentive element which will, in the judgment of the Commission, provide just and reasonable compensation to freight car owners, contribute to sound car service practices (including efficient utilization and distribution of cars), and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense. The Commission shall not make any incentive element applicable to any type of freight car if the Commission finds that the supply of such type of freight car is adequate. The Commission may exempt such incentive element from the compensation to be paid by any carrier or group of carriers if the Commission finds that such an exemption is in the national interest.".

(b) The Commission shall, within 18 months after the date of enactment of this Act, revise its rules, regulations, and practices with respect to car service, in accordance with the amendment made by subsection (a) of this section.

Rules and regulations, revision. 49 USC 1 note.

TITLE III—REFORM OF THE INTERSTATE COMMERCE COMMISSION

ACCESS TO INFORMATION BY CONGRESSIONAL COMMITTEES

SEC. 301. Section 17 of the Interstate Commerce Act (49 U.S.C. 17), as amended by section 303 of this Act, is further amended by inserting therein a new paragraph (15) as follows:

"(15) Whenever the Committee on Interstate and Foreign Commerce of the House of Representatives or the Committee on Commerce of the Senate makes a written request for documents which are in the possession or under the control of the Commission and which relate to any matter involving a common carrier by railroad subject to this part, the Commission shall, within 10 days after the date of receipt of such request, submit such documents (or copies thereof) to such committee, or submit a report in writing to such committee stating the reason why such documents have not been so submitted, and the anticipated date on which they will be submitted. If the Commission transfers any document in its possession or under its control to any other agency or to any person, it shall condition such transfer on the guaranteed return by the transferee of such document to the Commission for purposes of complying with the preceding sentence. This paragraph shall not apply to documents which have been obtained by the Commission from persons subject to regulation by the Commission, and which contain trade secrets or commercial or financial information of a privileged or confidential nature. This paragraph shall not be deemed to restrict any other authority of either House of Congress, or any committee or subcommittee thereof, to obtain documents. For purposes of this paragraph, the term 'document' means any book, paper, correspondence, memorandum, or other record, or any copy thereof.".

"Document."

EFFECTIVE DATE OF ORDERS OF THE COMMISSION

SEC. 302. Section 15(2) of the Interstate Commerce Act (49 U.S.C. 15(2)), is amended by striking out ", not less than thirty days, and shall", and inserting in lieu thereof "as the Commission may prescribe. Such orders shall".

COMMISSION HEARING AND APPELLATE PROCEDURE

SEC. 303. (a) Section 17 of the Interstate Commerce Act (49 U.S.C. 17) is amended by redesignating paragraphs (9) through (12) thereof as paragraphs (10) through (13) thereof, respectively, and by inserting therein the following new paragraph (9):

"Hearing."

"(9)(a) Whenever the term 'hearing' is used in this part, such term shall be construed to include an opportunity for the submission of all evidence in written form, followed by an opportunity for briefs, written statements, or conferences of the parties, such conferences to be chaired by a division, an individual Commissioner, an administrative law judge, an employee board, or any other designated employee of the Commission.

"(b) With respect to any matter involving a common carrier by railroad subject to this part, whenever the Commission assigns the initial disposition to any of such matter before the Commission to an administrative law judge, individual Commissioner, employee board, or division or panel of the Commission, such judge, Commissioner, board, division, or panel shall—

"(i) complete all evidentiary proceedings with respect to such matter within 180 days after its assignment; and

"(ii) with respect to any matter so assigned which involves written submissions or the taking of testimony at a public hearing, submit in writing to the Commission, within 120 days after the completion of all evidentiary proceedings, an initial decision, report, or order containing—

"(A) specific findings of fact;

"(B) specific and separate conclusions of law;

"(C) a recommended order; and

"(D) any justification in support of such findings of fact, conclusions of law, and order.

The Commission, or a duly designated division thereof, may, in its discretion, void any requirement for an initial decision, report, or order, and, in appropriate cases, may direct that any matter shall be considered forthwith by the Commission or such division, if it concludes that the matter involves a question of agency policy, a new or novel issue of law, or an issue of general transportation importance, or if the due and timely execution of its functions so requires. Whenever an initial decision, report, or order is submitted, copies thereof shall be served upon interested parties. Any such party may file an appeal with the Commission, with respect to such initial decision or report. If no such appeal is filed within 20 days after such service, or within such further period (not to exceed 20 days) as the Commission, or a duly designated division thereof, may authorize, the order set forth in such initial decision or report shall become the order of the Commission and shall become effective unless, within such period, the order shall have been stayed or postponed by the Commission pursuant to subdivision (d) or (e).

Review.

"(c) The Commission, or a duly designated division thereof, may, upon its own initiative, and shall, in any case in which an appeal is filed under subdivision (b), review the matter upon the same record or

upon the basis of a further hearing. Any such appeal shall be considered and acted upon by the Commission, or a duly designated division thereof, within 180 days after the date on which such appeal is filed. Any such decision, report, or order shall be stayed pending the determination of such appeal. Such a review shall be conducted in accordance with section 557 of title 5, United States Code, and such rules (limiting and defining the issues and pleadings upon review) as the Commission may adopt in conformance with section 557(b) of such title 5. The Commission may, in its discretion and on such terms and conditions as it may prescribe, authorize duly designated employee boards to perform functions under this paragraph of the same character as those which may be performed by a duly designated division of the Commission (other than the decision of any appeal under this paragraph which may be further appealed to the Commission).

"(d) Any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall become effective 30 days after it is served on the parties thereto, unless the Commission provides for such decision, order, or requirement, or any applicable rule, to become effective at an earlier date. Any interested party to a decision, order or requirement of a duly designated division of the Commission may petition the Commission for rehearing, reargument, or other reconsideration, subject to such rules and limitations as the Commission may establish. If the Commission finds that a decision, order, or requirement presents a matter of general transportation importance, or if it finds that clear and convincing new evidence has been presented or that changed circumstances exist which would materially affect such decision, order, or requirement, the Commission may reconsider such decision, order, or requirement, and it may, in its discretion, stay the effective date of such decision, order, or requirement. If the Commission reconsiders a decision, order, or requirement, it must complete the process and issue its final order not more than 120 days after the date on which it grants the application for reconsideration.

"(e) The Commission may, in its discretion, extend any time period set forth in this section for a period of not more than 90 days, if a majority of the Commissioners, by public vote, agree to such extension. The Commission shall submit an annual report in writing to each House of Congress setting forth each extension granted pursuant to this subdivision (classified by the type of proceeding involved), and stating the reasons for each such extension and the duration thereof.

Report to Congress.

"(f) In extraordinary situations in which an extension granted pursuant to subdivision (e) is not sufficient to allow for completion of necessary proceedings, the Commission may, in its discretion, grant a further extension if—

"(i) not less than 7 of the Commissioners, by public vote, agree to such further extension; and

"(ii) not less than 15 days prior to expiration of the extension granted pursuant to subdivision (e), the Commission reports in writing to the Congress that such further extension has been granted, together with—

"(A) a full explanation of the reasons for such further extension;

"(B) the anticipated duration of such further extension;

"(C) the issues involved in the matter before the Commission; and

"(D) the names of personnel of the Commission working on such matter.

"(g) The Commission may, at any time upon its own initiative, on grounds of material error, new evidence, or substantially changed circumstances—

"(i) reopen any proceeding;

"(ii) grant rehearing, reargument, or reconsideration with respect to any decision, order, or requirement; and

"(iii) reverse, modify, or change any decision, order, or requirement.

Rules.

The Commission may establish rules allowing interested parties to petition for leave to request reopening and reconsideration based upon material error, new evidence, or substantially changed circumstances.

"(h) Notwithstanding any other provision of this Act, any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall be final on the date on which it is served. A civil action to enforce, enjoin, suspend, or set aside such a decision, order, or requirement, in whole or in part, may be brought after such date in a court of the United States pursuant to the provisions of law which are applicable to suits to enforce, enjoin, suspend, or set aside orders of the Commission.

"(i) Notwithstanding the provisions of paragraphs (5), (6), (7), and (8), the provisions of this paragraph shall govern the disposition of, and shall apply only to, any matter before the Commission which involves a common carrier by railroad subject to this part, except that the provisions of other sections of this part pertaining to deadlines in Commission proceedings shall govern to the extent that they are inconsistent with the provisions pertaining to deadlines contained in this paragraph.

"(j) Reports in writing and other written statement (including, but not limited to, any report, order, decision and order, vote, notice, letter, policy statement, rule, or regulation) of any official action of the Commission (whether such action is taken by the Commission, a division thereof, any other group of Commissioners, a single Commissioner, an employee board, an administrative law judge, or any other individual or group of individuals who are authorized to take any official action on behalf of the Commission) shall indicate (i) the official designation of the individual or group taking such action (ii) the name of each individual taking, or participating in taking, such action, and (iii) the vote or position of each such participating individual. If any individual who is officially designated as a member of a group which takes any such action does not participate in such action, the written statement of such action shall indicate that such individual did not participate. Each individual who participates in taking any such action shall have the right to express his individual views as part of the written statement of such action. The written statement of any such action shall be made available to the public in accordance with Federal law.".

Written statement, availability to public.

49 USC 17.

(b) Section 17 of the Interstate Commerce Act is amended by inserting therein a new paragraph (14) as follows:

"(14) (a) Any formal investigative proceeding with respect to a common carrier by railroad which is instituted by the Commission after the date of enactment of this subdivision shall be concluded by the Commission with administrative finality within 3 years after the date on which such proceeding is instituted. Any such proceeding which is not so concluded by such date shall automatically be dismissed.

"(b) Within 1 year after the date of enactment of this subdivision, the Commission shall conclude or terminate, with administrative finality, any formal investigative proceeding with respect to a common carrier by railroad which was instituted by the Commission on its own

initiative and which has been pending before the Commission for a period of 3 or more years following the date of the order which instituted such proceeding.".

OFFICE OF RAIL PUBLIC COUNSEL

SEC. 304. (a) Part I of the Interstate Commerce Act is amended by redesignating section 27 thereof as section 29 thereof and by inserting after section 26 thereof a new section 27, as follows: 49 USC 27.

"OFFICE OF RAIL PUBLIC COUNSEL

"SEC. 27. (1) There shall be established, within 60 days after the date of enactment of this section, a new independent office affiliated with the Commission to be known as the Office of Rail Public Counsel. The Office of Rail Public Counsel shall function continuously pursuant to this section and other applicable Federal laws. Establishment. 49 USC 26b.

"(2) (a) The Office of Rail Public Counsel shall be administered by a Director. The Director shall be appointed by the President, by and with the advice and consent of the Senate. Director.

"(b) The term of office of the Director shall be 4 years. He shall be responsible for the discharge of the functions and duties of the Office of Rail Public Counsel. He shall be appointed and compensated, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, classification, and General Schedule pay rates, at a rate not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. Term. 5 USC 5332 note.

"(3) The Director is authorized to appoint, fix the compensation, and assign the duties of employees of such Office and to procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5, United States Code. Each bureau, office, or other entity of the Commission and each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized to provide the Office of Rail Public Counsel with such information and data as it requests. The Director is authorized to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of his functions and duties. The Director shall submit a monthly report on the activities of the Office of Rail Public Counsel to the Chairman of the Commission, and the Commission, in its annual report to the Congress, shall evaluate and make recommendations with respect to such Office and its activities, accomplishments, and shortcomings. Report to Commission and Congress.

"(4) In addition to any other duties and responsibilities prescribed by law, the Office of Rail Public Counsel—

"(a) shall have standing to become a party to any proceeding, formal or informal, which is pending or initiated before the Commission and which involves a common carrier by railroad subject to this part;

"(b) may petition the Commission for the initiation of proceedings on any matter within the jurisdiction of the Commission which involves a common carrier by railroad subject to this part;

"(c) may seek judicial review of any Commission action on any matter involving a common carrier by railroad subject to this part, to the extent such review is authorized by law for any person and on the same basis;

"(d) shall solicit, study, evaluate, and present before the Commission, in any proceeding, formal or informal, the views of those communities and users of rail service affected by proceedings initiated by or pending before the Commission, whenever the Director determines, for whatever reason (such as size or location), that such community or user of rail service might not otherwise be adequately represented before the Commission in the course of such proceedings; and

"(e) shall evaluate and represent, before the Commission and before other Federal agencies when their policies and activities significantly affect rail transportation matters subject to the jurisdiction of the Commission, and shall by other means assist the constructive representation of, the public interest in safe, efficient, reliable, and economical rail transportation services.

In the performance of its duties under this paragraph, the Office of Rail Public Counsel shall assist the Commission in the development of a public interest record in proceedings before the Commission.

Budget request and estimates, submittal to Congress and President. Appropriation authorization.

"(5) The budget requests and budget estimates of the Office of Rail Public Counsel shall be submitted concurrently to the Congress and to the President.

"(6) There are authorized to be appropriated to the Office of Rail Public Counsel for the purpose of carrying out the provisions of this section not to exceed $500,000 for the fiscal year ending June 30, 1976, not to exceed $500,000 for the fiscal year transition period ending September 30, 1976, and not to exceed $2,000,000 for the fiscal year ending September 30, 1977.".

Ante, p. 46.

(b) Section 13 of the Interstate Commerce Act (49 U.S.C. 13), as amended by this Act, is further amended by adding at the end thereof the following new paragraph:

"(6)(a) Whenever, pursuant to section 553(e) of title 5, United States Code, an interested person (including a government entity) petitions the Commission for the commencement of a proceeding for the issuance, amendment, or repeal of an order, rule, or regulation relating to common carriers by railroads under this Act, the Commission shall grant or deny such petition within 120 days after the date of receipt of such petition. If the Commission grants such a petition, it shall commence an appropriate proceeding as soon thereafter as practicable. If the Commission denies such a petition, it shall set forth, and publish in the Federal Register, its reasons for such denial.

Publication in Federal Register. Civil action.

"(b) If the Commission denies a petition under subdivision (a) (or if it fails to act thereon within the 120-day period established by such subdivision), the petitioner may commence a civil action in an appropriate court of appeals of the United States for an order directing the Commission to initiate a proceeding to take the action requested in such petition. Such an action shall be commenced within 60 days after the date of such denial or, where appropriate, within 60 days after the date of expiration of such 120-day period.

"(c) If the petitioner, in an action commenced under subdivision (b), demonstrates to the satisfaction of the court, by a preponderance of the evidence in the record before the Commission or, in an action based on a petition on which the Commission failed to act, in a new proceeding before such court, that the action requested in such petition to the Commission is necessary and that the failure of the Commission to take such action will result in the continuation of practices which are not consistent with the public interest or in accordance with this Act, such court shall order the Commission to initiate such action.

"(d) In any action under this paragraph, a court shall have no authority to compel the Commission to take any action other than the

initiation of a proceeding for the issuance, amendment, or repeal of an order, rule, or regulation under this Act.

"(e) As used in this paragraph, the term 'Commission' includes any division, individual Commissioner, administrative law judge, employee board, or any other person authorized to act on behalf of the Commission in any part of the proceeding for the issuance, amendment, or repeal of any order, rule, or regulation under this Act relating to common carriers by railroad.". "Commission."

REFORM OF RULES OF PRACTICE BEFORE THE COMMISSION

SEC. 305. (a) Within 360 days after the date of enactment of this Act, the Commission shall study, develop, and submit to the Congress an initial proposal setting forth rules of practice under which the Commission proposes to conduct all adjudicatory and rulemaking proceedings with respect to any matter involving a common carrier by railroad subject to this part. Such rules of practice before the Commission shall be consistent with existing law, shall take into consideration the varying nature of proceedings before the Commission, and shall include— Submittal to congressional committees. 49 USC 17 note.

(1) specific time limits upon the filing and disposition of all complaints, applications, petitions, pleadings, motions, appeals, and rulemaking proceedings before an administrative law judge, individual Commissioner, review board, division, or panel of the Commission, or the full Commission;

(2) specific methods of taking testimony, receiving evidence, hearing cross-examination, and the modification of such procedures so as to facilitate the timely execution of the functions of the Commission;

(3) utilization of additional administrative law judges or the assignment of employees of the Office, in complex adjudicatory or rulemaking proceedings, so as to facilitate proper focus and timely resolution of the issues within the required time limits; and

(4) specific remedies in any case of failure to observe required time limits.

(b) Within 420 days after the date of enactment of this Act, the Administrative Conference of the United States shall submit to the Congress and to the Commission its comments on the rules of practice before the Commission proposed pursuant to subsection (a) of this section, together with such recommendations as it considers appropriate.

(c) Within 30 days after the receipt of comments submitted pursuant to subsection (b) of this section, the Commission shall consider such comments and shall submit to the Congress a final proposal setting forth the rules of practice before the Commission with respect to matters involving common carriers by railroad. Such rules of practice shall take effect at the end of the first period of 60 calendar days of continuous session of the Congress after the date of submission of such final proposal, unless either the Senate or the House of Representatives adopts a resolution during such period stating that it does not approve such final proposal. If no resolution is adopted as provided in the preceding sentence, the Commission shall adopt such proposed rules of practice. For purposes of this subsection, continuity of session of the Congress is broken only by an adjournment sine die, and 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 from the computation of the 60-day period. Final proposal, submittal to Congress.

(d) If either the Senate or the House of Representatives passes a resolution of disapproval under subsection (c) of this section, the Commission shall develop a revised proposal setting forth the rules of practice before the Commission pursuant to this section. Within 60 days after the date of such disapproval, each such revised proposal shall be submitted to the Congress by the Commission for review pursuant to such subsection (c).

Review.

(e) The Commission shall periodically, but not less than once every 3 years, review the rules of practice adopted pursuant to subsection (c) of this section, and shall revise such rules as it considers necessary.

PROHIBITING DISCRIMINATORY TAX TREATMENT OF TRANSPORTATION PROPERTY

SEC. 306. Part I of the Interstate Commerce Act (49 U.S.C. 1 et seq.), as amended by this Act, is further amended by inserting therein a new section 28, as follows:

49 USC 26c.

"SEC. 28. (1) Notwithstanding the provisions of section 202(b), any action described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

"(a) The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.

"(b) The levy or collection of any tax on an assessment which is unlawful under subdivision (a).

"(c) The levy or collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.

"(d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part.

District courts, jurisdiction.

"(2) Notwithstanding any provision of section 1341 of title 28, United States Code, or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section, except that—

"(a) such jurisdiction shall not be exclusive of the jurisdiction which any Federal or State court may have in the absence of this subsection;

"(b) the provisions of this section shall not become effective until 3 years after the date of enactment of this section;

"(c) no relief may be granted under this section unless the ratio of assessed value to true market value, with respect to transportation property, exceeds by at least 5 per centum the ratio of assessed value to true market value, with respect to all other commercial and industrial property in the same assessment jurisdiction;

"(d) the burden of proof with respect to the determination of assessed value and true market value shall be that declared by the applicable State law; and

"(e) in the event that the ratio of the assessed value of all other commercial and industrial property in the assessment jurisdiction to the true market value of all such other commercial and industrial property cannot be established through the random-sampling method known as a sales assessment ratio study (conducted in accordance with statistical principles applicable to such studies) to the satisfaction of the court hearing the complaint that transportation property has been or is being assessed or taxed in contravention of the provisions of this section, then the court shall hold unlawful an assessment of such transportation property at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property, and the collection of any ad valorem property tax on such transportation property at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district.

"(3) As used in this section, the term— **Definitions.**

"(a) 'assessment' means valuation for purposes of a property tax levied by any taxing district;

"(b) 'assessment jurisdiction' means a geographical area, such as a State or a county, city, township, or special purpose district within such State which is a unit for purposes of determining the assessed value of property for ad valorem taxation;

"(c) 'commercial and industrial property' or 'all other commercial and industrial property' means all property, real or personal, other than transportation property and land used primarily for agricultural purposes or primarily for the purpose of growing timber, which is devoted to a commercial or industrial use and which is subject to a property tax levy; and

"(d) 'transportation property' means transportation property, as defined in regulations of the Commission, which is owned or used by a common carrier by railroad subject to this part or which is owned by the National Railroad Passenger Corporation.".

UNIFORM COST AND REVENUE ACCOUNTING SYSTEM

SEC. 307. Paragraph (3) of section 20 of the Interstate Commerce Act (49 U.S.C. 20(3)) is amended to read as follows:

"(3)(a) The Commission shall, not later than June 30, 1977, issue regulations and procedures prescribing a uniform cost and revenue accounting and reporting system for all common carriers by railroad subject to this part. Such regulations and procedures shall become effective not later than January 1, 1978. Before promulgating such regulations and procedures, the Commission shall consult with and solicit the views of other agencies and departments of the Federal Government, representatives of carriers, shippers, and their employees, and the general public. **Regulations.**

"(b) In order to assure that the most accurate cost and revenue data can be obtained with respect to light density lines, main line operations, factors relevant in establishing fair and reasonable rates, and other regulatory areas of responsibility, the Commission shall

identify and define the following items as they pertain to each facet of rail operations:

"(i) operating and nonoperating revenue accounts;

"(ii) direct cost accounts for determining fixed and variable cost for materials, labor, and overhead components of operating expenses and the assignment of such costs to various functions, services, or activities, including maintenance-of-way, maintenance of equipment (locomotive and car), transportation (train, yard and station, and accessorial services), and general and administrative expenses; and

"(iii) indirect cost accounts for determining fixed, common, joint, and constant costs, including the cost of capital, and the method for the assignment of such costs to various functions, services, or activities.

"(c) The accounting system established pursuant to this paragraph shall be in accordance with generally accepted accounting principles uniformly applied to all common carriers by railroad subject to this part, and all reports shall include any disclosure considered appropriate under generally accepted accounting principles or the requirements of the Commission or of the Securities and Exchange Commission. The Commission shall, notwithstanding any other provision of this section, to the extent possible, devise the system of accounts to be cost effective, nonduplicative, and compatible with the present and desired managerial and responsibility accounting requirements of the carriers, and to give due consideration to appropriate economic principles. The Commission should attempt, to the extent possible, to require that such data be reported or otherwise disclosed only for essential regulatory purposes, including rate change requests, abandonment of facilities requests, responsibility for peaks in demand, cost of service, and issuance of securities.

Review.

"(d) In order that the accounting system established pursuant to this paragraph continue to conform to generally accepted accounting principles, compatible with the managerial responsibility accounting requirements of carriers, and in compliance with other objectives set forth in this section, the Commission shall periodically, but not less than once every 5 years, review such accounting system and revise it as necessary.

Appropriation authorization.

"(e) There are authorized to be appropriated to the Commission for purposes of carrying out the provisions of this paragraph such sums as may be necessary, not to exceed $1,000,000, to be available for—

"(i) procuring temporary and intermittent services as authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed $250 per day plus expenses; and

"(ii) entering into contracts or cooperative agreements with any public agency or instrumentality or with any person, firm, association, corporation, or institution, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).".

SECURITIES

SEC. 308. (a)(1) Paragraph (6) of section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a)(6)) is amended to read as follows:

"(6) Any security issued by a motor carrier the issuance of which is subject to the provisions of section 214 of the Interstate Commerce Act, or any interest in a railroad equipment trust. For purposes of this paragraph 'interest in a railroad equipment trust' means any interest in an equipment trust, lease, conditional sales contract, or other

"Interest in a railroad equipment trust."

similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of, a common carrier to finance the acquisition of rolling stock, including motive power;".

(2) The second sentence of section 19(a) of such Act (15 U.S.C. 77s(a)) is amended by striking out "; but insofar as they relate to any common carrier subject to the provisions of section 20 of the Interstate Commerce Act, as amended, the rules and regulations of the Commission with respect to accounts shall not be inconsistent with the requirements imposed by the Interstate Commerce Commission under authority of such section 20". 49 USC 20.

(3) Section 214 of the Interstate Commerce Act (49 U.S.C. 314) is amended by striking out "That the exemption" and all that follows through "*And provided further*,". 15 USC 77c.

(b) Section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)) is amended by striking out ", and, in the case of carriers subject to the provisions of section 20 of the Interstate Commerce Act" and all that follows in such subsection, and inserting in lieu thereof "(except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).".

(c) Paragraph (7) of section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(7)) is amended to read as follows:

"(7) Any company (A) which is subject to regulation under section 214 of the Interstate Commerce Act, except that this exception shall not apply to a company which the Commission finds and by order declares to be primarily engaged, directly or indirectly, in the business of investing, reinvesting, owning, holding, or trading in securities, or (B) whose entire outstanding stock is owned or controlled by a company excepted under clause (A) hereof, if the assets of the controlled company consist substantially of securities issued by companies which are subject to regulation under section 214 of the Interstate Commerce Act.".

(d)(1) The amendments made by subsection (a) of this section shall take effect on the 60th day after the date of enactment of this Act, but shall not apply to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day. Effective date. 15 USC 77c note.

(2) The amendment made by subsection (c) of this section shall not apply to any report by any person with respect to a fiscal year of such person which began before the date of enactment of this Act. 15 USC 80a-3 note.

(3) The amendment made by subsection (c) of this section shall take effect on the 60th day after the date of enactment of this Act. Effective date. 15 USC 80a-3 note.

RAIL SERVICES PLANNING OFFICE

SEC. 309. Section 205 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715) is amended to read as follows:

"RAIL SERVICES PLANNING OFFICE

"SEC. 205. (a) ESTABLISHMENT.—The Rail Services Planning Office is established as an office in the Commission. The Office shall function continuously pursuant to the provisions of this Act, and shall be administered by a director.

"(b) DIRECTOR.—The Director of the Office shall be appointed for a term of 6 years by the Chairman of the Commission with the concurrence of 5 members of the Commission. He shall be appointed and compensated, without regard to the provisions of title 5, United States

Code, governing appointments in the competitive service, classification, and General Schedule pay rates, at a rate not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. The Director of the Office shall administer and be responsible for the discharge of the functions and duties of the Office from the date he takes office unless removed for cause by the Commission.

"(c) POWERS.—The Director of the Office is subject to the direction of, and shall report to, such member of the Commission as the Chairman thereof shall designate. The Chairman may designate himself as that member. Such Director is authorized, with the concurrence of such member or (in case of disagreement) the Chairman of the Commission, to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5) such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions and duties of the Office with any person (including a government entity). Each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized, and shall give careful consideration to a request, to furnish to the Director of the Office, upon written request, on a reimbursable basis or otherwise, such assistance as the Director deems necessary to carry out the functions and duties of the Office. Such assistance includes transfer of personnel with their consent and without prejudice to their position and rating.

"(d) DUTIES.—In addition to its duties and responsibilities under other provisions of this Act and under the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall—

Ante, p. 31.

"(1) assist the Commission in studying and evaluating any proposal, submitted to the Commission pursuant to section 5(2) or (3) of the Interstate Commerce Act (49 U.S.C. 5 (2) or (3)), for a merger, consolidation, unification or coordination project, joint use of tracks or other facilities, or acquisition or sale of assets, which involves any common carrier by railroad subject to part I of such Act;

"(2) assist the Commission in developing, with respect to economic regulation of transportation, policies which are likely to result in a more competitive, energy-efficient, and coordinated transportation system which utilizes each mode of transportation to its maximum advantage to meet the transportation service needs of the Nation;

"(3) assist States and local and regional transportation agencies in making determinations whether to provide rail service continuation subsidies to maintain in operation particular rail properties, by establishing criteria for determining whether particular rail properties are suitable for rail service continuation subsidies, with such criteria to include the following considerations: rail properties are suitable if the cost of the required subsidy for such properties per year to the taxpayers is less than (A) the cost of termination of rail service over such properties measured by increased fuel consumption and operational costs for alternative modes of transportation, (B) the cost to the gross national product in terms of reduced output of goods and services, (C) the cost of relocating or assisting through unemployment, retraining, and welfare benefits to individuals and firms adversely affected thereby, and (D) the cost to the environment measured by damage caused by increased pollution;

"(4) conduct an ongoing analysis of the national rail transportation needs, evaluate the policies, plans, and programs of the

Commission on the basis of such analysis, and advise the Commission of the results of such evaluation;

"(5) within 180 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, issue additional regulations, after conducting a proceeding in accordance with the provisions of section 553 of title 5, United States Code, which contain— Regulations. *Ante*, p. 31.

"(A) standards for the computation of subsidies for rail passenger service (except passenger service compensation disputes subject to the jurisdiction of the Commission under section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a))), which are consistent with the compensation principles described in the final system plan and which avoid cross subsidization among commuter, intercity, and freight rail services; and

"(B) standards for the determination of emergency commuter rail passenger service operating payments pursuant to section 17 of the Urban Mass Transportation Act of 1964; *Post*, p. 143.

"(6) determine and publish, and from time to time revise and reissue, standards for determining (A) the 'revenue attributable to the rail properties', (B) the 'avoidable costs of providing service', (C) a 'reasonable return on the value,' and (D) a 'reasonable management fee', as those phrases are used in section 304 of this Act, after a proceeding in accordance with the provisions of section 553 of title 5, United States Code; and

"(7) employ and utilize the services of attorneys and such other personnel as may be required in order properly to protect the interests of those communities and users of rail service which, for whatever reason (such as their size or location) might not otherwise be adequately represented in the course of the reorganization process under this Act, until the assumption of such duties by the Office of Rail Public Counsel pursuant to section 27(4)(d) of the Interstate Commerce Act (49 U.S.C. 27(4)(d)).

"(e) ADDITIONAL DUTIES.—(1) Within 270 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall issue additional regulations, after conducting a proceeding in accordance with section 553 of title 5, United States Code. Such regulations shall (A) develop an accounting system which will permit the collection and publication by the Corporation or by profitable railroads providing service over lines scheduled for abandonment, of information necessary for an accurate determination of the attributable revenues, avoidable costs, and operations of light density lines as operating and economic units, and (B) determine the 'avoidable costs of providing rail freight service', as that phrase is used in section 1a(6)(a)(ii)(A) of the Interstate Commerce Act. The Office may, at any time, revise and republish the standards and regulations required by this section to incorporate changes made necessary by the accounting system developed pursuant to this subsection. Regulations. *Post*, p. 127.

"(2) Upon the request of a State in the region, within 90 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, the Office shall prepare and publish an evaluation of the economic viability of any or all light density lines within such State which are not designated for inclusion in the final system plan. Such an evaluation shall include an analysis of the actions which may be necessary to make the operation of rail services over any such line economical. The results of each such evaluation shall be trans- Evaluation. Publication in Federal Register.

mitted to the requesting State and published in the Federal Register, not later than 1 year after the date such request is received by the Office.".

EQUITABLE DISTRIBUTION OF CARS FOR UNIT TRAIN SERVICE

SEC. 310. Section 1(12) of the Interstate Commerce Act (49 U.S.C. 1(12)), is amended by adding at the end thereof: "In applying the provisions of this paragraph, unit-train service and non-unit-train service shall be considered separate and distinct classes of service, and a distinction shall be made between these two classes of service and between the cars used in each class of service; questions of the justness and reasonableness of, or discrimination or preference or prejudice or advantage or disadvantage in, the distribution of cars shall be determined within each such class and not between them, notwithstanding any other provision of section 1, 2, or 3 of this Act (49 U.S.C. 1, 2, or 3), and of section 1, 2, or 3 of the Elkins Act (49 U.S.C. 41, 42, or 43). Coal cars supplied by shippers or receivers shall not be considered a part of such carrier's fleet or otherwise counted in determining questions of distribution or car count under this paragraph or any provision of law referred to in this section. As used in this paragraph, the term 'unit-train service', means the movement of a single shipment of coal of not less than 4,500 tons, tendered to one carrier, on one bill of lading, at one origin, on one day, and destined to one consignee, at one plant, at one destination, via one route.".

"Unit-train service."

APPROPRIATIONS REQUEST

SEC. 311. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11) is amended by adding at the end thereof the following new subsection:

"(j) Whenever the Interstate Commerce Commission submits any budget estimate or request, other budget information (including manpower needs), legislative recommendations prepared testimony for congressional hearings, or comments on legislation, to the President or to the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress. No officer or agency of the United States shall have any authority to prohibit, impose conditions on, or in any way impair the free communication by such Commission with the Congress, its committees, or any of the Members of the Congress with respect to any budget estimate or request of the Commission.".

Transmittal to Congress.

LAW REVISION

SEC. 312. The Commission shall prepare, or shall cause to be prepared, in whole or in part by consultants, a proposed modernization and revision of the Interstate Commerce Act, and a proposed codification of all Acts supplementary to the Interstate Commerce Act. The Commission shall submit the final draft thereof to the Congress within 2 years after the date of enactment of this Act. The final draft shall include comments on each proposed provision, significant alternative provisions considered but not recommended, and such other information as may be useful to the Congress. The final draft shall be designed to simplify the present law and to harmonize regulation among the several modes of transportation subject to regulation under the Interstate Commerce Act.

49 USC 1 note.

49 USC prec. 1 note.

Final draft, submittal to Congress.

TITLE IV—MERGERS AND CONSOLIDATIONS

RESPONSIBILITIES OF THE SECRETARY

SEC. 401. The Department of Transportation Act (49 U.S.C. 1651 et seq.) is amended by inserting after section 4 thereof the following new section 5:

"RAIL SERVICES

"SEC. 5. (a) The Secretary may develop and make available to interested persons feasible plans, proposals, and recommendations for mergers, consolidations, reorganizations, and other unification or coordination projects for rail services (including, but not limited to, arrangements for joint use of tracks or other facilities and any acquisition or sale of assets) which the Secretary believes would result in a rail system which is more efficient, consistent with the public interest. 49 USC 1654.

"(b) In order to achieve a more efficient, economical, and viable rail system in the private sector, the Secretary may, upon the request of any railroad and in accordance with subsections (a) through (e) of this section, assist in planning, negotiating, and effecting a unification or coordination of operations and facilities with respect to two or more railroads.

"(c) The Secretary may conduct such studies as are deemed advisable to determine the potential cost savings and possible improvements in the quality of rail services which are likely to result from unification or coordination with respect to two or more railroads, through the elimination of duplicative or overlapping operations and facilities; the reduction of switching operations; utilization of the shortest, or the most efficient, and economical routes; the exchange of trackage rights; the combining of trackage and of terminal or other facilities; the upgrading of tracks and other facilities used by two or more railroads; reduction of administrative and other expenses; and any other measures likely to reduce costs and improve rail service. For purposes of studies conducted under this section and the study described in section 901 of the Railroad Revitalization and Regulatory Reform Act of 1976, each railroad shall provide such information as may be requested by the Secretary in connection with the performance of functions under this section and such section 901. In furtherance of any of the functions or responsibilities of the Secretary under this section or such section 901, any officer or employee duly designated by the Secretary may obtain, from any railroad, information regarding the nature, kind, quality, origin, destination, consignor, consignee, and routing of property, without the consent of the consignor or consignee involved, notwithstanding the provisions of section 15(13) of the Interstate Commerce Act (49 U.S.C. 15(13)) and may, to the extent necessary or appropriate, exercise, with respect to any railroad, any of the powers described in section 203(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 713(c)), as provided therein, except that subpoenas shall be issued under the signature of the Secretary. Studies. *Post*, p. 147. Subpoenas.

"(d) When requested by one or more railroads, the Secretary may also hold conferences with respect to any proposed unification or coordination project. The Secretary may invite officers and directors of all affected railroads; representatives of employees of such railroads who may be affected; the Interstate Commerce Commission; appropriate State and local government officials, shippers, and consumer representatives; and representatives of the Federal Trade Commission and of the Attorney General to one or more such conferences with respect to such a proposal. The Secretary may mediate any dispute Conferences.

which may arise in connection with any proposed unification or coordination project. Persons attending or represented at any such conference shall not be liable under the antitrust laws of the United States with respect to any discussion at such conference and as to any agreements reached at such conference, which are entered into with the approval of the Secretary in order to achieve or determine a plan of action to implement any such unification or coordination project.

"(e) Whenever any railroad submits a proposal for a merger or other action the approval of which is subject to the jurisdiction of the Interstate Commerce Commission under section 5(2) of the Interstate Commerce Act (49 U.S.C. 5(2)), the Secretary may, if he has not already done so, conduct a study of such proposal in order to determine whether or not, in his judgment, such proposal is in accordance with the standards set forth in section 5(2)(c) of such Act (49 U.S.C. 5(2)(c)). Whenever such proposal is the subject of an application and a proceeding before such Commission, the Secretary is authorized to appear before the Commission in any proceeding held with respect to such application.".

MERGER PROCEDURE

SEC. 402. (a) Section 5(2)(f) of the Interstate Commerce Act (49 U.S.C. 5(2)(f)) is amended by inserting a new sentence immediately preceding the last sentence thereof as follows: "Such arrangement shall contain provisions no less protective of the interests of employees than those heretofore imposed pursuant to this subdivision and those established pursuant to section 405 of the Rail Passenger Service Act (45 U.S.C. 565).".

(b) Section 5(2) of the Interstate Commerce Act (49 U.S.C. 5(2)) is amended by adding at the end thereof the following two new subdivisions:

"(g) In any case arising under this paragraph which involves a common carrier by railroad, the Commission shall—

Application.

Publication in Federal Register.

49 USC 17.

Publication in Federal Register.

"(i) within 30 days after the date on which an application is filed with the Commission and after a certified copy of such application is furnished to the Secretary of Tranportation, (A) publish notice thereof in the Federal Register, or (B) if such application is incomplete, reject such application by order, which order shall be deemed to be final under the provisions of section 17;

"(ii) provide that written comments on an application, as to which such notice is published, may be filed within 45 days after the publication of such notice in the Federal Register;

"(iii) require that copies of any such comments shall be served upon the Secretary of Transportation and the Attorney General, each of whom shall be afforded 15 days following the date of receipt thereof to inform the Commission whether he will intervene as a party to the proceeding, and if so, to submit preliminary views on such application;

"(iv) require that all other applications, which are inconsistent, in whole or in part, with such applications, and all petitions for inclusion in the transaction, shall be filed with the Commission and furnished to the Secretary of Transportation, within 90 days after the publication of notice of the application in the Federal Register;

"(v) conclude any evidentiary proceedings within 240 days following the date of such publication of notice, except that in the case of an application involving the merger or control of two or more class I railroads, as defined by the Commission, the Com-

mission shall conclude any evidentiary proceedings not more than 24 months following the date upon which notice of the application was published in the Federal Register; and

"(vi) issue a final decision within 180 days following the date upon which the evidentiary proceeding is concluded.

If the Commission fails to issue a decision which is final within the meaning of section 17 within such 180-day period, it shall notify the Congress in writing of such failure and the reasons therefor. If the Commission determines that the due and timely execution of its functions under this paragraph so requires, or that an application brought under this paragraph is of major transportation importance, it may order that the case be referred directly (without an initial decision by a division, individual Commissioner, board, or administrative law judge) to the full Commission for a decision which is final within the meaning of section 17.

Congressional notification.

"(h) The Secretary of Transportation may propose any modification of any transaction governed by this paragraph which involves a carrier by railroad. The Secretary shall have standing to appear before the Commission in support of any such proposed modification.".

EXPEDITED RAILROAD MERGER PROCEDURE

SEC. 403. (a) Section 5 of the Interstate Commerce Act (49 U.S.C. 5) is amended by redesignating paragraphs (3) through (16) thereof as paragraphs (4) through (17) thereof, respectively, and by inserting therein a new paragraph (3), as follows:

"(3) (a) If a merger, consolidation, unification or coordination project (as described in section 5(c) of the Department of Transportation Act), joint use of tracks or other facilities, or acquisition or sale of assets, which involves any common carrier by railroad subject to this part, is proposed by an eligible party in accordance with subdivision (b) during the period beginning on the date of enactment of this paragraph and ending on December 31, 1981, the party seeking authority for the execution or implementation of such transaction may utilize the procedure set forth in this paragraph or in paragraph (2).

"(b) Any transaction described in subdivision (a) may be proposed to the Commission by—

"(i) the Secretary of Transportation (hereafter in this paragraph referred to as the 'Secretary'), with the consent of the common carriers by railroad subject to this part which are parties to such transaction; or

"(ii) any such carrier which, not less than 6 months prior to such submission to the Commission, submitted such proposed transaction to the Secretary for evaluation pursuant to subdivision (f).

"(c) Whenever a transaction described in subdivision (a) is proposed under this paragraph, the proposing party shall submit an application for approval thereof to the Commission, in accordance with such requirements as to form, content, and documentation as the Commission may prescribe. Within 10 days after the date of receipt of such an application, the Commission shall send a notice of such proposed transaction to—

Application.

Notice.

"(i) the Governor of each State which may be affected, directly or indirectly, by such transaction if it is executed or implemented;

"(ii) the Attorney General;

"(iii) the Secretary of Labor; and

"(iv) the Secretary (except where the Secretary is the proposing party).

The Commission shall accompany its notice to the Secretary with a request for the report of the Secretary pursuant to clause (v) of subdivision (f). Each such notice shall include a copy of such application; a summary of the proposed transaction involved, and the proposing party's reasons and public interest justifications therefor.

Hearing.

"(d) The Commission shall hold a public hearing on each application submitted to it pursuant to subdivision (c), within 90 days after the date of receipt of such application. Such public hearing shall be held before a panel of the Commission duly designated for such purpose by the Commission. Such panel may utilize administrative law judges and the Rail Services Planning Office in such manner as it considers appropriate for the conduct of the hearing, the evaluation of such application and comments thereon, and the timely and reasonable determination of whether it is in the public interest to grant such application and to approve such proposed transaction pursuant to subdivision (g). Such panel shall complete such hearing within 180 days after the date of referral of such application to such panel, and it may, in order to meet such requirement, prescribe such rules and make such rulings as may tend to avoid unnecessary costs or delay. Such panel shall recommend a decision and certify the record to the full Commission for final decision, within 90 days after the termination of such hearing. The full Commission shall hear oral argument on the matter so certified, and it shall render a final decision within 120 days after receipt of the certified record and recommended decision of such panel. The Commission may, in its discretion, extend any time period set forth in this subdivision, except that the final decision of the Commission shall be rendered not later than the second anniversary of the date of receipt of such an application by the Commission.

"(e) In making its recommended decision with respect to any transaction proposed under this paragraph, the duly designated panel of the Commission shall—

"(i) request the views of the Secretary, with respect to the effect of such proposed transaction on the national transportation policy, as stated by the Secretary, and consider the matter submitted under subdivision (f);

"(ii) request the views of the Attorney General, with respect to any competitive or anticompetitive effects of such proposed transaction; and

"(iii) request the views of the Secretary of Labor, with respect to the effect of such proposed transaction on railroad employees, particularly as to whether such proposal contains adequate employee protection provisions.

Such views shall be submitted in writing and shall be available to the public upon request.

Proposed transaction.

"(f) Whenever a proposed transaction is submitted to the Secretary by a common carrier by railroad pursuant to clause (ii) of subdivision (b), and whenever the Secretary develops a proposed transaction for submission to the Commission pursuant to subdivision (c), the Secretary shall—

Publication in Federal Register.

"(i) publish a summary and a detailed account of the contents of such proposed transaction in the Federal Register, in order to provide reasonable notice to interested parties and the public of such proposed transaction;

Notice.

"(ii) give notice of such proposed transaction to the Attorney General and to the Governor of each State in which any part of the properties of the common carriers by railroad involved in such proposed transaction are situated;

"(iii) conduct an informal public hearing with respect to such proposed transaction and provide an opportunity for all interested parties to submit written comments; Hearing.

"(iv) study each such proposed transaction with respect to—

"(A) the needs of rail transportation in the geographical area affected;

"(B) the effect of such proposed transaction on the retention and promotion of competition in the provision of rail and other transportation services in the geographical area affected;

"(C) the environmental impact of such proposed transaction and of alternative choices of action;

"(D) the effect of such proposed transaction on employment;

"(E) the cost of rehabilitation and modernization of track, equipment, and other facilities, with a comparison of the potential savings or losses from other possible choices of action;

"(F) the rationalization of the rail system;

"(G) the impact of such proposed transaction on shippers, consumers, and railroad employees;

"(H) the effect of such proposed transaction on the communities in the geographical areas affected and on the geographical areas contiguous to such areas; and

"(I) whether such proposed transaction will improve rail service; and

"(v) submit a report to the Commission setting forth the results of each study conducted pursuant to clause (iv), within 10 days after an application is submitted to the Commission pursuant to subdivision (c), with respect to the proposed transaction which is the subject of such study. The Commission shall give due weight and consideration to such report in making its determinations under this paragraph. Report to Commission.

"(g) The Commission may—

"(i) approve a transaction proposed under this paragraph, if the Commission determines that such proposed transaction is in the public interest; and

"(ii) condition its approval of any such proposed transaction on any terms, conditions, and modifications which the Commission determines are in the public interest; or

"(iii) disapprove any such proposed transaction, if the Commission determines that such proposed transaction is not in the public interest.

In each such case, the decision of the Commission shall be accompanied by a written opinion setting forth the reasons for its action.".

(b) Section 5 of the Interstate Commerce Act (49 U.S.C. 5) is further amended—

(1) in paragraph (2)(a) thereof by inserting "or paragraph (3)" immediately after "subdivision (b)";

(2) in paragraph (2)(f) thereof, by inserting immediately after "(2)" the following: "or paragraph (3)";

(3) in paragraph (5) thereof, as redesignated by this Act, by striking out "paragraph (2)" and inserting in lieu thereof "paragraphs (2) and (3)", and by striking out "paragraph (5)" and inserting in lieu thereof "paragraph (6)";

(4) in paragraph (8) thereof, as redesignated by this Act, by striking out "paragraph (4)" and inserting in lieu thereof

"paragraph (5)", and by striking out "(12)" and inserting in lieu thereof "(13)";

(5) in paragraph (10) thereof, as redesignated by this Act, by striking out "(7)" and inserting in lieu thereof "(8)";

(6) in paragraph (14) thereof, as redesignated by this Act, by striking out "(12)" and inserting in lieu thereof "(13)";

(7) in paragraph (16), as redesignated by this Act, by striking out "paragraph (14)" and inserting in lieu thereof "paragraph (15)";

(8) in paragraph (17), as redesignated by this Act, by striking out "paragraph (14)" and inserting in lieu thereof "paragraph (15)"; and

(9) by striking out "subparagraph" each place it appears and inserting in lieu thereof "subdivision".

TITLE V—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

DEFINITIONS

45 USC 821.

SEC. 501. As used in this title, the term—

(1) "applicant" means any railroad, or other person (including a governmental entity) which submits an application to the Secretary for the guarantee of an obligation under which it is an obligor or for a commitment to guarantee such an obligation;

(2) "equipment" includes any type of new or rebuilt standard gauge locomotive, caboose, or general service railroad freight car the use of which is not limited to any specialized purpose by particular equipment, design, or other features. General service railroad freight car includes a boxcar, gondola, open-top or covered hopper car, and flatcar. The Secretary may designate other types of cars as equipment upon a written finding, with reasons therefor, that such designation is consistent with the purposes of this Act;

(3) "facilities" means—

(A) track, roadbed, and related structures, including rail, ties, ballast, other track materials, grading, tunnels, bridges, trestles, culverts, elevated structures, stations, office buildings used for operating purposes only, repair shops, enginehouses, and public improvements used or useable for rail service operations;

(B) communication and power transmission systems, including electronic, microwave, wireless, communication, and automatic data processing systems, electrical transmission systems, powerplants, power transmission systems, powerplant machinery and equipment, structures, and facilities for the transmission of electricity for use by railroads;

(C) signals, including signals and interlockers;

(D) terminal or yard facilities, including trailer-on-flat-car and container-on-flat-car terminals, express or railroad terminal and switching facilities, and services to express companies and railroads and their shippers, including ferries, tugs, carfloats, and related shoreside facilities designed for the transportation of equipment by water; or

(E) shop or repair facilities or any other property used or capable of being used in rail freight transportation services or in connection with such services or for originating, termi-

nating, improving, and expediting the movement of equipment;

(4) "Fund" means the Railroad Rehabilitation and Improvement Fund established under section 502 of this title;

(5) "holder" means the obligee or creditor under an obligation, except that when a bank or trust company is acting as agent or trustee for such an obligee or creditor, the term refers to such bank or trust company;

(6) "obligation" means a bond, note, conditional sale agreement, equipment trust certificate, security agreement, or other obligation issued or granted to finance or refinance equipment or facilities acquisition, construction, rehabilitation, or improvement; and

(7) "obligor" means the debtor under an obligation, including the original obligor and any successor or assignee of such obligor who is approved by the Secretary.

THE RAIL FUND

Railroad Rehabilitation and Improvement Fund. 45 USC 822.

SEC. 502. (a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States the Railroad Rehabilitation and Improvement Fund. The Fund shall be administered by the Secretary, without the requirement of annual authorizations, in order (1) to secure the payment, when due, of the principal of, any redemption premium on, and any interest on, all Fund anticipation notes and Fund bonds, by a first pledge of and a lien on all revenues payable to and assets held in the Fund, and (2) to carry out the purposes, functions, and powers authorized in this title.

(b) PURPOSE.—The purpose of the Fund is to provide capital which is necessary to furnish financial assistance to railroads, to the extend of appropriated funds, for facilities maintenance, rehabilitation, improvements, and acquisitions, and such other financial needs as the Secretary approves, in accordance with this title.

(c) GENERAL POWERS.—In order to achieve the objectives and to carry out the purposes of this title, the Secretary may—

(1) issue and sell securities, including Fund anticipation notes and Fund bonds, as provided for in sections 507 and 508 of this title;

Rules and regulations.

(2) make and enforce such rules and regulations, and make and perform such contracts, agreements, and commitments, as may be necessary to appropriate to carry out the purposes or provisions of this title;

(3) prescribe and impose fees and charges for services by the Secretary, pursuant to this title;

(4) settle, adjust, and compromise, and, with or without consideration or benefit to the Fund, release or waive, in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Secretary or the Fund;

(5) sue and be sued, complain, and defend, in any State, Federal, or other court;

(6) acquire, take, hold, own, deal with, and dispose of, any property, including carrier redeemable preference shares as provided for in section 505(d) of this title; and

(7) determine, in accordance with appropriations, the amounts to be withdrawn from the Fund and the manner in which such withdrawals shall be effected.

(d) ASSISTANCE FROM OTHER AGENCIES.—The Secretary, with the consent of any department, establishment, or corporate or other instru-

mentality of the Federal Government, may utilize and act through any such department, establishment, or instrumentality. The Secretary may, with such consent, utilize the information, services, facilities, and personnel of any such department, establishment, or instrumentality, on a reimbursable basis. Each such department, establishment, and instrumentality is authorized to furnish any such assistance to the Secretary upon written request from the Secretary.

(e) JURISDICTION.—Whenever the Secretary or the Fund is a party to any civil action under this title, such action shall be deemed to arise under the laws of the United States. The district courts of the United States shall have original and removal jurisdiction of any action in which the Secretary or the Fund is a party, without regard to the amount in controversy. No attachment or execution may be issued against the Secretary, the Fund, or any property thereof prior to the entry of final judgment to such effect in any State, Federal, or other court.

(f) CONTENTS OF FUND.—There shall be deposited in the Fund, subject to utilization pursuant to subsection (i) of this section—

(1) funds received by the Secretary for deposit in the Fund, representing the proceeds from the issuance and sale by the Secretary to the Secretary of the Treasury of Fund anticipation notes, as provided in section 507 of this title;

(2) funds as may be hereafter appropriated to the Fund, following the submission to the Congress of the Secretary's report, under section 504 of this title, with respect to the perceived needs of the rail industry for facilities rehabilitation and improvement, projected cash shortfalls within the rail industry, and the scope and sources of long-term public sector funding for the Fund;

(3) funds received by the Secretary for deposit in the Fund, representing the proceeds from the issuance and sale of Fund bonds, as provided in section 508 of this title;

(4) redeemable preference shares issued by a railroad and purchased by the Secretary on behalf of the Fund and funds received by the Fund representing dividends and redemption payments on such shares, as provided in sections 505(d) and 506 (a) and (b) of this title;

(5) income and gains realized by the Fund from any investment of excess funds, pursuant to subsection (g) of this section, and the obligations or securities comprising such investments; and

(6) any other receipts of the Fund.

(g) EXCESS FUNDS INVESTMENT.—If the Secretary determines that the amount of money in the Fund exceeds the amount required for current needs, the Secretary may, subject to sections 508 (g) and (h) of this title, direct the Secretary of the Treasury to invest such amounts as the Secretary deems advisable, for such periods as the Secretary directs, in obligations of, or obligations guaranteed by, the Government of the United States, or in such other governmental or agency obligations or other securities of the United States as the Secretary of the Treasury deems appropriate.

(h) DEPOSITORY.—The Secretary may deposit moneys of the Fund with any Federal Reserve bank, any depository for public funds, or in such other places and in such manner as the Secretary of the Treasury deems appropriate.

(i) USES.—Moneys in the Fund shall be utilized—

(1) to provide financial assistance to railroads for facilities maintenance, rehabilitation, improvement, and acquisition projects, and for such other financial needs as may be approved by the Secretary pursuant to section 505 of this title,

(2) to effect the payment, when due, of the principal of, and any interest on, Fund anticipation notes and Fund bonds issued by the Secretary pursuant to sections 507 and 508 of this title,

(3) to redeem, as contemplated by section 507(c) and section 508(g) of this title, Fund anticipation notes and Fund bonds,

(4) in such amounts as are provided in appropriation acts, to make payment of all expenses incurred by the Secretary in carrying out his duties with respect to the Fund, and

(5) to make transfers to the general fund of the Treasury.

CLASSIFICATION AND DESIGNATION OF RAIL LINES

SEC. 503. (a) TRAFFIC DENSITY ANALYSIS.—Within 90 days after the date of enactment of this Act, each railroad designated by the Commission as a class I railroad shall prepare and submit to the Secretary a full and complete analysis of the rail system operated by it. Such analysis shall indicate the traffic density for the preceding 5 calendar years on each of the main and branch rail lines of the railroad submitting such analysis. The requirements of the two preceding sentences shall not apply to any railroad subject to reorganization pursuant to the Regional Rail Reorganization Act of 1973.

Submittal to Secretary of Transportation. 45 USC 823.

45 USC 701 note.

(b) PRELIMINARY STANDARDS AND DESIGNATIONS.—Within 180 days after the date of enactment of this Act, the Secretary shall develop and publish—

(1) the preliminary standards for classification, in at least 3 categories, of main and branch rail lines according to the degree to which they are essential to the rail transportation system; and

(2) the preliminary designations with respect to each main and branch rail line, in accordance with such standards for classification.

The classification of rail lines for purposes of this subsection shall be based on the level of usage measured in gross-ton-miles, the contribution to the economic viability of the railroad which controls such lines, and the contribution of such lines to the probable economic viability of any other railroads which participate in the traffic originating on such lines. In determining "level of usage" and "probable economic viability", for purposes of such classification, the Secretary shall take into account operational service and other appropriate factors, and he may make reasonable allowance for differences in operation among individual railroads or groups of railroads.

(c) PUBLIC HEARINGS.—Commencing 30 days after the date of publication of the standards and designations required under subsection (b) of this section, the Office shall conduct public hearings, at representative locations, to solicit comments and receive views on the preliminary standards for classification and on the preliminary designations. The Office shall give notice of the date, time, and place of each such hearing, and such notices shall be designed and placed in such manner that all interested parties will have a full and fair opportunity to be heard.

Notice.

(d) REPORT BY OFFICE.—Within 120 days after the date of publication of the standards and designations required under subsection (b) of this section, the Office shall submit a report to the Secretary containing its conclusions and recommendations with respect to such preliminary standards for classification and such preliminary designations. This report shall be based on the record which was developed by the Office during the hearings under subsection (c) of this section, as supplemented by such studies as may be undertaken by the Office.

(e) FINAL STANDARDS AND DESIGNATIONS.—Within 60 days after the date of receipt of the report required under subsection (d) of this section, the Secretary, with the cooperation and assistance of the Office, shall, after giving due consideration to such report, prepare and publish—

(1) the final standards for classification of main and branch rail lines; and

(2) the final designations with respect to each main and branch rail line, in accordance with such standards for classification, including findings to support any material change which is made in a final designation from the corresponding preliminary designation.

CAPITAL NEEDS STUDY

45 USC 824.

SEC. 504. (a) DEFERRED MAINTENANCE STATEMENT.—Within 180 days after the date of enactment of this Act, each railroad designated by the Commission as a class I railroad (other than a railroad subject to reorganization pursuant to the Regional Rail Reorganization Act of 1973) shall prepare and submit to the Secretary a full and complete statement (1) of such railroad's deferred maintenance and delayed capital expenditures, as of December 31, 1975, and (2) of the projected amounts of appropriate maintenance to be performed and capital expenditures to be made for such railroad's facilities, during each of the years from 1976 through 1985. Each railroad shall submit such additional information as may be required from it by the Secretary, in connection with his duties under section 503 of this title or under this section, prior to July 1, 1977, including the projected sources of and uses for the funds required by such railroad for such projected program.

45 USC 701 note.

(b) PRELIMINARY FINANCING RECOMMENDATIONS.—Within 360 days after the date of enactment of this Act, the Secretary, after giving due consideration to (1) the final designations under section 503(e) of this title, (2) the information furnished under subsection (a) of this section, and (3) any other relevant information, shall develop, publish, and transmit—

(A) to the Congress, preliminary recommendations as to the amount and type of carrier equity and other financing to be effected through the Fund, or through any other funding mechanism, recommended by the Secretary, based upon his view of the rail industry's facilities rehabilitation and improvement needs, as projected through December 31, 1985; and

(B) to the Congress and to the Secretary of the Treasury, preliminary recommendations as to the means by which the Federal share, if any, of such equity and other financing should be provided.

In preparing such recommendations, the Secretary shall specifically consider and evaluate the public benefits and costs which would result from public ownership of railroad rights-of-way.

Transmittal to Secretary and Congress.

(c) EVALUATION.—Within 90 days after the date of publication of the Secretary's preliminary recommendations under subsection (b) of this section, the Secretary of the Treasury shall publish and transmit to the Secretary and to the Congress his evaluation thereof and any recommendations with respect to the matters referred to in subsection (b)(3)(B) of this section.

Transmittal to Congress.

(d) FINAL RECOMMENDATIONS.—Within 90 days after the date of receipt of the evaluation, transmitted under subsection (c) of this

section, the Secretary shall, after giving due consideration to such recommendations, prepare and transmit to the Congress his final recommendations with respect to the matters referred to in subsection (b) of this section.

REHABILITATION AND IMPROVEMENT FINANCING

SEC. 505. (a) TIMING.—Any railroad may apply to the Secretary following the date of enactment of this Act, in accordance with regulations promulgated by the Secretary— 45 USC 825.

(1) for such financial assistance as may be approved by the Secretary; and

(2) for financial assistance for facilities rehabilitation and improvement financing, except that the Secretary shall not act finally on any such application until the date of publication of the final standards and designations under section 503(e) of this title.

(b) APPLICATION AND DETERMINATION.—(1) Each application for facilities rehabilitation and improvement financing shall set forth—

(A) a description of the proposed facilities rehabilitation and improvement project for which such railroad is seeking financial assistance, and of the current physical condition of such facilities;

(B) the classification of each main and branch rail line included in such project, as determined in accordance with the final standards and designations under section 503(e) of this title;

(C) the track standard under which each such line has been and is being operated and the reasons therefor, and the safety standards and signal requirements necessary under such standard to prevent loss of life and serious accident or injury at grade crossings;

(D) the track standard necessary, in the judgment of such railroad, to provide reliable and competitive freight service (and passenger service, where applicable) over each such line, together with such railroad's recommendations as to (i) the most economical method of improving the physical condition of each such line to meet such track standard, (ii) the cost of providing adequate safety standards and signals, and (iii) an economic analysis of the cost of such improvements in condition and in safety standards and signals;

(E) such railroad's estimate as to the cost of labor and materials, and the date of completion, and its opinion as to the priority to be accorded such portions of the proposed project as are reasonably divisible;

(F) the amount and kind of Federal financial assistance required by such railroad in order to complete the proposed project; and

(G) such other information as the Secretary shall by regulation require to assist him in evaluating such application in accordance with this section or for carrying out the purposes of this title.

(2) The Secretary shall act upon each such application within 6 months after the date on which all required information is received, except as otherwise provided in subsection (a)(2) of this section. The Secretary may approve any such application if he determines that providing the requested financial assistance is in the public interest. When making such a determination, the Secretary shall consider (A) the availability of funds from other sources at a cost which is reasonable under principles of prudent railroad financial management in light of the railroad's projected rate of return for the project to be financed, (B) the interest of the public in supplementing such other

funds as may be available in order to increase the total amount of funds available for railroad financing, and (C) the public benefits to be realized from the project to be financed in relation to the public costs of such financing and whether the proposed project will return public benefits sufficient to justify such public costs. The Secretary, in granting financial assistance to any applicant, shall assign the highest priority, among applications for assistance which would return equal public benefits, to applications for assistance for providing safety improvements and signals, including underpasses or overpasses at railroad crossings at which injury or loss of life has frequently occurred or is likely to occur.

(c) FINANCING AGREEMENT.—Upon the approval of an application for financial assistance under this section, the Secretary shall promptly enter into an agreement with such railroad to provide financing in such amounts and at such times as is sufficient, in the judgment of the Secretary, to meet the reasonable cost, in whole or in part, of the facilities rehabilitation and improvement project which has been approved, in whole or in part. Each such agreement shall include such terms and conditions as are necessary or appropriate, in the judgment of the Secretary, to assure that the financing will be used only in the manner, and for the purposes, approved by the Secretary.

11 USC 205.

(d) AUTHORIZATION.—(1) In the case of a railroad other than a railroad in reorganization under section 77 of the Bankruptcy Act, financing pursuant to this section shall be in the form of purchase by the Secretary of redeemable preference shares at par. Such shares shall be specifically issued for such purpose in accordance with the terms and conditions set forth in section 506 of this title.

(2)(A) In the case of a railroad in reorganization under section 77 of the Bankruptcy Act, the Secretary, in order to provide financing pursuant to this section, may agree to purchase redeemable preference shares of such railroad at par as part of a plan of reorganization of such railroad approved by the court having jurisdiction over the reorganization of such railroad. Such shares shall be specifically issued in accordance with the terms and conditions set forth in section 506 of this title.

(B) The Secretary, in order to provide financing pursuant to this section, may also purchase certificates issued under section 77(c)(3) of the Bankruptcy Act by a trustee of a railroad in reorganization and approved by the reorganization court, under such terms and conditions as may be approved by the Secretary and the reorganization court. In purchasing such trustee certificates or at any time thereafter, the Secretary may agree with the trustee of such railroad in reorganization, subject to the approval of the reorganization court, to exchange such certificates for redeemable preference shares issued, in accordance with the terms and conditions set forth in section 506 of this title, in connection with a plan of reorganization approved by the reorganization court. No certificate shall be purchased under this section unless and until the Secretary makes a finding in writing that—

(i) such certificates cannot otherwise be sold at a reasonable rate of interest;

(ii) the project to be financed can reasonably be expected to be maintained as part of a financially self-sustaining railroad system; and

(iii) the probable value of the assets of the railroad in the event of liquidation provides reasonable protection to the United States.

(3) The total par value of the redeemable preference shares and the amount of trustee certificates which the Secretary may purchase from the proceeds received from the issuance and sale of Fund anticipation

notes shall not exceed $600,000,000. Not more than $100,000,000 of such proceeds may be used to purchase trustee certificates.

(e) FUTURE PURCHASES OF REDEEMABLE PREFERENCE SHARES.—The total par value of the redeemable preference shares which the Secretary may purchase under this title after September 30, 1978, shall be determined by the Congress following the receipt by the Congress of the Secretary's recommendations as to the scope and sources of funding of the Fund or any recommended alternative financing mechanism, as submitted pursuant to section 504 of this title, except that—

(1) the amount of the Secretary's investment in redeemable preference shares in any fiscal year (out of proceeds other than those derived through the issuance and sale of Fund anticipation notes) shall not, when added to the amount of his prior investment in such shares, exceed 200 percent of the aggregate principal amount of the Fund bonds which (A) have been issued by the Secretary prior to such fiscal year, and (B) are projected to be issued by the Secretary through the end of such fiscal year; and

(2) neither redemptions of Fund bonds nor their payment at scheduled maturity shall have any bearing on the limitation in paragraph (1) of this subsection.

REDEEMABLE PREFERENCE SHARES

SEC. 506. (a) CHARACTERISTICS.—The redeemable preference shares acquired by the Secretary pursuant to section 505(d) of this title are securities which are issued by a railroad for the purpose of obtaining financing under this title. Each such redeemable preference share— 45 USC 826.

(1) shall be nonvoting and shall have a par value of $10,000;

(2) shall be senior in right (i) to all common stock of the issuing railroad, whenever issued, (ii) to any previously issued preferred stock where such seniority does not mitigate any rights of the holders of such stock accorded by the terms and conditions of such stock, and (iii) to any subsequently issued preferred stock, with respect to dividend and redemption payments and in case of liquidation or dissolution of such railroad, but shall be otherwise subordinate in such matters to any of such railroad's previously issued and outstanding securities which rank ahead of its common stock and shall be subordinate to all securities other than common stock received in exchange as a part of a court approved reorganization plan under section 77 of the Bankruptcy Act (11 U.S.C. 205) approved after the date of enactment of this sentence for previously incurred senior debt or previously issued and outstanding securities which ranked ahead of its common stock;

(3) shall accrue dividends, commencing on the 10th anniversary date of the date of its original issuance, at such rate as shall be fixed by the Secretary for each issuance prior to the issuance thereof and which, when added to the amount of the mandatory redemption payments under subparagraph (4) of this paragraph, shall return to the Fund not less than 150 percent of the aggregate par value thereof, over the scheduled life of the issue and in annual payments which shall be as nearly equal as practicable; and

(4) shall be subject to mandatory redemption, at par, commencing not earlier than the 6th and not later than the 11th (as determined by the Secretary for each issuance) anniversary date of the date of its original issuance, in annual amounts which shall, over the period ending (as determined by the Secretary for

each issuance) not later than the 30th anniversary date of the date of its original issuance, aggregate the total par value of such share.

(b) DEPOSIT.—All redeemable preference shares which are acquired by the Secretary pursuant to section 505(d) of this title shall, upon such acquisition, be deposited in the Fund.

(c) OVERDUE PAYMENTS.—Whenever any dividend or redemption payment which is due on redeemable preference shares issued by any railroad remains unpaid for a period of 4 months, the Secretary shall be entitled to appoint two members to the Board of Directors of such railroad. The term of office of such members shall not extend beyond the period during which such dividend or redemption payments remains unpaid.

FUND ANTICIPATION NOTES

45 USC 827.

SEC. 507. (a) GENERAL.—The Secretary shall, until September 30, 1978, issue and sell, and the Secretary of the Treasury until such date shall, to the extent of appropriated funds, purchase Fund anticipation notes in an aggregate principal amount of not more than $600,000,000, in order to provide financial assistance to railroads for such financing needs as the Secretary approves.

(b) TERMS OF ISSUE.—Fund anticipation notes shall be issued in denominations of $100,000 (or any integral multiple thereof), upon such terms and conditions, with such maturities, such rates of interest, if any, and such redemption premiums, if any, as the Secretary in his sole discretion may determine. The date of maturity of each Fund anticipation note may not exceed 7 years from the date of its issuance.

(c) REDEMPTION.—If the Congress, following its receipt of the recommendations of the Secretary pursuant to section 504(d) of this title (with respect to the amount of facilities rehabilitation and improvement financing which should be effected through the Fund and the method of long-term public sector funding therefor) authorizes the issuance of Fund bonds, the Secretary shall redeem the Fund anticipation notes then outstanding, in such manner, and over such period of time, as the Secretary shall determine, from the proceeds of the sale of such Fund bonds and from such other public sector moneys as have been appropriated to the Fund.

(d) REMITTANCE AND TERMINATION.—If the Congress does not, on or before September 30, 1978, enact legislation of the type referred to in subsection (c) of this section, the Secretary shall hold in trust all redeemable preference shares issued by railroads which are held in the Fund, and the Fund shall thereupon terminate.

FUND BONDS

45 USC 828.

SEC. 508. (a) ISSUANCE.—The Secretary may, following enactment of the legislation referred to in section 507(c) of this title, issue Fund bonds in denominations of $100,000 (or any integral multiple thereof), in such total amounts as may be authorized by the Congress. No Fund bonds—

(1) shall be issued which mature in less than 8, or more than 15, years from the date of original issuance thereof;

(2) shall be issued later than the 10th anniversary of the date of publication of the final standards and designations under section 503(e) of this title; and

(3) shall, except as otherwise provided pursuant to subsections (d)(6) and (g) of this section, be subject to redemption (at the option of the Secretary) (A) at any time prior to the 10th anni-

versary of the date of original issuance thereof, and (B) at any time thereafter.

(b) PLEDGE AND LIEN.—The Secretary, subject to sections 502(g) and 508(g) of this title, shall impose a first pledge of, and a first lien on, all revenues payable to, and assets held in, the Fund, and appropriated for the use of the Secretary pursuant to this title. The Secretary may impose such a pledge of and lien on all other revenues or property of the Fund. The purpose of any such pledge and lien shall be to secure the payment, when due, of the principal of, any redemption premiums on, and any interest on, all Fund anticipation notes and Fund bonds, and for other purposes incidental thereto. Such incidental purposes may include the creation of reserve and other funds which may be similarly pledged and used, to such extent and in such manner as the Secretary deems necessary or desirable. Any pledge made by the Secretary shall be valid and binding from the time it is made. The revenues and assets held in the Fund, and the revenues or property of the Fund which are so pledged and which are subsequently received by the Fund, shall immediately be subject to the lien of such pledge without any physical delivery thereof or any further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind, in tort, contract, or otherwise, against the Secretary or the Fund, without regard to whether such parties have notice thereof. No instrument by which a pledge is created need be recorded or filed to protect such pledge.

(c) ENHANCEMENT OF MARKETABILITY.—The Secretary may enter into binding covenants with the holders of Fund bonds, and with the trustee, if any, under any agreement entered into in connection with the issuance of such bonds with respect to (1) the establishment of reserves, and other funds; (2) stipulations concerning the subsequent issuance of obligations; and (3) such other matters as the Secretary deems necessary or desirable to enhance the marketability of Fund bonds.

(d) SPECIFIC DETERMINATIONS.—Subject to subsection (a) of this section, the Secretary may determine, with respect to Fund bonds—

(1) the form and denominations in which they shall be issued;

(2) the time when they shall be sold, and in what amounts;

(3) the time when they shall mature;

(4) the price thereof at sale;

(5) the rate of interest thereon;

(6) whether, and in what manner, they may be redeemed prior to the date when they mature; and

(7) whether they shall be negotiable or nonnegotiable and whether they shall be bearer or registered instruments, and any indentures or covenants relating thereto.

(e) CHARACTERISTICS.—Fund bonds issued by the Secretary under this section shall—

(1) contain a recital that they are issued under this section, which shall be conclusive evidence as to the validity and regularity of issuance and sale of such Fund bonds;

(2) be subject to such other terms and conditions as the Secretary may, by the resolution authorizing their issuance, determine;

(3) 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 or control of any officer or agency of the United States;

(4) not be exempted from Federal, State, and local taxation; and

(5) not be debts or enforceable general obligations of, nor shall payment of the principal thereof or interest thereon be guaranteed by, the United States. Neither the full faith and credit, nor the general taxing power, of the Federal Government shall be pledged to the payment of the principal of, any premium on, or interest on, such Fund bonds.

(f) No Personal Liability.—Neither the Secretary, nor any other individual, who executes any Fund anticipation notes or Fund bonds, shall be subject to any personal liability or accountability by reason of the issuance of any such notes or bonds.

(g) Redemption and Transfer.—If, after the 10th anniversary date of the original issuance of the initial series of Fund bonds, the amount in the Fund, exclusive of the value of any redeemable preference shares held by the Fund, exceeds 250 percent of the amount required to satisfy amounts due in the succeeding fiscal year on account of Fund bonds, the Secretary may use such excess to redeem Fund bonds in accordance with their terms or may withdraw all or part of such excess from the Fund and transfer it to the general fund of the United States. When all Fund bonds have been redeemed, all amounts remaining in the Fund or thereafter accruing to it shall be transferred to the general fund of the United States, except to the extent necessary to cover such expenses of the Fund as may be required to carry on and complete any remaining responsibilities.

(h) Purchase by Secretary.—The Secretary, subject to such agreements with holders of Fund bonds as may then exist, is authorized (out of any funds available) to purchase Fund anticipation notes or Fund bonds. Upon any such purchase, such bonds and notes shall be canceled.

AUTHORIZATIONS

45 USC 829.

Sec. 509. There is authorized to be appropriated to the Secretary of the Treasury for the purposes of the Fund not to exceed $600,000,000 and the Secretary of the Treasury is authorized and directed to purchase, from time to time, prior to September 30, 1978, from the Secretary, out of such moneys in the Treasury as are appropriated under this sentence, Fund anticipation notes in such aggregate principal amounts, subject to the foregoing limitation, as the Secretary may so offer for sale. No money in the Fund, regardless of source, shall be obligated, expended, or otherwise committed to any purpose from the Fund prior to or after September 30, 1978, without prior approval thereof in an annual appropriations Act. The Fund shall not qualify as one of the exceptions provided in section 401(d) of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1351(d)).

EXEMPTION

45 USC 830.

Sec. 510. Neither the provisions of section 20a of the Interstate Commerce Act (49 U.S.C. 20a), nor the registration and prospectus delivery requirements of the Securities Act of 1933, nor the provisions of the securities laws of any State, shall be applicable to the issuance and sale of redeemable preference shares by railroads under this title.

GUARANTEE OF OBLIGATIONS

45 USC 831.

Sec. 511. (a) General.—The Secretary may, in accordance with the provisions of this section, guarantee and make commitments to guarantee the payment of the principal balance of, and any interest on, an obligation of an applicant prior to, on, or after the date of execu-

tion or the date of disbursement of such obligation, if the proceeds of such obligation shall be or have been used to acquire or to rehabilitate and improve facilities or equipment. Each guarantee of such an obligation shall be made in accordance with the provisions of sections 511 through 513 of this title and such rules as the Secretary may prescribe to protect reasonably the interest of the United States. Each application for the guarantee of such an obligation or for a commitment to guarantee such an obligation shall be made in writing to the Secretary in such form and with such content as the Secretary prescribes. Such application shall be granted, in whole or in part, if the Secretary determines that the proposed, negotiated, or executed obligation is eligible for such guarantee. Each such guarantee or commitment to guarantee shall be extended in such form, under such terms and conditions, and pursuant to such regulations as the Secretary deems appropriate, consistent with the purposes of this title. Such a guarantee or commitment to guarantee shall inure to the benefit of the holder of the obligation to which such guarantee or commitment to guarantee applies.

Obligation guarantee fund. Establishment.

(b) FUND.—An obligation guarantee fund shall be established and administered by the Secretary as a revolving fund to carry out the provisions of sections 511 through 513 of this title. Moneys in the obligation guarantee fund shall be deposited in the Treasury of the United States to the credit of such fund or invested in bonds or other obligations of the United States approved by the Secretary of the Treasury.

(c) VALUATION.—Before granting any application for a guarantee or a commitment to guarantee any obligation, the Secretary shall make a determination of the value of the facilities or equipment which are or will be financed or refinanced by such obligation. Such determination of value shall be conclusive and not subject to review in any court.

(d) MODIFICATIONS.—The Secretary may approve any modification of any provision of a guarantee, or of a commitment to guarantee an obligation, including the rate of interest, time of payment of interest or principal, security, or any other terms and conditions, if the Secretary makes a finding in writing that such modification is equitable and is in the overall best interests of the United States under this title, and that the holder of such obligation consents to such modification.

(e) EXTENT OF AUTHORITY.—(1) The aggregate unpaid principal amounts of obligations which may be guaranteed by the Secretary under this section shall not exceed $1,000,000,000 at any one time, of which not to exceed $150,000,000 may be guaranteed for the purposes described in paragraph (2) of this subsection.

(2) Obligations may be guaranteed for the purpose of improving rail properties designated in the final system plan pursuant to section 206(c)(1)(C) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(C)), if the proceeds of such obligations shall be or have been used to acquire or rehabilitate and improve facilities or equipment in a manner that returns the most public benefits for the costs involved.

(f) RATE OF INTEREST.—The rate of interest (exclusive of premium charges for a guarantee and service fees) which shall be paid on the unpaid principal balance of each obligation guaranteed by the Secretary under this section, shall not exceed an annual percentage rate which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates for similar obligations in the private market.

Publication in Federal Register.

(g) NOTICE.—Upon receipt of an application for the guarantee of an obligation under this section, the Secretary shall cause a notice of such application to be published in the Federal Register and shall invite and afford interested persons an opportunity to submit comments on such application.

(h) PREQUISITES FOR GUARANTEES.—No obligation shall be guaranteed and no commitment shall be made to guarantee any obligation under this section, unless and until the Secretary makes a finding in writing that—

(1) an obligation for equipment acquisition, rehabilitation, or improvement is secured by the particular equipment which is to be financed or refinanced by such obligation;

(2) payment of the obligation is required by its terms to be made within 25 years from the date of its execution;

(3) the financing or refinancing is justified by the present and probable future demand for rail services to be rendered by the applicant and will serve to meet demonstrable needs for rail services and to provide shippers with improved service;

(4) the applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, or improved with the proceeds of the obligation will be economically and efficiently utilized;

(5) the probable value of any equipment or facilities to be improved, rehabilitated, or acquired is sufficient to provide the United States with reasonable security and protection in the event of default by the obligor, in the case of repossession by the holder of the obligation or in the case of possession or purchase by the Secretary; and

(6) the transaction will result in an improvement in the ability of any affected railroad to transport passengers or freight.

(i) GENERAL REQUIREMENT.—The recipients of any guarantees of, or of any commitments to guarantee, an obligation under this section, shall, consistent with their capital resources, maintain their facilities, on a continuing basis, in accordance with standards promulgated under this subsection. The Secretary shall assure compliance with this requirement by regular periodic inspection.

Periodic inspection.

(j) CONDITIONS OF GUARANTEES.—No guarantee of, and no commitment to guarantee, an obligation may be granted, approved, or extended under this section, unless the obligor first agrees in writing that so long as any principal or interest is due and payable on such obligation—

(1) there will be no increase in discretionary dividend payments over the average ratio which such payments bore to earnings for the applicable fiscal period during the 5 years preceding such proposed increase, without prior approval of such increase by the Secretary;

(2) the obligor will not use assets or revenues (other than cash) related to or derived from railroad operations in nonrailroad enterprises, without prior approval in writing from the Secretary; and

(3) the obligor will take all reasonable and practicable steps possible, in accordance with such guidelines as may be established by the Secretary, to improve the equitable distribution and efficient and expeditious use of all equipment and facilities in order to improve rail service.

Hearing.

Approval under paragraph (1) or (2) of this subsection may only be granted if, after a public hearing with an opportunity for interested persons to submit comments, the Secretary makes a written finding

that such increase in dividends (or such use of assets or revenues) will not materially affect the ability of the obligor to comply with the requirements of this section.

(k) BREACH OF CONDITIONS.—The Attorney General shall commence a civil action in any appropriate district court of the United States to enjoin any activity which the Secretary finds is in violation of any requirement or condition specified in subsection (i) or (j) of this section, and to secure any other appropriate relief, including termination, suspension, and punitive damages.

(l) INVESTIGATION CHARGE.—The Secretary shall charge and collect from each applicant such amounts as he deems reasonable for the investigation of any application submitted under this section, for appraisal of the value of the equipment or facilities involved, and for making the necessary determinations and findings. Such charges shall not aggregate more than one-half of 1 percent of the principal amount of the obligation with respect to which the applicant seeks a guarantee or commitment to guarantee.

(m) PREMIUM CHARGE.—The Secretary shall assess and collect from the obligor an annual premium charge on each obligation guaranteed under this section. The amount of such premium may not exceed an annual rate of 1 percent on the unpaid principal balance of such obligation at the time payment is due. Payment is due initially when the obligation is guaranteed by the Secretary, and, thereafter, on the anniversary date of such guarantee.

(n) ADMINISTRATIVE COSTS.—All moneys received by the Secretary under this section shall be deposited in the obligation guarantee fund, and to the extent provided in appropriation acts, may be used by the Secretary to pay administrative costs and expenses incurred by him pursuant to this section.

ISSUANCE OF NOTES OR OBLIGATIONS

SEC. 512. (a) AUTHORIZATION.—The Secretary may issue, in such amounts as are provided in appropriation acts, 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 the Secretary may prescribe. Such obligations may be issued whenever the moneys in the obligation guarantee fund are not sufficient to pay any amount which the Secretary is required to pay under section 513 of this title. Such obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States on comparable maturities during the month preceding the issuance of such obligations. The Secretary of the Treasury shall purchase any such obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force. The purposes for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under this subsection. The Secretary of the Treasury may sell any such obligations at such times and price and upon such terms and conditions as he shall determine in his discretion. All purchases, redemptions, and sales of such obligations by such Secretary shall be treated as public debt transactions of the United States. Moneys obtained under this subsection shall be deposited in the obligation guarantee fund, and redemptions of any such obligations shall be made by the Secretary from such fund.

45 USC 832.

Interest rate.

31 USC 774.

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(b) VALIDITY.—No guarantee or commitment to guarantee under section 511 of this title may be terminated, suspended, canceled, or otherwise revoked, except in accordance with lawful terms and conditions prescribed by the Secretary. Such a guarantee or commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of such sections of this title, and that such obligation has been approved and is legal as to principal, interest, and other terms. Such a guarantee or commitment to guarantee shall be valid and incontestable in the hands of the holder thereof, as of the date when the Secretary granted the application therefor, except as to fraud or material misrepresentation by such holder.

(c) DEFINITION.—As used in this section, the term "Secretary of the Treasury" includes any designated representative of such Secretary.

DEFAULT ON GUARANTEED OBLIGATIONS

45 USC 833.

SEC. 513. (a) GENERAL.—If there is a default by the obligor in any payment of principal or interest due under an obligation guaranteed under section 511 of this title, and if such default continues for 30 days, the holder of such obligation or his agent has the right to demand payment by the Secretary of the unpaid interest on, and the unpaid principal of, such obligation consistent with the terms of the guarantee of such obligation. Such payment may be demanded after or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 90 days from the date of such default. Within such specified period, but not later than 60 days from the date of such demand, the Secretary shall pay to such holder the unpaid interest on, and the unpaid principal of, such obligation, consistent with the terms of the guarantee of such obligation, except that (1) the Secretary shall not be required to make any such payment if he finds, prior to the expiration of such period, that there was no default by the obligor in the payment of interest or principal or that such default has been remedied, and (2) no such holder shall receive payment or be entitled to retain payment in a total amount which, together with an other recovery (including any recovery based upon a security interest in equipment or facilities) exceeds the actual loss of such holder.

(b) RIGHTS OF THE SECRETARY.—(1) If the Secretary makes payment to a holder under subsection (a) of this section, the Secretary shall thereupon—

(A) have all of the rights granted to him by law or agreement with the obligor; and

(B) be subrogated to all of the rights which were granted such holder, by law, assignment, or security agreement between such holder and the obligor.

(2) The Secretary may, in his discretion, complete, recondition reconstruct, renovate, repair, maintain, operate, charter, rent, sell, or otherwise dispose of any property or other interests obtained by him pursuant to this section. The terms of any such sale or other disposition shall be as approved by the Secretary.

(c) FORM OF PAYMENT.—Any amount required to be paid by the Secretary pursuant to subsection (a) of this section shall be paid in cash.

(d) ACTION AGAINST OBLIGOR.—If there is a default by the obligor in any payment due under an obligation guaranteed under section 511 of this title, the Secretary shall take such action against such obligor

or any other person as is, in his discretion, necessary or appropriate to protect the interests of the United States. Such an action may be brought in the name of the United States or in the name of the holder of such obligation. Such holder shall make available to the Secretary all records and evidence necessary to prosecute any such suit. The Secretary may, in his discretion, accept a conveyance of property in full or partial satisfaction of any sums owed to him. If the Secretary receives, through the sale of property, an amount greater than his cost and the amount paid to the holder under subsection (a) of this section, he shall pay such excess to the obligor.

AUDIT OF TRANSACTIONS

SEC. 514. (a) GENERAL.—The Comptroller General of the United States is authorized to audit the operations of the Fund and of the obligation guarantee fund in accordance with such rules and regulations as he may prescribe. Any such audit shall be conducted at the place or places where accounts of the Fund or of the obligation guarantee fund are normally kept. The representatives of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to, or in use by or in connection with the Fund, the obligation guarantee fund, or the Secretary which pertain to the financial transactions of the Fund or the obligation guarantee fund and which are necessary to facilitate an audit. Such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, things, and property shall remain in the possession and custody of the Fund, the obligation guarantee fund, or the Secretary, as the case may be. 45 USC 834.

(b) ACCESS TO INFORMATION.—The representatives of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by any person or entity which has entered into a financial transaction with or involving the Fund, the obligation guarantee fund, or the Secretary, under this title, to the extent deemed necessary by the Comptroller General to facilitate any audit of financial transactions pursuant to subsection (a) of this section. Such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such property of such person or entity shall, to the extent practicable, remain in the possession and custody of such person or entity.

(c) REPORT.—The Comptroller General shall make a report of each such audit to the Congress. Such report shall contain all comments and information which the Comptroller General deems necessary to inform Congress of the financial operations and condition of the Fund and of the obligation guarantee fund and any recommendations which he deems advisable. Such report shall indicate specifically and describe in detail any program, expenditure, or other financial transaction or undertaking observed in the course of such audit which the Comptroller General deems to have been carried on or made without lawful authority or which is inconsistent with the purposes and provisions of this title. A copy of such report shall be furnished to the President, the Secretary, and the Commission, at the time it is submitted to the Congress.

ANNUAL REPORT

45 USC 835.

SEC. 515. The Secretary shall report to the Congress within 90 days following the end of each fiscal year on the financial condition and operations of the Fund and of the obligation guarantee fund during such fiscal year, and on the anticipated condition and operations of the Fund and of the obligation guarantee fund during the current fiscal year.

EMPLOYEE PROTECTION

45 USC 836.

SEC. 516. (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 title. 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 the date of enactment of this title. In the absence of such an executed agreement, the Secretary of Labor shall prescribe the applicable protective arrangements, within 150 days after the date of enactment of this title.

(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 title. 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 title. 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 title, 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 title.

(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 title.

INTERCITY RAIL PASSENGER SERVICE

SEC. 517. The Secretary is authorized, pursuant to the provisions of, and within the authorizations contained in, this title, to provide financial assistance, in the aggregate sum of up to $200,000,000, to any railroad or railroads for the purpose of improving intercity rail passenger service on any lines of such railroad or railroads which are located outside of the Northeast Corridor (as defined in section 701 (c) of this Act). 45 USC 837. *Post*, p. 119.

TITLE VI—IMPLEMENTATION OF THE FINAL SYSTEM PLAN

GENERAL

SEC. 601. (a) Unless otherwise specified, whenever, in this title, an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or provision of "such Act", the section or other provision amended or repealed is a section of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

(b) The table of contents of such Act is amended to read as follows:

"TABLE OF CONTENTS

"TITLE I—GENERAL PROVISIONS

"Sec. 101. Declaration of policy.
"Sec. 102. Definitions.

"TITLE II—UNITED STATES RAILWAY ASSOCIATION

"Sec. 201. Formation and structure.
"Sec. 202. General powers and duties of the Association.
"Sec. 203. Access to information.
"Sec. 204. Report.
"Sec. 205. Rail Services Planning Office.
"Sec. 206. Final system plan.
"Sec. 207. Adoption of final system plan.
"Sec. 208. Review by Congress.
"Sec. 209. Judicial review.
"Sec. 210. Obligations of the Association.
"Sec. 211. Loans.
"Sec. 212. Records, audit, and examination.
"Sec. 213. Emergency assistance pending implementation.
"Sec. 214. Authorization for appropriations.
"Sec. 215. Maintenance and improvement of plant.
"Sec. 216. Purchase of debentures and series A preferred stock.

"TITLE III—CONSOLIDATED RAIL CORPORATION

"Sec. 301. Formation and structure.
"Sec. 302. Powers and duties of the Corporation.
"Sec. 303. Valuation and conveyances of rail properties.
"Sec. 304. Termination and continuation of rail services.
"Sec. 305. Continuing reorganization; supplemental transactions.
"Sec. 306. Certificates of value.
"Sec. 307. Protection of Federal funds.

"TITLE IV—LOCAL RAIL SERVICES

"Sec. 401. Findings and purposes.
"Sec. 402. Rail service continuation assistance.
"Sec. 403. Acquisition and modernization loans.

"TITLE V—EMPLOYEE PROTECTION

"Sec. 501. Definitions.
"Sec. 502. Employment offers.
"Sec. 503. Assignment of work.
"Sec. 504. Collective-bargaining agreements.
"Sec. 505. Employee protection.
"Sec. 506. Contracting out.
"Sec. 507. Arbitration.
"Sec. 508. Duties of acquiring and selling railroads.
"Sec. 509. Payment of benefits.

"TITLE VI—MISCELLANEOUS PROVISIONS

"Sec. 601. Relationship to other laws.
"Sec. 602. Annual evaluation by the Secretary.
"Sec. 603. Freight rates for recyclables.
"Sec. 604. Separability.
"Sec. 605. Duty of transferee.".

(c) Section 202(a)(2) of such Act (45 U.S.C. 712(a)(2)) is amended to read as follows:

45 USC 720.
45 USC 721.

"(2) issue obligations under section 210 of this title; make loans under section 211 of this title; purchase or otherwise acquire or receive and hold and dispose of securities (whether debt or equity) of the Corporation under section 216 of this title and exercise all of the rights, privileges, and powers of a holder of any such securities; and issue certificates of value under section 306 of this Act;".

Post, p. 89.

(d) Section 303 of such Act (45 U.S.C. 743) is amended by adding at the end thereof the following new subsection:

"(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 Act (including transfers and conveyances which are made in accordance with a supplemental transaction pursuant to section 305 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.".

Post, p. 100.

(e) Section 208 of such Act (45 U.S.C. 718) is amended by adding at the end thereof the following new subsection:

"(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 209(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 the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 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—

Notice to Congress; publication in Federal Register. *Ante*, p. 31.

"(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 206(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 the date of enactment of this paragraph

Post, p. 97.

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 508 of this Act shall be subject to further negotiations for any modifications which may be necessary to implement designations made pursuant to this paragraph.".

Post, p. 117.

(f) Section 102(14) of such Act (45 U.S.C. 702(14)) is amended to read as follows:

"Secretary."

"(14) 'Secretary' means the Secretary of Transportation or the person at the time performing the duties of the Office of the Secretary of Transportation in accordance with law, or the duly authorized representative of either of them;".

(g) Section 102 of such Act (45 U.S.C. 702) is amended (1) by redesignating paragraphs (8) through (15) thereof as paragraphs (10) through (17) thereof, respectfully; and (2) by inserting therein a new paragraph (9) as follows:

"Local or regional transportation authority."

"(9) 'local or regional transportation authority' includes a political subdivision of a State.".

SPECIAL COURT

SEC. 602. (a) Section 209(b) of such Act (45 U.S.C. 719) is amended by striking out the sixth sentence thereof and inserting in lieu thereof the following new sentence: "The special court may issue rules for the conduct of any proceedings under this section and under section 305 of this Act, 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 305).".

Post, p. 100.

(b) Section 209 of such Act (45 U.S.C. 719) is amended by adding at the end thereof the following three new subsections:

"(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 Act or any provision thereof, or from any action taken by the Association pursuant to authority conferred or purportedly conferred under this Act;

"(B) challenging the constitutionality of this Act 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 Act;

"(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 303(c) of this Act;

45 USC 743.

"(E) brought after a conveyance, pursuant to section 303(b) of this Act, to set aside or annul such conveyance or to secure in any way the reconveyance of any rail properties so conveyed; or 45 USC 743.

"(F) with respect to continuing reorganization and supplemental transactions, in accordance with section 305 of this Act;

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 303(b)(1) of this Act, 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. USC prec. title 1.

"(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 303(b) of this Act in order to effect the purposes of this Act 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) A final order or 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, except that any order or judgment enjoining the enforcement, or declaring or determining the unconstitutionality or invalidity, of this Act, in whole or in part, or of any action taken under this Act, shall be reviewable by direct appeal to the Supreme Court of the United States in the same manner that an injunctive order may be appealed under section 1253 of title 28, United States Code. Such review is exclusive and any petition or appeal shall be filed not more than 20 days after entry of such order or judgment.

"(f) Disposition of Cash Deposits.—Whenever the compensation which is deposited with the special court under section 303(a) of this Act 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 303(c) of this Act. Notwithstanding section 303(c)(4) of this Act, 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 303(a), 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 303(c)(4) of this Act, the special court may, within 90 days after the date of conveyance of rail properties pursuant to section 303(b) of this Act, 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 of the applicable trustee or person, the special court may order such additional distributions as it finds reasonable and appropriate, prior to the making of the findings referred to in paragraphs (1), (2), and (3) of such section 303(c).

45 USC 743.

"(g) STAY OF COURT PROCEEDINGS.—The special court may stay or enjoin any action or proceeding in any State court or in any court of the United States other than the Supreme Court if such action or proceeding is contrary to any provision of this Act, impairs the effective implementation of this Act, or interferes with the execution of any order of the special court pursuant to this Act.".

FINANCE COMMITTEE

SEC. 603. (a) Section 201 of such Act (45 U.S.C. 711) is amended by redesignating subsections (i) and (j) thereof as subsections (j) and (k) thereof, respectively, and by inserting therein a new subsection "(i)" as follows:

"(i) FINANCE COMMITTEE.—The Board of Directors of the Association shall have a Finance Committee which shall consist of the Chairman of such Board, the Secretary, and the Secretary of the Treasury (acting directly or, at any time, through their respective duly authorized representatives). The Finance Committee is authorized to exercise only such powers as are vested in it pursuant to any provision of this Act. The vesting of such powers in the Finance Committee shall not be deemed to relieve the Board of Directors of its authority to exercise any other powers of the Association, none of which may be delegated to the Finance Committee, or of its general authority to study, analyze, and make advisory findings with respect to any matter relevant to the role of the Association as an investor in securities of the Corporation. Notwithstanding any provision of State law, (1) the Finance Committee, without any requirement of review or approval by the Board of Directors of the Association, is authorized to establish, revise, and maintain its own rules and procedures, by majority vote of the members thereof, and (2) the Board of Directors of the Association shall not have power to take, and shall not take, any action affecting the membership of the Finance Committee or limiting the exercise by the Finance Committee of the powers vested in it pursuant to any provision of this Act.".

(b)(1) Section 201(h) of such Act (45 U.S.C. 711(h)) is amended by adding at the end thereof the following new sentence: "The Secretary and the Chairman of the Commission may act in such capacity directly or at any time through their duly authorized representatives.".

(2) Section 201(d)(2) of such Act (45 U.S.C. 711(d)(2)) is amended by striking "or" and inserting in lieu thereof the following: "acting directly or at any time through".

(c) Section 102 of such Act (45 U.S.C. 702), as amended by this Act, is amended by redesignating paragraph (7) thereof as paragraph (8) thereof, and by inserting therein a new paragraph (7) as follows:

"(7) 'Finance Committee' means the Finance Committee of the Board of Directors of the Association established under section 201(i) of this Act;".

OBLIGATIONS OF THE ASSOCIATION

SEC. 604. Section 210(b) of such Act (45 U.S.C. 720(b)) is amended to read as follows:

"(b) MAXIMUM OBLIGATIONAL AUTHORITY.—The aggregate amount of obligations of the Association issued under this section which may be outstanding at any one time shall not exceed $275,000,000. No obligations or proceeds thereof shall be issued or made available after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 except—

Ante, p. 31.

"(1) to meet existing or potential commitments for loans under section 211 of this title made or applied for prior to January 1, 1976; and

Post, p. 92.

"(2) for the purpose of providing loans pursuant to subsections (g) and (h) of section 211 of this title.".

DEBENTURES AND SERIES A PREFERRED STOCK

SEC. 605. Title II of such Act is amended by adding at the end thereof the following new section:

"DEBENTURES AND SERIES A PREFERRED STOCK

"SEC. 216. (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 $1,100,000,000 of the series A preferred stock of the Corporation.

Rules and regulations.
45 USC 726.

"(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 211 of this title or which was incurred under section 215 of this title and assumed by the Corporation; or

45 USC 725.

"(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 $1,100,000,000 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.

"(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 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407). For purposes of this paragraph, continuity of session of Congress is broken only in the circumstances described in section 1011(5) of that Act (31 U.S.C. 1401(5)). 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 title 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, United States Code.

"(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 303(b)(1) of this Act. 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. 45 USC 743.

"(5) Not later than 60 days after the date of conveyance pursuant to section 303(b)(1) of this Act, the Association shall select 6 individuals to serve as members of the Board of Directors of the Corporation, subject to the provisions of section 301(d) of this Act. 45 USC 741.

"(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 title, 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 Act 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 Act 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) APPROPRIATION.—There is authorized to be appropriated to the Association $2,100,000,000 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.".

LOANS

45 USC 721.

SEC. 606. Section 211 of such Act (45 U.S.C. 741) is amended by adding at the end thereof the following new subsections:

"(g) PRE-CONVEYANCE LOANS TO THE 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 303(b) of this Act, 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—

45 USC 743.

"(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 216 of this title.

Ante, p. 89.

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) The Association is authorized, subject to the limitations set forth in section 210(b) of this title, to enter into loan agreements, in amounts not to exceed $230,000,000 in the aggregate, with the Corporation, the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to section 303(b)(1) of this Act, 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 the transferors, in order to avoid disruptions in ordinary business relationships. Such obligations shall be limited to amounts claimed by suppliers (including private car lines) of materials or services utilized in current rail operations, claims by shippers arising from current rail services, payments to railroads for settlement of current interline accounts, claims of employees arising under the collective bargaining agreements of the railroads in reorganization in the region and subject to section 3 of the Railway Labor Act, claims of all employees or their personal representatives for personal injuries or death and subject to the provisions of Employers' Liability Acts (45 U.S.C. 51-60), and 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 505(a) of this Act. The Association shall not make such a loan unless it first finds that the loan is for the purpose of paying obligations with respect to accrued pension plans referred to in the preceding sentence or that the Corporation, the National Railroad Passenger Corporation, or a profitable railroad is entitled to a loan pursuant to subsections (e) and (g) of section 504 of this Act, or unless it first finds that—

Ante, p. 88.

45 USC 743.

45 USC 153.

45 USC 51 note.

45 USC 775.

Post, p. 113.

"(A) provision for the payment of such obligations was not included in the financial projections of the final system plan;

"(B) such obligations arose from rail operations prior to the date of conveyance of rail properties pursuant to section 303(b)(1) of this Act and are, under other applicable law, the responsibility of a railroad in reorganization in the region;

"(C) the Corporation, the National Railroad Passenger Corporation, or a profitable railroad has advised the Association that the direct payment of such obligations by the Corporation, the National Railroad Passenger Corporation or profitable railroad is necessary to avoid disruptions in ordinary business relationships;

"(D) the transferor is unable to pay such obligations within a reasonable period of time; and

"(E) with respect to loans made to the Corporation, the procedures to be followed by the Corporation, in seeking reimbursement from the railroads in reorganization in the region for obligations paid on their behalf under this subsection, have been jointly agreed to by the Finance Committee and the Corporation.

"(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 303(b)(1) of this Act. 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.

45 USC 743.

"(3) The Association may, not less than 30 days prior to the date of conveyance pursuant to section 303(b)(1) of this Act, 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 (11 U.S.C. 205) 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 303(b)(1) of this Act, 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.

"(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 303(b)(1) of this Act, 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. 45 USC 743.

"(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.

"(6) 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—

"(A) 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)(E) 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;

"(B) the Finance Committee so directs the Association; and

"(C) neither House of the Congress disapproves such affirmative finding and direction, in accordance with the following provisions of this paragraph.

A copy of each such finding, the reasons therefor, and such direction made by the Finance Committee, 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 finding and direction so transmitted shall become effective immediately, and shall remain in effect, unless, within

the first period of 30 calendar days of continuous session of Congress after the date of transmittal of such finding and direction to Congress, either House of Congress disapproves such finding and direction in accordance with the procedures specified in section 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407). For purposes of this paragraph, continuity of session of Congress is broken only in the circumstances described in section 1011(5) of that Act (31 U.S.C. 1401(5)).

"Corporation."

"(7) For purposes of this subsection, the term 'Corporation' includes a subsidiary of the Corporation.

"(i) ELECTRIFICATION.—Upon application by the Corporation, the Secretary shall, pursuant to the provisions of and within the obligational limitations contained in sections 511 through 513 of the Railroad Revitalization and Regulatory Reform Act of 1976, guarantee obligations of the Corporation for the purpose of electrifying high-density mainline routes if the Secretary finds that such electrification will return operating and financial benefits to the Corporation and will facilitate compatibility with existing or renewed electrification systems. The aggregate unpaid principal amount of obligations which may be guaranteed by the Secretary under this paragraph shall not exceed $200,000,000 at any one time.".

Ante, pp. 76–80.

MISCELLANEOUS AMENDMENTS TO TITLE II

SEC. 607. (a) Section 201(j) of such Act (45 U.S.C. 711(j)), as redesignated by section 603(a) of this Act, is amended by adding at the end thereof the following new paragraph:

"(4) Any reference in this Act to the Secretary of the Treasury is to the Secretary of the Treasury or the person at the time performing the duties of the Office of the Secretary of the Treasury in accordance with law, or the duly authorized representative of either of them. Any reference in this Act to the Chairman of the Commission is to the Chairman of the Commission or the person at the time performing the duties of the Chairman of the Commission in accordance with law, or the duly authorized representative of either of them.".

(b) Section 202(e) of such Act (45 U.S.C. 712(e)) is amended by inserting after "obligations issued" and before "and loans" in clause (4) thereof the following: ", certificates of value issued, securities purchased,".

(c) Section 202(f) of such Act (45 U.S.C. 712(f)) is amended by inserting after "section" and before ")" in the first sentence thereof the following: "and receipts and disbursements under section 216 of this title and section 306 of this Act.".

Ante, p. 89; *Post*, p. 104.

(d) Section 203(a) of such Act (45 U.S.C. 713(a)) is amended by striking out the last sentence thereof.

(e) Section 206(d)(3) of such Act (45 U.S.C. 716(d)(3)) is amended by inserting after the first sentence thereof the following three new sentences: "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 pub-

lished under section 207(b)(2) of this title shall be deemed to be timely if made prior to the adoption of the final system plan under section 207(c) of this title.". 45 USC 717.

(f) Section 206(c)(1)(B) of such Act (45 U.S.C. 716(c)(1)(B)) is amended by inserting immediately after "paragraph" the following: "and what alternative designations shall be made under this paragraph".

(g) Section 206(c)(1)(A) of such Act (45 U.S.C. 716(c)(1)(A)) is amended by striking out the semicolon and inserting in lieu thereof the following: ": *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;".

(h) Section 206(c)(2) of such Act (45 U.S.C. 716(c)(2)) is amended by adding at the end thereof the following new sentence: "Any rail properties designated to be offered for sale to the Corporation may be sold instead to a subsidiary of the Corporation.".

(i) Sections 206(d)(1), 209 (c) and (d), 215(d), 304(e), and 501 (1) and (2) of such Act (45 U.S.C. 716(d)(1), 719(c) and (d), 744 (e), and 771 (1) and (2)) are amended by inserting after "Corporation" each time it appears the following: "or any subsidiary thereof". 45 USC 716, 719, 725, 744, 771.

(j) Section 206(c)(1)(D) of such Act (45 U.S.C. 716(c)(1)(D)) is amended by—

(1) inserting immediately after "by" the following "(i)"; and

(2) striking out "; and" at the end thereof and adding the following: ", 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".

(k) Section 210(c) of such Act (45 U.S.C. 720(c)) is amended by adding at the end thereof the following new sentence: "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.". Guarantees.

(l) Section 209(c) of such Act (45 U.S.C. 719(c)) is amended by striking out "obligations of the Association" each time it appears and inserting in lieu thereof "certificates of value of the Association".

(m)(1) Subsection (b) of section 214 of such Act (45 U.S.C. 724(b)) is amended by striking out "$5,000,000" and inserting in lieu thereof "$7,000,000". Appropriation authorization.

(2) Section 214(c) of such Act is amended by striking out the period and inserting in lieu thereof ", and not to exceed $14,000,000 for the fiscal period which includes the period ending September 30, 1977.".

(n) Section 214(a) of such Act (45 U.S.C. 724(a)) is amended by adding at the end thereof the following: "There are authorized to be appropriated to the Secretary such sums as may be necessary to discharge the obligations of the United States arising under section 303 (c)(5) of this Act.". Appropriation authorization. *Post*, p. 109.

(o) Paragraph (4) of section 206(d) of such Act (45 U.S.C. 716 (d)(4)) is amended—

(1) in the first sentence thereof, by striking out "30 days after the effective date of the final system plan" and inserting in lieu thereof "7 days after the date of the enactment of the Railroad Revitalization and Regulatory Reform Act of 1976"; and in the *Ante*, p. 31.

second sentence thereof, by striking out "60" and inserting in lieu thereof "95"; and

(2) by inserting immediately after the first sentence thereof the following new sentence: "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.".

(p) Section 206(d) of such Act (45 U.S.C. 716(d)) is amended by adding at the end thereof the following new paragraph:

"(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 the date of enactment of this paragraph.".

45 USC 716.

(q) Section 206 of such Act (45 U.S.C. 717(c)) is amended by adding at the end thereof the following new subsection:

"(j) Any rail properties over which rail service was being provided as of the date of enactment of this Act, and which were recommended in the preliminary system plan for transfer to the Corporation, shall be deemed to be designated in the final system plan for transfer to the Corporation under subsection (c)(1)(A) of this section. Any designation in the final system plan, pursuant to subsection (c)(1)(B) of this section, of overhead trackage rights to be acquired by a profitable railroad operating in the region over specified rail properties to be acquired by the Corporation, where such designation does not (1) authorize such profitable railroad to interchange traffic with at least one railroad, or (2) provide for the connection of portions of such profitable railroad's rail properties, and where the transfer of ownership of such rail properties (including trackage rights) to such profitable railroad was recommended in the preliminary system plan, and the Commission has made a determination with respect thereto, in accordance with subsection (d)(3) of this section, shall be deemed to authorize such profitable railroad to interchange traffic with the Corporation and any other profitable railroad connecting with such specified rail properties.".

Final system plan, certified copy, delivery date.

(r) Section 209(c) of such Act (45 U.S.C. 719(c)) is amended by adding at the end thereof, without paragraph indentation, the following new sentences: "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 10, 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 303(a) of this Act shall be determined with respect to the date prescribed in such notice.".

45 USC 743.

(s) Section 209(c) (1) and (2) of such Act (45 U.S.C. 719(c)(1) and (2)) is amended by striking out "railroad leased" each time it appears therein and inserting in lieu thereof "person leased".

(t) Section 102(12) of such Act (45 U.S.C. 702(12)), as redesignated by this Act, is amended (1) by inserting immediately before "which are used or useful" the following: "(or a person owned, leased, or otherwise controlled by a railroad)"; and (2) by striking out "phase" and inserting in lieu thereof "phrase".

Ante, p. 86.

CAPITALIZATION OF THE CORPORATION

SEC. 608. Section 301(e) of such Act (45 U.S.C. 741(e)) is amended to read as follows:

"(e) INITIAL CAPITALIZATION.—(1) In order to carry out the final system plan, 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.".

PROTECTION OF FEDERAL FUNDS

SEC. 609. Title III of such Act, as amended by this Act, is further amended by inserting the following new section:

"PROTECTION OF FEDERAL FUNDS

"SEC. 307. (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 Act are being used to finance any portion of its operations, or (B) Federal funds have been invested therein pursuant to this Act. 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. 45 USC 747.

"(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— Report to Congress.

45 USC 716.

"(1) the degree to which the goals of section 206(a) of this Act 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 216(f) of this Act.".

Ante, p. 89.

CONTINUING REORGANIZATION; SUPPLEMENTAL TRANSACTIONS

SEC. 610. (a) Section 102 of such Act (45 U.S.C. 702), as amended by this Act, is amended—

(1) in paragraph (16) thereof, by striking out "and";

(2) in paragraph (17) thereof, by striking out the period and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following two new paragraphs:

"Subsidiary."

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

"Supplemental transaction." *Infra.*

45 USC 743.

"(19) 'supplemental transaction' means any transaction set forth in a proposal under section 305 of this Act, within 6 years after the date on which the special court orders conveyances of rail properties to the Corporation under section 303(b) of this Act, 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.".

(b) Title III of such Act is amended by adding at the end thereof the following new sections:

"CONTINUING REORGANIZATION; SUPPLEMENTAL TRANSACTIONS

45 USC 745.

"SEC. 305. (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 206(c)(1)(A) of this Act 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, con-

45 USC 716.

sistent 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 Act 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.

Publication in Federal Register.

"(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 Act 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.

Publication in Federal Register.

"(c) REVIEW BY THE 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 Act 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 sub-

section, 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 Act 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 Act 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 Act 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 Act 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 Act 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) Within 180 days 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 Act 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 Act 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 Act 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 recon-

sideration of the proposal as so modified. Within 90 days 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 Act 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 judge of a United States district court with respect to such proceedings and such powers shall include those 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 Act, 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) Any supplemental transaction under this section shall subject the transferor and transferee, in each such supplemental transaction, to the requirements and other provisions of title V of this Act, except that the term 'effective date of this Act' contained in such title V shall be applied to such supplemental transaction as if it read 'effective date of the supplemental transaction'. 45 USC 771.

"(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 209(e)(3) of this Act. *Ante*, p. 86.

"(e) DEFINITION.—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 (11 U.S.C. 205) 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 303(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 Act and to any subsequent holders of such securities at the time of the supplemental transaction involved; and 45 USC 743.

"(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.

"CERTIFICATES OF VALUE

45 USC 746.

45 USC 743.

Guaranteed payment.

"SEC. 306. (a) GENERAL.—On the date when the Corporation is required to deposit securities with the special court pursuant to section 303(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 title. 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 303(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 303(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 (without regard to 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 303(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 303(c)(4) of this Act to the transferor receiv-

ing such series of certificate of value 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 303(b)(1) of this title to the Corporation or a subsidiary thereof; (B) subtracting the value of other benefits provided under this Act, 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 303(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 303(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.

Base value.

45 USC 743.

"Rail properties."

Post, p. 110.

"(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.

Fair market value.

"(d) AUTHORIZATION FOR 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.".

OFFICERS AND DIRECTORS OF THE CORPORATION

SEC. 611. (a) Section 301(c) of such Act (45 U.S.C. 741(c)) is amended by inserting "(1)" immediately before "The members", by deleting the second sentence of such paragraph (1) and by adding at the end thereof the following new paragraph:

"(2) Notwithstanding any provision of State law, after the date of enactment of this paragraph, the members of the executive committee of the Association (including duly authorized representatives of members who are authorized by this Act 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 Direc-

tors 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.".

(b) Section 301(d) of such Act (45 U.S.C. 741(d)) is amended to read as follows:

"(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 (other than resignations pursuant to this subsection), such vacancy shall be filled only by a vote of the holders of the class of securities that initially elected such director. Two members of the Board selected by the holders of the Corporation's debentures and series A preferred stock shall resign when the total of the principal amount of the outstanding debentures and the amount of the liquidation amount of the outstanding series A preferred stock, once having exceeded $1,500,000,000, has been reduced below that amount; two additional members of the Board selected by the holders of the Corporation's debentures and series A preferred stock of the Corporation shall resign when the total of the principal amount of the outstanding debentures and the amount of the liquidation amount of the outstanding series A preferred stock, once having exceeded $1,500,000,000, has been reduced below $750,000,000. The two remaining members of the Board selected by the holders of the Corporation's debentures and series A preferred stock shall resign when all the debentures and series A preferred stock have been redeemed by the Corporation. As directors resign in accordance with the foregoing provisions, the election of corporate directors to fill the vacancies created by their resignations shall be governed by applicable State law and the articles and bylaws of the Corporation.".

(c) Section 301 of such Act (45 U.S.C. 741) is amended by (1) striking out subsection (f) thereof; (2) redesignating subsection (g) thereof as subsection (h); and (3) inserting therein the following two new subsections:

"(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 303(a) of this title, and the distribution of such securities, in accordance with section 303(c) of this title, the special court shall, within 30 days after the date of conveyance pursuant to section 303(b)(1) of this Act, 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.". 45 USC 743.

MISCELLANEOUS AMENDMENTS TO TITLE III

SEC. 612. (a) Section 303(b)(3) of such Act (45 U.S.C. 743(b)(3)) is amended to read as follows:

"(3)(A)(i) Notwithstanding any other provision of this Act, 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. **Railroad rolling stock, conveyance.**

"(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. **"Railroad rolling stock."**

"(B) Subject to the provisions of this paragraph, the provisions of this Act 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 (11 U.S.C. 205(j)). 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.".

(b) Section 201 of the Government Corporation Control Act (31 U.S.C. 856) is amended by (1) inserting "and" after the comma at the end of subsection (7) thereof; and (2) deleting ", and (9) the Consolidated Rail Corporation to the extent provided in the Regional Rail Reorganization Act of 1973." and inserting in lieu thereof ".".

45 USC 701 note.

(c)(1) Section 303(a)(1) of such Act (45 U.S.C. 743(a)(1)) is amended by inserting after "Corporation", the second time it appears "or any subsidiary thereof".

(2) Paragraphs (1) and (2) of section 303(b) of such Act (45 U.S.C. 743(b) (1) and (2)) are amended by inserting after "Corporation" each time it appears therein (except the first time) "or any subsidiary thereof".

(3) Section 303(c)(1) of such Act (45 U.S.C. 743(c)(1)) is amended by inserting after "Corporation" each time it appears "or any subsidiary thereof".

(4) Paragraph (2)(A) of section 303(c) of such Act (45 U.S.C. 743(c)(2)(A)) is amended by striking "Corporation" the second time it appears and inserting in lieu thereof "Corporation or any subsidiary thereof".

(d)(1) Section 303(a)(2) of such Act (45 U.S.C. 743(a)(2)) is amended by inserting after "region" the first time it appears "and each State or responsible person (including a government entity)".

(2) Section 303(b)(1) of such Act (45 U.S.C. 743(b)(1)) is amended (A) by inserting immediately after "region" the first place it appears the following: ", States, and responsible persons", and (B) by striking out "and the respective profitable railroads operating in the region" and inserting in lieu thereof ", the respective profitable railroads operating in the region, States, and responsible persons".

(3) Section 303(b)(2) of such Act (45 U.S.C. 743(b)(2)) is amended by striking out "and the respective profitable railroads operating in the region" and inserting in lieu thereof ", the respective profitable railroads operating in the region, States, and responsible persons".

(4) Paragraph (4) of section 303(b) of such Act (45 U.S.C. 743 (b)(4)) is amended by striking "or the profitable railroad" and inserting in lieu thereof ", profitable railroad, State, or responsible person".

(5) Section 303(c) of such Act (45 U.S.C. 743(c)) is amended by striking "and profitable railroads operating in the region" and inserting in lieu thereof ", profitable railroads operating in the region, States, and responsible persons".

(6) Paragraph (1)(A)(ii) of section 303(c) of such Act (45 U.S.C. 743(c)(1)(A)(ii)) is amended by inserting "State, or responsible person" after "region,".

(7) Paragraph (3) of section 303(c) of such Act (45 U.S.C. 743(c)(3)) is amended by inserting ", State, or responsible person" after "region" and by inserting after "railroad" each time it appears therein (except the first time) ", State, or responsible person".

(8) Paragraph (4) of section 303(c) of such Act (45 U.S.C. 743(c)(4)) is amended by inserting ", States, and responsible persons" after "railroads".

(e) Section 303(c)(2) of such Act (45 U.S.C. 743(c)(2)) is amended by (1) striking out "shall" in the clause preceding subparagraph (A) thereof and inserting "may" in lieu thereof; (2) striking

out the semicolon at the end of subparagraph (A) thereof and inserting in lieu thereof ", except that at least one share of series B preferred stock and one certificate of value shall be allocated to each such railroad;"; and (3) amending subparagraph (C) thereof to read as follows:

"(C) enter a judgment against the Corporation if the judgment would not endanger the viability or solvency of the Corporation.".

(f) Section 303(c) of such Act (45 U.S.C. 743(c)) is amended by adding at the end thereof the following new paragraph:

"(5) Whenever the special court orders, pursuant to section 303(b)(1) of this title, the transfer or conveyance to the Corporation or any subsidiary thereof of rail properties designated under section 206 (c)(1) (C) or (D) of this Act, to the National Railroad Passenger Corporation, to a profitable railroad, or to a State, or responsible person (including a government entity), the United States shall pay any judgment entered against the Corporation with respect to the conveyance of any such rail properties or against the National Railroad Passenger Corporation, such profitable railroad, State, or responsible person, plus interest thereon 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.". 45 USC 716.

(g) Section 303(d) of such Act (45 U.S.C. 743(d)) is amended by (1) striking out "5" and inserting in lieu thereof "20".

(h) Section 303(c)(4) of such Act (45 U.S.C. 743(c)(4)) is amended by (1) striking out "subsection (b)" and inserting in lieu thereof "subsection (a)"; and (2) inserting after "region" the following: "and to persons leased, operated, or controlled by such railroads who so transferred or conveyed rail properties".

(i) Section 303 of such Act (45 U.S.C. 743) is amended by (1) adding ", certificates of value" after "securities" in subsection (c)(1)(A)(i) thereof, in the preamble of subsection (c)(2) and in subsection (c)(2) thereof, and in subsection (c)(3) thereof; (2) adding "and certificates of value" after "of the Corporation" in subsection (c)(2)(A) thereof and after "Corporation's securities" in subsection (c)(2)(B) thereof; (3) striking out "obligations of the Association" each place the phrase appears and inserting in lieu thereof "certificates of value issued by the Association"; and (4) striking out "obligations" each place it appears other than as part of such phrase and inserting in lieu thereof "certificates of value".

(j)(1) Section 301(a) of such Act (45 U.S.C. 741(a)) is amended by inserting immediately after "Corporation" the following: "or such other corporate name as may be duly adopted by the Corporation".

(2) Section 201(k) of such Act (45 U.S.C. 711(k)), as redesignated by section 603(a) of this Act, is amended (A) by striking out "these provisions" in the third sentence thereof and inserting in lieu thereof "this provision"; (B) by striking out "or the Corporation" each place

it appears in the third and fourth sentences thereof; and (C) by striking out the second sentence thereof.

(3) Section 301(b) of such Act (45 U.S.C. 741(b)) is amended in the third sentence thereof by inserting immediately after "of the Corporation" the following: "or of its principal railroad operating subsidiary".

(k) Section 303(b)(4) of such Act (45 U.S.C. 743(b)(4)) is amended by inserting immediately after "is made assumes" the following: "all future liability under such lease and".

(l) Section 303(b) of such Act (45 U.S.C. 743(b)) is amended by inserting at the end thereof the following two new paragraphs:

"(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) Notwithstanding anything to the contrary contained in this Act or any other provision of law, the special court shall include in its order such further directions as may be necessary to assure (A) that the operation and administration of the employee pension benefit plans described in section 505(a) of this Act 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 (B) 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 for benefits accruing during such period).".

45 USC 775.

29 USC 1001 note.

(m) Section 301 of such Act (45 U.S.C. 741) is amended by adding at the end thereof the following two new subsections:

"(h) 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 Corporation 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.

"(i) Corporate Simplification.—In the interest of corporate simplification, the Corporation, in implementing the final system plan, shall undertake, as soon as possible and pursuant to financial assistance provided by the Railroad Revitalization and Regulatory Reform

Act of 1976, to acquire all interests in rail lines and related rail properties otherwise conveyed to the Corporation, upon the tender of such interests to it, so as to eliminate any remaining intermediate layers of ownership or interest, such as leaseholds, owned or held by persons who are neither a railroad, a railroad in reorganization, nor controlled by a railroad in reorganization. Any option conditions regarding the purchase price for such interests, in existence since prior to January 2, 1974, shall be deemed to be conclusive of fair and equitable value.". *Ante*, p. 31.

(n) Section 303(c)(3) of such Act (45 U.S.C. 743(c)(3)) is amended by adding at the end thereof the following: "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 211(h) of this Act, for which payment the profitable railroad has not been reimbursed, as provided in section 211(h). 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 section 303(a)(2), of any such amount so found together with interest at the rate provided in section 211(h).". *Ante*, p. 92.

(o) Section 303(b)(1) of such Act (45 U.S.C. 743(b)(1)) is amended by striking out "railroad leased" and inserting in lieu thereof "person leased".

(p) Section 303(b)(1) of such Act (45 U.S.C. 743(b)(1)) is amended by adding at the end thereof the following: "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.".

(q)(1) Section 303(c)(1)(A)(i) of such Act is amended by inserting after "exchange" the second time it appears the following: "(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)".

(2) Section 303(c)(1)(A)(ii) of such Act (45 U.S.C. 743(c)(1)(A)(ii)) is amended by inserting immediately after "region," the following: "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)".

(3) Section 303(c)(2) of such Act (45 U.S.C. 743(c)(2)) is amended by inserting immediately after "reorganization" the second time it appears the following: "(taking into consideration compensa-

ble 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)".

(4) Section 303(c)(3) of such Act (45 U.S.C. 743(c)(3)) is amended by adding at the end thereof the following new sentence: "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.".

DEFINITIONS

SEC. 613. Section 501 of such Act (45 U.S.C. 771) is amended—

(1) in paragraphs (1) and (6) thereof, by inserting immediately after "Corporation" each place it appears the following: "or a subsidiary thereof";

(2) in paragraph (2) thereof (A) by inserting immediately after "Corporation" the following: "or a subsidiary thereof, to the National Railroad Passenger Corporation,"; and (B) by striking out "except a president," and inserting in lieu thereof "(except 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), but does not include a president,";

(3) by amending paragraph (3) thereof to read as follows:

"(3) 'protected employee' means any employee of—

"(A) an acquiring or selling railroad who is adversely affected by a transaction;

"(B) the Corporation who, immediately preceding such employment by the Corporation, was employed by a selling railroad and who is adversely affected by the sale of rail properties to the Corporation pursuant to an offer designated under section 206(c)(2) of this Act;

45 USC 716.

"(C) a railroad in reorganization in the region; and

"(D) a railroad who is adversely affected by a supplemental transaction under section 305 of this Act or by a project recommended under section 206(g) of this Act;

Ante, p. 100.

who, in any such case, has not reached age 65 on the effective date of this Act;"

(4) amending paragraph (8) thereof by (A) striking out "this Act or" and inserting in lieu thereof "this Act, including section 305 thereof, or", and (B) striking out "and" at the end of such paragraph;

(5) striking out the period at the end of paragraph (9) thereof and inserting in lieu thereof "; and"; and

(6) adding at the end thereof the following new paragraph:

"(10) 'selling railroad' means a railroad which sells rail properties pursuant to an offer designated under section 206(c)(2) of this Act.".

EMPLOYMENT OFFERS

SEC. 614. (a) Section 502(b) of such Act (45 U.S.C. 772(b)) is amended to read as follows:

"(b) MANDATORY OFFER.—The Corporation shall offer employment, to be effective as of the date of a conveyance or discontinuance of serv-

ice under the provisions of this Act, to each employee of a railroad in reorganization in the region who has not already accepted an offer of employment by the Association (where applicable), an acquiring railroad, or the Corporation. Such offers of employment to employees represented by labor organizations shall be confined to their same craft and class. The Corporation shall apply to such employees the protective provisions of this title.".

(b) Section 502(a) of such Act (45 U.S.C. 772(a)) is amended by adding at the end thereof the following new sentence: "As used in this subsection, the term 'where applicable' refers to the relation of the Association, as an employer (A) to employees of the Association who, before the date of conveyance, under section 303(b)(1) of this Act, had creditable service under the relevant statute and who were offered and accepted coverage under such statute, and (B) to former employees of railroads in reorganization in the region, after the date of such conveyance.". 45 USC 743.

COLLECTIVE BARGAINING AGREEMENTS

SEC. 615. Section 504 of such Act (45 U.S.C. 774) is amended by adding at the end thereof the following three new subsections:

"(e) LIABILITY FOR EMPLOYEE CLAIMS.—In all cases of claims by employees, arising under the collective bargaining agreements of the railroads in reorganization in the region, and subject to section 3 of the Railway Labor Act (45 U.S.C. 153), 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 303(b)(1) of this Act, and shall be entitled to direct reimbursement from the Association pursuant to section 211(h) of this Act. 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 satisfication against the estates of the railroads in reorganization which were their former employers. *Ante*, p. 92.

"(f) TRANSFER OF EMPLOYEES TO THE NATIONAL RAILROAD PASSENGER CORPORATION OR ACQUIRING RAILROADS.—Notwithstanding any otherwise applicable provisions of this title, protected employees to whom the Corporation has made offers of employment may be transferred to the National Railroad Passenger Corporation in accordance with the following procedure:

"(1) Not later than 90 days after the date of completion of the transaction required by section 206(c) of this Act, implementing agreement negotiations between representatives of the various crafts or classes of employees associated with the involved properties, the Corporation, and the National Railroad Passenger Corporation shall commence. These negotiations shall— 45 USC 716.

"(A) identify the specific employees of the Corporation to whom the National Railroad Passenger Corporation offers employment;

"(B) the procedure by which those employees of the Corporation may elect to accept employment with the National Railroad Passenger Corporation;

"(C) the procedure for acceptance of such employees into the National Railroad Passenger Corporation's employment; and

"(D) the procedure for determining the seniority of such employees in their respective crafts or classes on the National

Railroad Passenger Corporation's system which shall, to the extent possible, preserve their prior seniority rights.

If no agreement regarding the matters referred to in this subsection is reached by the end of 60 days after the date of commencement of negotiations (which shall also be a date which is at least 90 days after the transaction contemplated by section 601(d) of this Act), upon notice of any party, all parties thereto shall within an additional 10 days select a neutral referee. If such parties are unable to agree upon the selection of such a referee, the National Mediation Board shall promptly appoint a referee. Hearings shall commence not later than 30 days after the date of selection or appointment of such referee, and a decision shall be rendered by such referee within 60 days after the date of commencement of the hearings. The referee shall resolve and decide all matters in dispute regarding the negotiation of the implementing agreement or agreements. All parties may participate, but the referee shall have the only vote. The referee's decision shall be final and binding and shall constitute the implementing agreement or agreements between the parties. The salary and expenses of the referee shall be paid pursuant to the provisions of the Railway Labor Act.

45 USC 791.

Hearings.

45 USC 151.

"(2) Prior to implementation of an agreement or agreements pursuant to paragraph (1) of this subsection, the representatives of the various crafts or classes of employees designated to be transferred to the National Railroad Passenger Corporation shall meet with representatives of the National Railroad Passenger Corporation for the purposes of negotiating agreements regarding rates of pay, rules, and working conditions. If, 60 days after the date of commencement of such negotiations, no agreement has been reached, the bargaining agreement in existence on the rail properties from which the employees are to be transferred and which is applicable to the craft or class of employees being transferred will apply and such implementing agreement will be put into effect.

"(3) An employee of the Corporation who is entitled to protection and who is transferred as a result of an acquisition pursuant to this Act shall upon transfer to the National Railroad Passenger Corporation or to an acquiring railroad, carry with him his protected status. The National Railroad Passenger Corporation or an acquiring railroad, as new employers, shall be responsible for payment of protective benefits and shall be entitled to reimbursement pursuant to section 509 of this title.

Post, p. 116.

"(4) The National Railroad Passenger Corporation may prior to completion of any of the agreements referred to in this section, offer employment to any noncontract employee. Noncontract employees accepting employment with the National Railroad Passenger Corporation shall carry with them all rights and benefits accorded to them under this title.

"(g) 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 303 of this Act, 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 211(h) of this Act.".

45 USC 743.

Ante, p. 92.

EMPLOYEE PROTECTION

SEC. 616. (a) Section 505(a) of such Act (45 U.S.C. 775(a)) is amended by striking out the period at the end thereof and inserting in lieu thereof the following: ", including benefits under any employee pension benefit plan in effect on December 1, 1975, other than a plan maintained primarily for the purpose of providing deferred compensation for a select group of management personnel or other highly compensated employees. For purposes of protecting employee pension benefits under this title, the term 'protected employee whose employment is governed by a collective-bargaining agreement' includes any beneficiary of, and any participant in, such plan, including noncontract employees. The protected benefits of such beneficiary or participant, accrued as of the date of conveyance, may be limited to the amount guaranteed under terminated plans pursuant to title IV of the Employee Retirement Income Security Act of 1974. Pension benefits shall not be paid to any beneficiary of a terminated plan whose benefits are guaranteed by such Act.". 29 USC 1301.

(b) Section 505(b)(1) of such Act (45 U.S.C. 775(b)(1)) is amended by striking out "the last 12 months immediately prior to his being adversely affected" and inserting in lieu thereof "the 12 full calendar months immediately preceding February 26, 1975, or in the case of a supplementary transaction, the 12 full calendar months immediately preceding the effective date of such transaction".

(c) Section 505(b)(3) of such Act (45 U.S.C. 775(b)(3)) is amended by striking out "his being adversely affected" and inserting in lieu thereof "February 26, 1975, or the effective date of the supplemental transaction, as the case may be".

(d) Section 505(b) of such Act (45 U.S.C. 775) is amended by (1) redesignating paragraph (4) thereof as paragraph (5) thereof and (2) inserting a new paragraph (4) therein as follows:

Noncontract employees.

"(4) If a noncontract employee exercises seniority rights in a craft or class of employees protected under this Act, then, during the period such seniority is exercised, such noncontract employee shall be entitled to the same protection offered under this Act to employees in the craft or class in which such seniority is exercised. However, in computing the monthly displacement allowance, the last 12 months prior to February 26, 1975, during which such noncontract employee performed service under a collective-bargaining agreement, shall be used.".

(e) Section 505(f) of such Act (45 U.S.C. 775(f)) is amended to read as follows:

"(f) TERMINATION ALLOWANCE.—The Corporation may terminate the employment of an employee of a railroad in reorganization who has less than 3 years' service with such railroad, as of the date of enactment of this Act. The Corporation's right to terminate an employee must be exercised within a period of 1 year from the date of conveyance, pursuant to section 303 of this Act. Upon notification to the employee of the Corporation's intent to terminate his services, the employee shall have the option of accepting the termination allowance or of accepting a voluntary furlough without pay. If the employee entitled to receive a lump sum separation allowance accepts such an allowance, the amount shall be determined as follows: 45 USC 743.

2 to 3 years' service	180 days' pay at the rate of the position last held.
1 to 2 years' service	90 days' pay at the rate of the position last held.
Less than 1 year's service	5 days' pay at the rate of the position last held for each month of service.".

(f) Section 505(h) of such Act (45 U.S.C. 775(h)) is amended by adding at the end thereof the following new sentence: "Provisions of this title shall be applied, upon a conveyance or discontinuance of service, to employees who are otherwise entitled to protective benefits and who were placed in furlough status on or after February 26, 1975.".

(g) Section 505 of such Act (45 U.S.C. 775) is amended by adding at the end thereof the following new subsection:

"(i) NONCONTRACT EMPLOYEES.—Compensation, severance, termination, and moving expense benefits for employees not governed by a collective-bargaining agreement shall be consistent with subsections (b), (c), (e), (f), and (g) of this section and shall be in accordance with the following provisions:

"(1) A protected employee, whose employment is not governed by the terms of a collective-bargaining agreement, may be required by the Corporation, upon reasonable notice, to transfer to any position on the Corporation's system. If such transfer requires a change in residence, the employee may either voluntarily suspend his employment at his home location in lieu of protective benefits, or he may sever his employment and receive a benefit computed in accordance with subsection (e) or (f) of this section. These provisions supersede all provisions or conditions in subsection (d) of this section.

"(2) If any dispute arises between the Corporation and a noncontract employee regarding the interpretation or application of any provision of this title, the Corporation shall establish a resolution procedure with arbitration as the final step. Either party may request arbitration, and the cost and expenses of such arbitration shall be shared equally by the parties.".

(h) Section 509 of such Act (45 U.S.C. 779) is amended to read as follows:

"PAYMENT OF BENEFITS

"SEC. 509. The Corporation, the Association (where applicable), and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees pursuant to the provisions of this title. The Corporation, the Association (where applicable), and acquiring railroads shall then be reimbursed for the actual amounts paid to, or for the benefit of, protected employees, pursuant to the provisions of this title, other than provisions with respect to employee pension benefits, not to exceed the aggregate sum of $250,000,000, by the Railroad Retirement Board, upon certification to such Board, by the Corporation, the Association (where applicable), and acquiring railroads, of the amounts paid such employees. Such reimbursement shall be made from a separate account maintained in the Treasury of the United States to be known as the Regional Rail Transportation Protective Account. Neither the Regional Rail Transportation Protective Account nor the Corporation nor an acquiring railroad shall be charged for any amounts of benefits paid to a protected employee under the provisions of the Railroad Unemployment Insurance Act or any other income protection law or regulation. There is authorized to be appropriated to the Regional Rail Transportation Protective Account annually such sums as may be required to meet the obligations payable hereunder, not to exceed the aggregate sum of $250,000,000. There is further authorized to be appropriated to the Railroad Retirement Board annually such sums as may be necessary to provide for additional administrative expenses to be incurred by the Board in the performance of its functions under this section.".

Regional Rail Transportation Protective Account.

45 USC 367.

Appropriation authorization.

DUTIES OF ACQUIRING AND SELLING RAILROADS

SEC. 617. Section 508 of such Act (45 U.S.C. 778) is amended to read as follows:

"DUTIES OF ACQUIRING AND SELLING RAILROADS

"SEC. 508. (a) ACQUIRING RAILROADS.—(1) An acquiring railroad shall offer such employment, subject to such rules and working conditions, and afford such employment protection to employees of a railroad from which it acquires properties or facilities (including operating rights) pursuant to this Act, and shall afford such protection to its own employees who are adversely affected by such acquisition, as shall be agreed upon between such acquiring railroad and the representatives of such employees prior to such acquisition, except that the protection and benefits (except as to rules and working conditions) provided for protected employees in such agreements shall be the same as those specified in section 505 of this title. Unless and until such agreements are reached, the acquiring railroad shall not enter into purchase agreements pursuant to section 206(d)(4) of this Act. For purposes of this subsection, the National Railroad Passenger Corporation shall be deemed to be an acquiring railroad, with respect to employees described in section 501(3) of this title.

45 USC 775.

45 USC 716.

45 USC 771.

"(2) If the National Railroad Passenger Corporation acquires rail properties of a railroad in reorganization in the region, prior to the date of conveyance of rail properties to the Corporation pursuant to section 303(b)(1) of this Act but after the publication of the preliminary system plan, it shall offer such employment and afford such employment protection to employees of a railroad from which it acquires rail properties and shall further protect its own employees who may be adversely affected by such acquisition, as shall be agreed upon between the National Railroad Passenger Corporation and the representatives of such employees prior to such acquisitions. The protection and benefits provided for employees in such agreements shall be the same as those specified in section 505 of this title, and such protection and benefits shall supersede conflicting provisions in any previously applicable job stabilization agreements or agreements implementing such stabilization agreements, and the National Railroad Passenger Corporation shall be reimbursed for expenses incurred as a result of any such acquisition, as provided in section 509 of this title.

45 USC 743.

Ante, p. 116.

"(b) SELLING RAILROADS.—A selling railroad shall offer such employment and shall provide such employment protection to each of its employees who are adversely affected by such sale, pursuant to agreements to be entered into between it and the representatives of such employees prior to said sale: *Provided*, That (1) the protection and benefits provided for protected employees in such agreements shall be the same as those specified in section 505 of this title, and (2) unless and until such agreements are reached, the selling railroad shall not enter into selling agreements pursuant to section 206(d) of this Act.".

EXEMPTIONS

SEC. 618. (a) Section 601(a)(2) of such Act (45 U.S.C. 791(a)(2)) is amended by adding immediately before the period at the end thereof the following: "and with respect to any action taken to formulate or implement any supplemental transaction".

(b) Section 601(b) of such Act (45 U.S.C. 791(b)) is amended to read as follows:

"(b) COMMERCE, SECURITIES, AND BANKRUPTCY.—(1) The provisions of the Interstate Commerce Act (49 U.S.C. 1 et seq.) and the Bankruptcy Act (11 U.S.C. 205 et seq.) are inapplicable (A) to actions taken under this Act 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 Act to formulate or implement any supplemental transaction.

11 USC 1 note.

"(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 Act, shall be deemed for all purposes to have been issued subject to and authorized pursuant to section 20a of the Interstate Commerce Act (49 U.S.C. 20a).

"(3) The provisions of section 5 of the Securities Act of 1933 (15 U.S.C. 77e), 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 303(a) of this Act, 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 303(c) of this Act.

45 USC 743.

"(4) The powers and duties of the Commission under section 77 of the Bankruptcy Act (11 U.S.C. 205), 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 the date of enactment of this paragraph, with respect to any railroad in reorganization under such section 77 but not subject to this Act 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 Act prior to the date of enactment of this paragraph. 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 the Interstate Commerce Act. 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) Section 601(c) of such Act (45 U.S.C. 791(c)) is amended to read as follows:

"(c) ENVIRONMENT.—The provisions of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to any action taken under authority of this Act before, and including, the conveyance of rail properties ordered by the special court under section 303(b)(1) of this Act, and shall not apply thereafter to any action taken in compliance with the requirements of the final system plan.".

APPLICATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

SEC. 619. Nothing in this title shall affect the application of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to actions of the Commission. 45 USC 791 note.

TITLE VII—NORTHEAST CORRIDOR PROJECT IMPLEMENTATION

NATIONAL RAILROAD PASSENGER CORPORATION

SEC. 701. (a) GENERAL.—To carry out the purposes of this title, the Rail Passenger Service Act, and the Regional Rail Reorganization Act of 1973, the National Railroad Passenger Corporation is authorized to— 45 USC 851. 45 USC 501 note. 45 USC 701 note.

(1) acquire by purchase, lease, exchange, gift, or otherwise, and to hold, maintain, sell, lease or otherwise dispose of, any real or personal property or interest therein which is necessary or useful in establishing and maintaining improved high-speed rail services, as specified in section 703 of this title;

(2) enter into and implement such contracts and agreements as are necessary or appropriate in the conduct of its functions;

(3) provide for the continuous operation and maintenance of rail freight, intercity rail passenger, and commuter rail passenger service over the properties acquired pursuant to this section: *Provided*, That any provision of rail freight or rail commuter service shall be effectuated by a compensatory contract with the responsible carrier;

(4) improve railroad rights-of-way between Boston, Massachusetts, and Washington, District of Columbia (including at its option, the route through Springfield, Massachusetts, and routes to Harrisburg, Pennsylvania, and Albany, New York, from the Northeast Corridor main line) to enable improved high-speed rail passenger service to be provided between Boston, Massachusetts, and Washington, District of Columbia, and intermediate intercity markets, in accordance with the goals set forth in section 703 of this title;

(5) acquire, construct, improve, and install passenger stations; communications, electric power, and other facilities and equipment; public and private highway and pedestrian crossings; other safety facilities or equipment; and any other facilities or equipment which it determines are necessary to enable improved high-speed rail passenger service to be provided over the railroad rights-of-way to be improved under paragraph (4) of this subsection;

(6) enter into agreements with other railroads, other carriers, and commuter agencies, for the purpose of granting, acquiring, or entering into trackage rights, contract services, and other appropriate arrangements for freight and commuter services over the rights-of-way acquired under this title, with such agreement to be on such terms and conditions as are necessary to reimbursement for costs on an equitable and fair basis, except that cross subsidization among intercity, commuter, or rail freight services is prohibited;

(7) appoint a qualified individual to serve as the General Manager of the Northeast Corridor improvement project; and

(8) enter into agreements with telecommunications common carriers on a basis which is consistent with, and subject to, the

47 USC 609.

Communications Act of 1934, for the purpose of continuing existing, and creating new and improved, rail passenger radio mobile telephone service in the high-speed rail passenger service area specified in section 703(1) of this title.

(b) TRANSFER OF RAIL PROPERTIES.—The Corporation, on the date of conveyance pursuant to section 303(b)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743), shall, by purchase or lease, transfer to the National Railroad Passenger Corporation all rail properties designated pursuant to sections 206(c)(1)(C) and 601(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(C) and 791(d)), and it shall, within 180 days after the date of enactment of this title, execute agreements providing for the National Railroad Passenger Corporation to assume (1) all operational responsibility for intercity rail passenger services with respect to such properties, and (2) control and maintenance of the properties transferred. Such parties may agree to retaining or transferring, in whole or in part, operational responsibility for rail freight or commuter rail services in the area specified.

(c) DEFINITION.—As used in this title, the term "Northeast Corridor" means the States of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, and Maryland, and the District of Columbia.

OPERATIONS REVIEW PANEL

45 USC 852.

SEC. 702. (a) ESTABLISHMENT.—There is established an entity which shall be representative of the various users of Northeast Corridor rail transportation facilities, to be known as the Operations Review Panel (hereafter in this section referred to as the "Panel"). The Panel shall have the authority to take such actions as are necessary to resolve differences of opinion concerning operations (among or between the National Railroad Passenger Corporation, other railroads, and State, local, and regional agencies responsible for the provision of commuter rail, rapid rail, or rail freight services), with respect to all matters except those conferred on the Commission in section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a)).

(b) MEMBERSHIP.—The Panel shall consist of 5 members, as follows:

(1) one member who shall be selected by the chief executive officer of the National Railroad Passenger Corporation;

(2) one member who shall be selected by majority vote of the commuter rail authorities which are subject to the jurisdiction of the Panel;

(3) one member who shall be selected by the chief executive officer of the Corporation; and

(4) two neutral members who shall be selected by the Chairman of the National Mediation Board.

The members shall each serve a term of 4 years from the date of such selection, or until a successor has been selected. If, within 45 days after the date of enactment of this Act, the National Railroad Passenger Corporation, the commuter authorities, or the Corporation fails to select the member who it is authorized to select under this subsection, the Chairman of the National Mediation Board shall, within 30 days after the expiration of such 45-day period, appoint a member on behalf of such party. Any member so appointed shall serve until such time as the party so represented selects a successor.

(c) DECISIONS AND REVIEW.—All decisions of the Panel shall be final and binding on the parties. All costs and expenses of the Panel shall be paid by (1) the National Railroad Passenger Corporation, (2) the

commuter rail authorities which are subject to such Panel, and (3) the Corporation, each of which shall pay one-third of such costs and expenses, unless otherwise determined by a majority of the members of such Panel. The Panel may adopt such rules of procedure and may employ such resources as it considers appropriate. It may issue preliminary and final orders, which shall have the force and effect of law, with respect to any difference of opinion concerning any operational matter which is the subject of such an order. No order of the Panel shall be subject to review by any court. Upon petition by any party subject to the Panel, the United States District Court for the District of Columbia shall enforce any final order issued by the Panel.

REQUIRED GOALS

SEC. 703. The Northeast Corridor improvement project shall be implemented by the Secretary in order to achieve the following goals: 45 USC 853.

(1) INTERCITY RAIL PASSENGER SERVICES.—(A)(i) Within 5 years after the date of enactment of this Act, the establishment of regularly scheduled and dependable intercity rail passenger service between Boston, Massachusetts, and New York, New York, operating on a 3-hour-and-40-minute schedule, including appropriate intermediate stops; and regularly scheduled and dependable intercity rail passenger service between New York, New York, and Washington, District of Columbia, operating on a 2-hour-and-40-minute schedule, including appropriate intermediate stops.

(ii) Improvements in facilities in accordance with route criteria approved by the Congress, on routes to Harrisburg, Pennsylvania, and Albany, New York, from the Northeast Corridor main line, and from Springfield, Massachusetts, to Boston, Massachusetts, and New Haven, Connecticut, in order to facilitate compatibility with improved high-speed rail service operated on the Northeast Corridor main line.

(B) The improvement of nonoperational portions of stations (as determined by the Secretary in consultation with the National Railroad Passenger Corporation) used in intercity rail passenger service and of related facilities and fencing. Fifty percent of the cost of such improvements shall be borne by States (or local or regional transportation authorities), except that the Secretary may, in his sole discretion, fund entirely any safety-related improvement.

(C) The improvements required by this section shall be accomplished in a manner which is compatible with the accomplishment in the future of additional improvements in service levels, and which will produce the maximum labor benefit in terms of hiring persons who are presently unemployed.

(D) The submission by the Secretary and the National Railroad Passenger Corporation to the Congress of annual reports on progress achieved and work in progress and planned (including the need for further improvements) with respect to the completion of this program, including an up-to-date accounting of intercity passenger ridership, revenues from such ridership, expenses, and on-time dependability of intercity passenger trains in the Northeast Corridor.

(E) Within 2 years after the date of enactment of this Act, the submission by the Secretary to the Congress of a report on the financial and operating results of the intercity rail passenger service established under this section, on the rail freight service improved and maintained pursuant to this section, and on the Report to Congress.

practicability, considering engineering and financial feasibility and market demand, of the establishment of regularly scheduled and dependable intercity rail passenger service between Boston, Massachusetts, and New York, New York, operating on a 3-hour schedule, including appropriate intermediate stops, and regularly scheduled and dependable intercity rail passenger service between New York, New York, and Washington, District of Columbia, operating on a 2½-hour schedule, including appropriate intermediate stops. Such report shall include a full and complete accounting of the need for improvements in intercity passenger transportation within the Northeast Corridor and a full accounting of he public costs and benefits of improving various modes of transportation to meet those needs. If such report shows (i) that further improvements are needed in intercity passenger transportation in the Northeast Corridor, and (ii) that improvements (in addition to those required by subparagraph (A)(i) of this paragraph) in the rail system in such area would return the most public benefits for the public costs involved, the Secretary shall make appropriate recommendations to the Congress. Within 6 years after the date of enactment of this Act, the Secretary shall submit an updated comprehensive report on the matters referred to in this subparagraph. Thereafter, if it is practicable, the Secretary shall facilitate the establishment of intercity rail passenger service in the Corridor which achieves the service goals specified in this subparagraph.

(2) RAIL COMMUTER SERVICES, RAIL RAPID TRANSIT, AND LOCAL TRANSPORTATION.—To the extent compatible with the goals contained in paragraph (1) of this section, the facilitation of improvements in and usage of rail commuter services, rail rapid transit, and local public transportation.

(3) RAIL FREIGHT SERVICE.—The maintenance and improvement of rail freight service to all users of rail freight service located on or adjacent to the Northeast Corridor and the maintenance and improvement of all through-freight services which remain in the Northeast Corridor, to the extent compatible with the goals contained in paragraphs (1) and (2) of this section.

(4) PASSENGER RADIO TELEPHONE SERVICE.—To the extent compatible with the goals contained in paragraph (1) of this section, the continuation of and improvement in passenger radio telephone service aboard trains operated in high-speed rail service between Washington, District of Columbia, and Boston, Massachusetts. The President and relevant Federal agencies, including the Federal Communications Commission, shall take such actions as are necessary to achieve this goal, subject to the provisions of the Communications Act of 1934 (47 U.S.C. 151 et seq.), including necessary licensing, construction, operation, and maintenance standards for the radio service, as determined by the Federal Communications Commission to be in the public interest, convenience, and necessity.

FUNDING

45 USC 854.

SEC. 704. (a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary—

(1) $1,600,000,000 to remain available until expended in order to effectuate the goals of section 703(1)(A)(i) of this title and after such goals have been achieved, the goals of section 703(1)(A)(ii);

(2) $150,000,000 to remain available until expended in order to effectuate the goal of section 703(1)(B);

(3) for payment to the National Railroad Passenger Corporation—

(A) $10,000,000 to remain available until expended for nonrecurring costs related to the initial assumption of control and responsibility for maintaining rail operations on the Northeast Corridor;

(B) $85,182,956 to acquire the properties of the Northeast Corridor;

(C) $650,000 to remain available until expended, for the development and utilization of mobile radio frequencies for high-speed rail passenger radio telephone service; and

(D) $20,000,000, to remain available until expended, for acquiring and improving properties designated in accordance with section 206(c)(1)(D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(D)).

(b) LIMITATION.—No funds appropriated under this section or pursuant to section 601 of the Rail Passenger Service Act may be used to subsidize any operating losses of commuter rail or rail freight services. 45 USC 601.

(c) COORDINATION.—The Secretary shall take all steps necessary to coordinate all transportation programs related to the Northeast Corridor to assure that all such programs are integrated and consistent with implementation of the Northeast Corridor improvement project under this title, including, if the Secretary finds any significant noncompliance with the implementation of the goals of section 703 of this title, the denial of funding to any noncomplying program until such noncompliance is corrected.

(d) EMERGENCY MAINTENANCE CONTINUATION.—After the conveyance of rail properties, pursuant to section 303(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(b)) and section 701(b) of this title, not to exceed $25,000,000 of the funds appropriated pursuant to Public Law 94-6 (89 Stat. 11) shall remain available to be utilized by the Secretary for the purpose of performing emergency maintenance on the rail properties designated in accordance with section 206(c)(1)(C) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(C)).

CONFORMING AMENDMENTS

SEC. 705. (a) Section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a)) is amended by adding at the end thereof the following three new sentences: "Notwithstanding any other provision of this Act, the Corporation may enter into agreements with any other railroads and with any State (or local or regional transportation agency) responsible for providing commuter rail or rail freight services over tracks, rights-of-way, and other facilities acquired by the Corporation pursuant to authority granted by the Regional Rail Reorganization Act of 1973 and the Railroad Revitalization and Regulatory Reform Act of 1976. In the event of a failure to agree, the Commission shall order that rail services continue to be provided, and it shall, consistent with equitable and fair compensation principles, decide, within 180 days after the date of submission of a dispute to the Commission, the proper amount of compensation for the provision of such services. The Commission, in making such a determination, shall consider all relevant factors, and shall not permit cross subsidization among intercity, commuter, and rail freight services.". 45 USC 701 note. *Ante*, p. 31.

(b) Section 601(d)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 791(d)(1)) is amended to read as follows:

45 USC 716.

"(d) NORTHEAST CORRIDOR.—(1) Rail properties designated in accordance with section 206(c)(1)(C) of this Act 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 206(c)(1)(C) of this Act (45 U.S.C. 716(c)(1)(C)), which shall take effect on the date of conveyance of such properties to the Corporation.".

(c) Section 403(b) of the Rail Passenger Service Act (45 U.S.C. 563(b)) is amended (1) by inserting "(1)" immediately after "(b)", and (2) by striking out the second sentence thereof and inserting in lieu thereof the following: "The Corporation shall institute such service under an agreement if the State, regional, or local agency agrees to reimburse the Corporation for 50 percent of total operating losses and associated capital costs of such service if service can be provided with the resources available to the Corporation and if it is consistent with the following requirements:

"(A) The State or agency must make an adequate assurance to the Corporation that it has sufficient resources to meet its share of the costs of such service for the period such service is to be provided under this section.

"(B) The State or agency has conducted a market analysis acceptable to the Corporation to insure that there is adequate demand to warrant such service.

An agreement made pursuant to this section may by mutual agreement be renewed for one or more additional terms of not more than 2 years.

"(2) If more than one application is made for service and all applications are consistent with the requirements of this subsection, but all the services applied for cannot be provided with the available resources of the Corporation, the Board of Directors shall decide in its discretion which application or applications best serve the public interest and can be provided with the available resources of the Corporation, except that a proposal for State support of a service deleted from the basic system shall be given preference.

"(3) The Board of Directors shall establish the basis for determining the total costs and the total revenue of the service provided pursuant to this subsection.".

(d) Section 404(b)(4) of the Rail Passenger Service Act (45 U.S.C. 564(b)) is amended by striking out the first sentence thereof and inserting in lieu thereof the following: "For purposes of paragraph (3) of this subsection, the reasonable portion of such losses to be assumed by the State, regional, or local agency shall be equal to 50 percent of the total operating losses and associated capital costs of such service.".

(e) Section 306 of the Rail Passenger Service Act (45 U.S.C. 546) is amended by adding at the end thereof the following new subsection:

"(i) The provisions of section 361 of the Public Health Service Act (42 U.S.C. 264) shall not apply to railroad conveyances operated in intercity rail passenger service.".

(f) Section 303(a)(5) of the Rail Passenger Service Act (45 U.S.C. 543(a)(5)) is amended by (1) striking out "for each meeting of the board he attends." and inserting in lieu thereof "per diem when engaged in the actual performance of duties.", and (2) inserting ", secretarial or professional staff support which is reasonably required" immediately after "necessary travel".

(g) Section 305(d)(1)(B) of the Rail Passenger Service Act (45 U.S.C. 545(d)(1)(B) is amended by striking out "for the construction of tracks or other facilities necessary to provide".

(h) Section 402(d)(1) of the Rail Passenger Service Act (45 U.S.C. 562(d)(1)) is amended by striking out "the construction of tracks or other facilities necessary to provide".

(i) Section 403(c) of the Rail Passenger Service Act (45 U.S.C. 563(c)) is amended by adding the following sentence at the end thereof: "After January 1, 1977, all route additions shall be in accordance with the Criteria and Procedures for Making Route and Service Decisions approved by the Congress pursuant to section 404(c)(3), and this subsection shall no longer apply to route additions.".

FACILITIES WITH HISTORICAL OR ARCHITECTURAL SIGNIFICANCE

SEC. 706. Section 4(i) of the Department of Transportation Act (49 U.S.C. 1653) is amended by—

(1) redesignating paragraph (1)(C) thereof and all references thereto as paragraph (1)(D) thereof;

(2) inserting immediately after paragraph (1)(B) thereof the following new subparagraph: "(C) acquiring and utilizing space in suitable buildings of historic or architectural significance, unless the use of such space would not prove feasible and prudent compared with available alternatives;";

(3) redesignating paragraph (4), (5), (6), (7), (8), (9), and (10) thereof as paragraphs (5), (6), (7), (8), (9), (10), and (11) thereof, respectively;

(4) inserting after paragraph (3) thereof the following new paragraph:

"(4) Acquisitions made for the purpose set forth in paragraph (1)(C) of this subsection shall be made only after consultation with the chairman of the National Endowment for the Arts and the Advisory Council on Historic Preservation."; and

(5) amending paragraph (9) thereof, as redesignated by this section, to read as follows:

"(9)(A) There is authorized to be appropriated for the purpose set forth— **Appropriation authorization.**

"(i) in paragraphs (1)(A) and (1)(C) of this subsection, not to exceed $15,000,000;

"(ii) in paragraph (1)(B) of this subsection, not to exceed $5,000,000; and

"(iii) in paragraph (1)(D) of this subsection, not to exceed $5,000,000.

"(B) There shall be available to the National Endowment for the Arts, from the sums available under subparagraphs (A)(ii) and (A)(iii) of this paragraph, not to exceed $2,500,000 for planning pursuant to paragraph (1)(D) of this subsection, and not to exceed $2,500,000 for interim maintenance pursuant to paragraph (1)(B) of this subsection.

"(C) Sums appropriated for the purposes of this subsection are authorized to remain available until expended.".

TITLE VIII—LOCAL RAIL SERVICE CONTINUATION

EXTENSION OF SERVICE

SEC. 801. (a) Section 1(18) of the Interstate Commerce Act (49 U.S.C. 1(18)) is amended to read as follows:

"(18)(a) No carrier by railroad subject to this part shall—

"(i) undertake the extension of any of its lines of railroad or the construction of any additional line of railroad;

"(ii) acquire or operate any such extension or any such additional line; or

"(iii) engage in transportation over, or by means of, any such extended or additional line of railroad,

unless such extension or additional line of railroad is described in and covered by a certificate which is issued by the Commission and which declares that the present or future public convenience and necessity require or will be enhanced by the construction and operation of such extended or additional line of railroad. Upon receipt of an application for such a certificate, the Commission shall (A) send a copy of the application to the chief executive officer of each State that would be directly affected by the construction or operation of such extended or additional line, (B) send an accurate and understandable summary of such application to a newspaper of general circulation in such affected area or areas with a request that such information be made available to the general public, (C) cause a copy of such summary to be published in the Federal Register, (D) take such other steps as it deems reasonable and effective to publicize such application, and (E) indicate in such transmissions and publications that each interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

Publication in newspaper.

Publication in Federal Register.

"(b) The Commission shall establish, and may from time to time amend, rules and regulations (as to hearings and other matters) to govern applications for, and the issuance of, any certificate required by subdivision (a). An application for such a certificate shall be submitted to the Commission in such form and manner and with such documentation as the Commission shall prescribe. The Commission may—

Rules and regulations.

"(i) issue such a certificate in the form requested by the applicant;

"(ii) issue such a certificate with modifications in such form and subject to such terms and conditions as are necessary in the public interest; or

"(iii) refuse to issue such a certificate.

"(c) Upon petition or upon its own initiative, the Commission may authorize any carrier by railroad subject to this part to extend any of its lines of railroad or to take any other action necessary for the provision of adequate, efficient, and safe facilities for the performance of such carrier's obligations under this part. No authorization shall be made unless the Commission finds that the expense thereof will not impair the ability of such carrier to perform its obligations to the public.

"(d) Carriers by railroad subject to this part may, notwithstanding this paragraph and section 5 of this part, and without the approval of the Commission, enter into contracts, agreements, or other arrangements for the point ownership or joint use of spur, industrial, team, switching, or side tracks. The authority granted to the Commission under this paragraph shall not extend to the construction, acquisition, or operation of spur, industrial, team, switching, or side tracks if such tracks are located or intended to be located entirely within one State, and shall not apply to any street, suburban, or interurban electric railway which is not operated as part of a general system of rail transportation.

"(e) Any construction or operation which is contrary to any provision of this paragraph, of any regulations promulgated under this

paragraph, or of any terms and conditions of an applicable certificate, may be enjoined by an appropriate district court of the United States in a civil action commenced and maintained by the United States, the Commission, or the attorney general or the transportation regulatory body of an affected State or area. Such a court may impose a civil penalty of not to exceed $5,000 on each person who knowingly authorizes, consents to, or permits any violation of this paragraph or of the conditions of a certificate issued under this paragraph.". Penalty.

(b) Paragraphs (19), (20), (21), and (22) of section 1 of the Interstate Commerce Act (49 U.S.C. 1(19) through 1(22)) are repealed. Repeal.

DISCONTINUANCE OR ABANDONMENT

SEC. 802. The Interstate Commerce Act is amended by inserting after section 1 thereof the following new section:

"DISCONTINUANCE AND ABANDONMENT OF RAIL SERVICE

"SEC. 1a. (1) No carrier by railroad subject to this part shall abandon all or any portion of any of its lines of railroad (hereafter in this section referred to as 'abandonment') and no such carrier shall discontinue the operation of all rail service over all or any portion of any such line (hereafter referred to as 'discontinuance'), unless such abandonment or discontinuance is described in and covered by a certificate which is issued by the Commission and which declares that the present or future public convenience and necessity require or permit such abandonment or discontinuance. An application for such a certificate shall be submitted to the Commission, together with a notice of intent to abandon or discontinue, not less than 60 days prior to the proposed effective date of such abandonment or discontinuance, and shall be in accordance with such rules and regulations as to form, manner, content, and documentation as the Commission may from time to time prescribe. Abandonments and discontinuances shall be governed by the provisions of this section or by the provisions of any other applicable Federal statute, notwithstanding any inconsistent or contrary provision in any State law or constitution, or any decision, order, or procedure of any State administrative or judicial body. 49 USC 1a.

"(2)(a) Whenever a carrier submits to the Commission a notice of intent to abandon or discontinue, pursuant to paragraph (1), such carrier shall attach thereto an affidavit certifying that a copy of such notice (i) has been sent by certified mail to the chief executive officer of each State that would be directly affected by such abandonment or discontinuance, (ii) has been posted in each terminal and station on any line of railroad proposed to be so abandoned or discontinued, (iii) has been published for 3 consecutive weeks in a newspaper of general circulation in each county in which all or any part of such line of railroad is located, and (iv) has been mailed, to the extent practicable, to all shippers who have made significant use (as determined by the Commission in its discretion) of such line of railroad during the 12 months preceding such submission. Notice. Publication in newspapers.

"(b) The notice required under subdivision (a) shall include (i) an accurate and understandable summary of the carrier's application for a certificate of abandonment or discontinuance, together with the reasons therefor, and (ii) a statement indicating that each interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

"(3) During the 60-day period between the submission of a completed application for a certificate of abandonment or discontinuance pursuant to paragraph (1) and the proposed effective date of an abandonment or discontinuance, the Commission shall, upon petition, or may, upon its own initiative, cause an investigation to be conducted to assist it in determining what disposition to make of such application. An order to the Commission to implement the preceding sentence must be issued and served upon any affected carrier not less than 5 days prior to the end of such 60-day period. If no such investigation is ordered, the Commission shall issue such a certificate, in accordance with this section, at the end of such 60-day period. If such an investigation is ordered, the Commission shall order a postponement, in whole or in part, in the proposed effective date of the abandonment or discontinuance. Such postponement shall be for such reasonable period of time as is necessary to complete such investigation. Such an investigation may include, but need not be limited to, public hearings at any location reasonably adjacent to the line of railroad involved in the abandonment or discontinuance application, pursuant to rules and regulations of the Commission. Such a hearing may be held upon the request of any interested party or upon the Commission's own initiative. The burden of proof as to public convenience and necessity shall be upon the applicant for a certificate of abandonment or discontinuance.

Hearings.

"(4) The Commission shall, upon an order with respect to each application for a certificate of abandonment or discontinuance—

"(a) issue such certificate in the form requested by the applicant if it finds that such abandonment or discontinuance is consistent with the public convenience and necessity. In determining whether the proposed abandonment is consistent with the public convenience and necessity, the Commission shall consider whether there will be a serious adverse impact on rural and community development by such abandonment or discontinuance;

"(b) issue such certificate with modifications in such form and subject to such terms and conditions as are required, in the judgment of the Commission, by the public convenience and necessity; or

"(c) refuse to issue such certificate.

Each such certificate which is issued by the Commission shall contain provisions for the protection of the interests of employees. Such provisions shall be at least as beneficial to such interests as provisions established pursuant to section 5(2)(f) of this Act and pursuant to section 405 of the Rail Passenger Service Act (45 U.S.C. 565). If such a certificate is issued, actual abandonment or discontinuance may take effect, in accordance with such certificate, 120 days after the date of issuance thereof.

49 USC 5.

Transportation system diagram.

"(5)(a) Each carrier by railroad subject to this part shall, within 180 days after the date of promulgation of regulations by the Commission pursuant to this section, prepare, submit to the Commission, and publish, a full and complete diagram of the transportation system operated, directly or indirectly, by such carrier. Each such diagram which shall include a detailed description of each line of railroad which is 'potentially subject to abandonment', as such term is defined by the Commission. Such term shall be defined by the Commission by rules and such rules may include standards which vary by region of the Nation and by railroad or group of railroads. Each such diagram shall also identify any line of railroad as to which such carrier plans to submit an application for a certificate of abandonment or discontinuance in accordance with this section. Each such carrier shall sub-

mit to the Commission and publish, in accordance with regulations of the Commission, such amendments to such diagram as are necessary to maintain the accuracy of such diagram.

"(b) The Commission shall not issue a certificate of abandonment or discontinuance with respect to a line of railroad if such abandonment or discontinuance is opposed by—

"(i) a shipper or any other person who has made significant use (as determined by the Commission in its discretion) of such line of railroad during the 12-month period preceding the submission of an applicable application under paragraph (1); or

"(ii) a State, or any political subdivision of a State, if such line of railroad is located, in whole or in part, within such State or political subdivision;

unless such line or railroad has been identified and described in a diagram or in an amended diagram which was submitted to the Commission under subdivision (a) at least 4 months prior to the date of submission of an application for such certificate.

"(6)(a) Whenever the Commission makes a finding, in accordance with this section, that the public convenience and necessity permit the abandonment or discontinuance of a line or railroad, it shall cause such finding to be published in the Federal Register. If, within 30 days of such publication, the Commission further finds that—

Publication in Federal Register.

"(i) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

"(ii) it is likely that such proffered assistance would—

"(A) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line; or

"(B) cover the acquisition cost of all or any portion of such line of railroad;

the Commission shall postpone the issuance of a certificate of abandonment or discontinuance for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment or discontinuance, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect.

"(b) A carrier by railroad subject to this part shall promptly make available, to any party considering offering financial assistance in accordance with subdivision (a), its most recent reports on the physical condition of any line of railroad with respect to which it seeks a certificate of abandonment or discontinuance, together with such traffic, revenue, and other data as is necessary to determine the amount of assistance that would be required to continue rail service.

"(7) Whenever the Commission finds, under paragraph (6)(a) of this section, that an offer of financial assistance has been made, the Commission shall determine the extent to which the avoidable cost of providing rail service plus a reasonable return on the value of the rail properties involved exceed the revenues attributable to the line of railroad or the rail service involved.

"(8) Petitions for abandonment or discontinuance which were filed and pending before the Commission as of the date of enactment of this section or prior to the promulgation by the Commission of regulations required under this section shall be governed by the provisions of section 1 of this Act which were in effect on such date of enactment, except that paragraphs (6) and (7) of this section shall be applicable to such petitions.

"(9) Any abandonment or discontinuance which is contrary to any provision of this section, of any regulation promulgated under this section, or of any terms and conditions of an applicable certificate, may be enjoined by an appropriate district court of the United States in a civil action commenced and maintained by the United States, the Commission, or the attorney general or the transportation regulatory body of an affected State or area. Such a court may impose a civil penalty of not to exceed $5,000 on each person who knowingly authorizes, consents to, or permits any violation of this section or of any regulation under this section.

Penalty.

"(10) As used in this section:

"Avoidable cost."

"(a) The term 'avoidable cost' means all expenses which would be incurred by a carrier in providing a service which would not be incurred, in the case of discontinuance, if such service were discontinued or, in the case of abandonment, if the line over which such service was provided were abandoned. Such expenses shall include but are not limited to all cash inflows which are foregone and all cash outflows which are incurred by such carrier as a result of not discontinuing or not abandoning such service. Such foregone cash inflows and incurred outflows shall include (i) working capital and required capital expenditures, (ii) expenditures to eliminate deferred maintenance, (iii) the current cost of freight cars, locomotives and other equipment, and (iv) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes.

"Reasonable return."

"(b) The term 'reasonable return' shall, in the case of a railroad not in reorganization, be the cost of capital to such railroad (as determined by the Commission), and, in the case of a railroad in reorganization, shall be the mean cost of capital of railroads not in reorganization, as determined by the Commission.".

LOCAL RAIL SERVICE ASSISTANCE

SEC. 803. Section 5 of the Department of Transportation Act, as added by section 401 of this Act (49 U.S.C. 1654), is amended by adding at the end thereof the following 10 new subsections:

"(f) The Secretary shall, in accordance with this section, provide financial assistance to States for rail freight assistance programs that are designed to cover—

"(1) the cost of rail service continuation payments;

"(2) the cost of purchasing a line of railroad or other rail properties to maintain existing or provide for future rail service;

"(3) the cost of rehabilitating and improving rail properties on a line of railroad to the extent necessary to permit adequate and efficient rail freight service on such line; and

"(4) the cost of reducing the costs of lost rail service in a manner less expensive than continuing rail service.

Federal share.

"(g) The Federal share of the costs of any rail service assistance program shall be as follows: (1) 100 percent for the period from July 1, 1976 to June 30, 1977; (2) 90 percent for the period from July 1, 1977 to June 30, 1978; (3) 80 percent for the period from

July 1, 1978 to June 30, 1979; and (4) 70 percent for the period from July 1, 1979 to June 30, 1981. For the period from July 1, 1979 to June 30, 1981, the Secretary may make such adjustments in the percentage level of the Federal share as may be necessary and appropriate so as not to exceed the maximum amount of funds authorized under subsection (o) of this section. The Secretary shall, within 1 year after the date of enactment of this subsection, promulgate standards and procedures under which the State share of such cost may be provided through in-kind benefits such as forgiveness of taxes, trackage rights, and facilities which would not otherwise be provided.

Standards and procedures.

"(h) Each State which is, pursuant to subsection (j) of this section, eligible to receive rail service assistance is entitled to an amount equal to the total amount authorized and appropriated for such purpose, multiplied by a fraction whose numerator is the rail mileage in such State which is eligible for rail service assistance under this section and whose denominator is the rail mileage in all of the States which are eligible for rail service assistance under this section. Notwithstanding the provisions of the preceding sentence, the entitlement of each State shall not be less than 1 percent of the funds appropriated. For purposes of this subsection, rail mileage shall be measured by the Secretary, in consultation with the Interstate Commerce Commission. Any portion of the entitlement of any State which is withheld, in accordance with this section, and any such sums which are not used or committed by a State shall be reallocated immediately, to the extent practicable, among the other States, in accordance with the formula set forth in the first sentence of this subsection.

"(i) Rail service assistance to which a State is entitled under this section may be allocated by such State to meet the cost of establishing and implementing the State rail plan required by subsection (j) of this section or by section 402(c)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762(c)(1)). Such grants shall be made available by the Secretary during the course of the State rail planning process, and shall be distributed by the Secretary as needed by the States. The amount of State rail planning grants to which each State (including each State referred to in subsection (n)(1) of this section) is entitled shall be proportionate to the amount of rail service assistance to which such State is entitled under this Act.

Eligibility.

"(j) A State is eligible to receive rail service assistance from the Secretary if—

"(1) such State has established an adequate plan for rail services in such State as part of an overall planning process for all transportation services in such State, including a suitable process for updating, revising, and amending such plan;

"(2) such State plan is administered or coordinated by a designated State agency and provides for the equitable distribution of resources;

"(3) such State agency (A) has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail transportation services, (B) employs or will employ, directly or indirectly, sufficient trained and qualified personnel, (C) maintains or will maintain adequate programs of investigation, research, promotion, and development, with provisions for public participation, and (D) is designated and directed solely, or in cooperation with other State agencies to take all practicable steps to improve transportation safety and to reduce transportation-related energy utilization and pollution;

"(4) such State provides satisfactory assurance that it has or will adopt and maintain adequate procedures for financial control,

accounting, and performance evaluation in order to assure proper use of Federal funds; and

"(5) such State complies with regulations of the Secretary issued under this section and the Secretary determines that such State meets or exceeds the requirements of paragraphs (1) through (4) of this subsection.

"(k) A project is eligible in any year for financial assistance from the applicable rail service assistance program only if—

"(1) (A) the Commission has found that the public convenience and necessity permit the abandonment of, or the discontinuance of rail service on, the line of railroad which is related to such project, or (B) the line of railroad or related project was eligible for assistance under title IV of the Regional Rail Reorganization Act of 1973; and

45 USC 761.

"(2) such line, or related projects, has not previously been the subject of Federal rail service assistance under this section for more than 5 fiscal years.

"(l) The Secretary shall pay to each eligible State an amount equal to its entitlement under subsection (h) of this section, to be expended or committed to one or more projects which are eligible, pursuant to subsection (k) of this section.

Recordkeeping.

"(m) (1) Each recipient of financial assistance under subsections (e) through (o) of this section, whether in the form of grants, subgrants, contracts, subcontracts, or other arrangements, shall keep such records as the Secretary shall prescribe including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project which was supplied by other sources, and such other records as will facilitate an effective audit. Such records shall be maintained for 3 years after the completion of such a project or undertaking.

Audit.

"(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of receipts which, in the opinion of the Secretary or of the Comptroller General may be related or pertinent to the grants, contracts, or other arrangements referred to in paragraph (1) of this subsection.

"(3) The Secretary and the Comptroller General shall regularly conduct, or cause to be conducted—

"(A) a financial audit, in accordance with generally accepted auditing standards; and

"(B) a performance audit of the activities and transactions assisted under this section, in accordance with generally accepted management principles.

Rules and regulations.

Such audits may be conducted by independent certified or licensed public accountants and management consultants approved by the Secretary and the Comptroller General, and they shall be conducted in accordance with such rules and regulations as may be prescribed by the Comptroller General.

"State."

"(n) As used in this section, the term 'State' means—

"(1) during the period from the date of enactment of this subsection through the second anniversary of the date on which rail properties are conveyed pursuant to section 303(b)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(b)(1)), any State in which a carrier by railroad subject to part I of the Interstate Commerce Act maintains any line of railroad,

49 USC 1.

except that the term shall not include 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, and the District of Columbia; and

"(2) during the period following the second anniversary of the date on which rail properties are conveyed pursuant to such section 303(b)(1), any State in which a carrier by railroad subject to part I of the Interstate Commerce Act maintains any line of railroad. 45 USC 743.

"(o) There are authorized to be appropriated to the Secretary for the purposes of subsections (f) through (o) of this section not to exceed $360,000,000, without fiscal year limitation. Of the foregoing sums, not to exceed $5,000,000 shall be made available for planning grants during each of the 3 fiscal years ending June 30, 1976; September 30, 1977; and September 30, 1978. In addition, any appropriated sums remaining after the repeal of section 402 of the Regional Rail Reorganization Act of 1973 are authorized to remain available to the Secretary for purposes of subsections (f) through (o) of this section. Such sums as are appropriated are authorized to remain available until expended.". Appropriation authorization. 45 USC 762.

TERMINATION AND CONTINUATION OF RAIL SERVICES

SEC. 804. Section 304 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744) is amended to read as follows:

"TERMINATION AND CONTINUATION OF RAIL SERVICES

"SEC. 304. (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 303(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 303(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

45 USC 716.

rail properties (under section 206(g) of this Act) or as part of a coordination project (under sections 206 (c) and (g) of this Act), rail service on such properties may be discontinued, subsequent to the date of conveyance of rail properties pursuant to such section 303(b)(1), if the Commission determines that such rail service on such rail properties is not compensatory and if—

45 USC 743.

"(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 303(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 205(d)(6) of this Act.

45 USC 715.

"(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.

Rules and regulations.

"(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.

Notice.

"(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 the Interstate Commerce Act, 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 205(d)(6) of this Act. 45 USC 715.

"(3) If necessary to prevent any disruption or loss of rail service, at any time after the date of conveyance, pursuant to section 303(b)(1) of this title, the Commission—

45 USC 743.

"(A) 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; 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. 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.

45 USC 715.
Jurisdiction.

"(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 303(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 303(b)(1)), 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 303(b)(2) of this title or subsection (c)(2)(B) of this section, is not paid when it is due, 45 USC 743.

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 303(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 section and under regulations issued by the Office pursuant to section 205(d)(5) of this Act, for the operation of rail passenger service after the 180-day mandatory operation period, and 45 USC 715.

"(B) provides compensation, pursuant to paragraph (2) of this subsection, for operations conducted during the 180-day mandatory operation period,

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 paragragh (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) of the Urban Mass Transportation Act of 1964 and under regulations issued by the Office pursuant to section 205(d)(5) of this Act. *Post*, p. 143.

"(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) of the Urban Mass Transportation Act of 1964 and under regulations issued by the Office pursuant to section 205(d)(5) of this Act.

"(C) 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 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a))).

"(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.

"(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 the Interstate Commerce Act.

"(h) INTERIM ABANDONMENT.—After the date of enactment of this section and prior to the date of conveyance (pursuant to section 303 (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 Act, 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.

45 USC 743.

"(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 303(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 enactment of the Railroad Revitalization and Regulatory Reform Act of 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 (11 U.S.C. 205); or

Ante, p. 31.

"(3) following certification to the special court, pursuant to section 209(c) of the Regional Rail Reorganization Act of 1973, of any such rail properties not previously so certified. 45 USC 719.

"(j) EXEMPTION.—(1) No local public body which provides mass transportation services and which is otherwise subject to the Interstate Commerce Act shall, with respect to the provision of such services, be subject to the Interstate Commerce Act or to rules, regulations and orders promulgated under such Act, except that any such local public body shall continue to be subject to applicable Federal laws pertaining to (A) safety, (B) the representation of employees for purposes of collective bargaining, and (C) employment retirement, annuity, and unemployment systems or any other provision pertaining to dealings between employees and employers. 49 USC 1.

"(2) For purposes of this subsection, the term—

"(A) 'local public body' has the meaning prescribed for such term in section 12(c)(2) of the Urban Mass Transportation Act (49 U.S.C. 1608(c)(2)) and includes any person or entity which contracts with a local public body to provide transportation services; and "Local public body."

"(B) 'mass transportation' has the meaning prescribed for such term in section 12(c)(5) of the Urban Mass Transportation Act (49 U.S.C. 1608(c)(5)).". "Mass transportation."

CONTINUATION ASSISTANCE

SEC. 805. (a) Section 402 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762) is amended to read as follows:

"RAIL SERVICE CONTINUATION ASSISTANCE

"SEC. 402. (a) GENERAL.—(1) The Secretary shall provide financial assistance in accordance with this section to assist in the provision of rail service continuation payments, the acquisition or modernization of rail properties, including the preservation of rights-of-way for future rail service, the construction or improvement of facilities necessary to accommodate the transportation of freight previously moved by rail service, and the cost of operating and maintaining rail service facilities such as yards, shops, docks, or other facilities useful in facilitating and maintaining main line or local rail service. The Federal share of the costs of any such assistance shall be as follows: (A) 100 percent for the 12-month period following the date that rail properties are conveyed pursuant to section 303(b)(1) of this Act; and (B) 90 percent for the succeeding 12-month period. 45 USC 743.

"(2) The Secretary shall, within one year after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, promulgate standards and procedures under which the State share of such cost may be provided through in-kind benefits such as forgiveness of taxes, trackage rights, and facilities which would not otherwise be provided. Standards and procedures. *Ante*, p. 31.

"(3) The Secretary, in cooperation with the Secretary of Labor, the Association, and the Commission, shall assist States and local or regional transportation authorities in negotiating initial operating or lease agreements and shall report to the Congress not later than 30 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 on the progress of such negotiations. The Secretary may, with the concurrence of a State, enter directly into operating or lease agreements with railroads designated to provide service under section 304(d) of this Act, and with the trustees of rail- Report to Congress. 45 USC 744.

roads in reorganization in the region over whose rail properties such service will be provided, to assure the uninterrupted continuation of rail service after such date of conveyance. Such agreements may be entered into only during the period when the Federal share is 100 percent. Payments shall be made from the funds to which a State would otherwise be entitled under this section.

"(b) ENTITLEMENT.—(1) Each State in the region which is, pursuant to subsection (c) of this section, eligible to receive rail service continuation assistance is entitled to an amount equal to the total amount authorized and appropriated for such purpose multiplied by a fraction whose numerator is the rail mileage in such State which is eligible for rail service continuation assistance under this section and whose denominator is the rail mileage in all of the States in the region which are eligible for rail service continuation assistance under this section. Notwithstanding the preceding sentence, the entitlement of each State shall not be less than 3 percent of the funds appropriated. Not more than 5 percent of a State's entitlement may be used for rail planning activities. For purposes of this subsection, rail mileage shall be measured by the Secretary in consultation with the Interstate Commerce Commission. Any portion of the entitlement of any State which is withheld, in accordance with this section, and any such sums which are not used or committed by a State shall be reallocated immediately, to the extent practicable, among the other States in accordance with the formula set forth in this subsection. In addition to amounts provided pursuant to such rail mileage formula, funds shall also be made available to each State for the cost of operating and maintaining rail service facilities such as yards, shops, and docks which are useful in facilitating and maintaining mainline or local rail services and which are contained in each State's rail plan, except that (A) any such assistance shall extend for a period of only 12 months following the date rail properties are conveyed under section 303(b)(1) of this Act, and (B) no railroad shall be required to operate such facilities. With respect to the limitation on assistance for rail service facilities under the preceding sentence, the Secretary shall, not later than 90 days prior to the end of such 12-month period, submit a report to the Congress in conjunction with a designated State agency, recommending future action with respect to such facilities.

Rail mileage, measurement.

45 USC 743.

"(2) For a period of not more than 1 year following the date rail properties are conveyed pursuant to section 303(b)(1) of this Act, the Secretary is authorized to provide financial assistance, from the funds to which a State would otherwise be entitled under this section for the continuation of local rail services, to any person determined by the Secretary to be financially responsible who will enter into any operating and lease agreements with railroads designated to provide service under section 304(d) of this Act, regardless of the eligibility of the State, where the applicable rail properties are located, to receive assistance under subsection (c) of this section. In any case in which a State is eligible to receive rail service continuation assistance under subsection (c) of this section, States shall have priority to receive such payments over any other person eligible under this paragraph and no other person eligible under this paragraph shall receive such payments unless his application therefor has been approved by the State agency designated under subsection (c) to administer the State plan.

Financial assistance.

45 USC 744.

"(c) ELIGIBILITY.—(1) A State in the region is eligible to receive financial assistance pursuant to subsection (b) of this section if, in any fiscal year—

"(A) the State has established a State plan for rail transportation and local rail services (herein referred to as the 'State rail

plan') which is administered or coordinated by a designated State agency and such plan includes a suitable process for updating, revising, and amending such plan and provides for the equitable distribution of such financial assistance among State, local, and regional transportation authorities;

"(B) the State agency (i) has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail services, (ii) employs or will employ, directly or indirectly, sufficient trained and qualified personnel, and (iii) maintains or will maintain adequate programs of investigation, research, promotion, and development with provision for public participation;

"(C) the State provides satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this title to the State; and

"(D) the State complies with the regulations of the Secretary issued under this section.

"(2) The rail freight services which are eligible for rail service continuation assistance pursuant to this section are—

"(A) those rail services of railroads in reorganization in the region, or persons leased, operated, or controlled by any such railroad, which the final system plan does not designate to be continued;

"(B) those rail services on rail properties referred to in section 304(a)(2) of this Act;

"(C) those rail services in the region which have been, at any time during the 5-year period prior to the date of enactment of this Act, or which, are subsequent to the date of enactment of this Act, owned, leased, or operated by a State agency or by a local or regional transportation authority, or with respect to which a State, a political subdivision thereof, or a local or regional transportation authority has invested (at any time during the 5-year period prior to the date of enactment of this Act), or invests (subsequent to the date of enactment of this Act), substantial sums for improvement or maintenance of rail service; or

"(D) those rail services in the region with respect to which the Commission authorizes the discontinuance of rail services or the abandonment of rail properties, effective on or after the date of enactment of this Act.

"(3) The rail freight properties which are eligible to be acquired or modernized with financial assistance pursuant to subsection (b) of this section are those rail properties which are used for services eligible for rail service continuation assistance, pursuant to paragraph (2) of this subsection, including those properties which are identified, in the applicable State rail plan as having potential for future use for rail freight service.

"(4) The facilities which are eligible to be constructed or improved with financial assistance pursuant to subsection (b) of this section are those facilities in the region (including intermodal terminals and highways or bridges) which are needed in order to provide rail freight service which will no longer be available because of the discontinuance of rail freight service under section 304 of this Act or other lawful authority. No funds provided under this paragraph may be used to pay the State share of any highway projects under title 23, United States Code.

"(5) Rail properties are eligible to be acquired with financial assistance pursuant to subsection (b) of this section if (A) they are

to be used for intercity or commuter rail passenger service, and (B) they pertain to a line in the region (other than rail properties designated in accordance with section 206(c)(1)(C) of this Act) which, if so acquired (i) would enable the National Railroad Passenger Corporation to serve, more efficiently, a route which it operated on November 1, 1975, (ii) would provide intercity rail passenger service designated by the Secretary under title II of the Rail Passenger Service Act, or (iii) would provide such service over a route designated for service pursuant to section 403(c) of the Rail Passenger Service Act (45 U.S.C. 563(c)).

45 USC 716.

45 USC 521.

"(d) REGULATIONS.—Within 90 days after the date of enactment of this Act, the Secretary shall issue, and may from time to time amend, regulations with respect to the provision of financial assistance under this title.

"(e) PAYMENT.—The Secretary shall pay to each eligible State in the region an amount equal to its entitlement under subsection (b) of this section.

"(f) RECORDS, AUDIT, AND EXAMINATION.—(1) Each recipient of financial assistance under this section, whether in the form of grants, subgrants, contracts, subcontracts, or other arrangements, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit. Such records shall be maintained for 3 years after the completion of such a project or undertaking.

"(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, contracts, or other arrangements referred to in such paragraph.

Notice and hearing.

"(g) WITHHOLDING.—If the Secretary, after reasonable notice and an opportunity for a hearing to any State agency, finds that a State is not eligible for financial assistance under subsections (c) and (d) of this section, payment to such State shall not be made until there is no longer any failure to comply.

"(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out the purposes of this section an amount not to exceed $180,000,000 without fiscal year limitation. Such sums as are appropriated shall remain available until expended.

"(i) DEFINITION.—As used in this section, the term 'rail service continuation assistance' includes expenditures made by a State (or a local or regional transportation authority), at any time during a 1-year period preceding the date of enactment of this Act, or subsequent to the date of enactment of this Act, for acquisition, rehabilitation, or modernization of rail facilities on which rail freight services would have been curtailed or abandoned but for such expenditures.".

(b) Section 403(a) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 763), is amended by striking the colon and the proviso and inserting in lieu thereof a period.

(c) Section 403(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 763(b)) is amended by striking the last sentence thereof and inserting in lieu thereof the following: "Notwithstanding any other provision of this title, a State may expend sums received by it under paragraphs (1) and (2) of section 402(b) of this title for

acquisition and modernization pursuant to this section, or for any project designated pursuant to a State rail plan.".

REPEAL

SEC. 806. Effective on the date of the second anniversary of the date on which rail properties are conveyed, pursuant to section 303(b)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743), title IV of such Act is repealed.

Effective date.

45 USC 761-763.

RAIL PASSENGER SERVICE

SEC. 807. Section 206(d)(5) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(d)(5)) is amended to read as follows:

"(5) All properties—

"(A) transferred by the Corporation pursuant to sections 206(c)(1)(C) and 601(d) of this Act;

45 USC 716, 791.

"(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 900 days after the date of conveyance, pursuant to section 303(b)(1) of this Act, to meet the needs of commuter or intercity rail passenger service,

45 USC 743.

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.".

EMERGENCY OPERATING ASSISTANCE

SEC. 808. The Urban Mass Transportation Act of 1964 is amended by adding at the end thereof the following new section:

"EMERGENCY OPERATING ASSISTANCE

"SEC. 17. (a) The Secretary shall provide financial assistance for the purpose of reimbursing—

49 USC 1613.

"(1) the Consolidated Rail Corporation, the National Railroad Passenger Corporation, other railroads, and, if applicable, the trustee or trustees of a railroad in reorganization in the region (as defined in section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702)) for the costs of rail passenger service operations conducted at a loss during the 180-day mandatory operation period, as required under section 304(e) of such Act (45 U.S.C. 744(e)). Such reimbursement shall cover all costs not otherwise paid by a State or a local or regional transportation authority which would have been payable by such State or authority, pursuant to regulations issued by the Office under section 205(d)(5) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715) if such regulations had been in effect on the date of conveyance of rail properties under section 303(b)(1) of such Act; and

"(2) States, local public bodies, and agencies thereof for additional costs incurred by such States, bodies, and agencies with respect to rail passenger service required by section 304(e)(4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744 (e)(4)).

"(b) Financial assistance under subsection (a) of this section shall not apply to intercity rail passenger service provided pursuant to an agreement with the National Railroad Passenger Corporation which was in effect immediately prior to such date of conveyance.

"(c) Financial assistance provided pursuant to subsection (a) of this section shall be subject to such terms, conditions, requirements, and provisions as the Secretary may deem necessary and appropriate with such reasonable exceptions to requirements and provisions otherwise applicable under this Act as the Secretary may deem required by the emergency nature of the assistance authorized by this section. Nothing in this section shall authorize the Secretary to waive the provisions of section 13(c) of this Act.

49 USC 1609.
Federal share.

"(d) The Federal share of the costs of any rail passenger service required by subsections (c) and (e) of section 304 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744 (c) and (e)) shall be as follows:

"(1) 100 percent of the costs eligible under subsections (a)(1) or (a)(2) of this section for the 180-day mandatory operation period required by section 304(e) of such Act;

"(2) 100 percent for the 180-day period following the 180-day mandatory operation period;

"(3) 90 percent for the 12-month period succeeding the period specified in subparagraph (2) of this subsection; and

"(4) 50 percent for the 180-day period succeeding the period specified in subparagraph (3) of this subsection.

No assistance may be provided beyond the time specified in subsection (d)(3) of this section, unless the applicant for such assistance provides satisfactory assurances to the Secretary that the service for which such assistance is sought will be continued after the termination of the assistance authorized by this section.

"(e) The terms and provisions which are applicable to assistance provided pursuant to this section shall be consistent, insofar as is practicable, with the terms and provisions which are applicable to operating assistance under section 5 of this Act.

49 USC 1604.

"(f) To finance assistance under this section, the Secretary may incur obligations on behalf of the United States in the form of grants, contract agreements, or otherwise, in such amounts as are provided in appropriations Acts, in an aggregate amount not to exceed $125,000,000. There are authorized to be appropriated for liquidation of the obligations incurred under this section not to exceed $40,000,000 by September 30, 1976, $95,000,000 by September 30, 1977, and $125,000,000 by September 30, 1978, such sums to remain available until expended.".

Appropriation authorization.

CONVERSION OF ABANDONED RAILROAD RIGHTS-OF-WAY

Report to President and Congress.
49 USC 1a note.

SEC. 809. (a) STUDY.—The Secretary shall, within 360 days after the date of enactment of this Act, and in consultation with the Secretary of the Interior, the Office, the Association, the Environmental Protection Agency, any other appropriate Federal agency, any appropriate State and regional transportation agency, any other appropriate State and local governmental entities, and any appropriate private groups and individuals, prepare and submit to the Congress and the President a report on the conversion of railroad rights-of-way. This

report shall evaluate and make suggestions concerning potential alternate uses of, and public policy with respect to the conversion of, railroad rights-of-way on which service has been discontinued or is likely to be discontinued. This report shall include—

(1) an inventory statement developed by the Secretary as to all abandoned railroad rights-of-way and significant segments of such rights-of-way which retain their linear characteristics, including, as to each, identification of the owner of record and an evaluation of its topography, characteristics, condition, approximate value, and alternate use suitability;

(2) an evaluation of the advantages of establishing a rail bank consisting of selected such rights-of-way, as a means of assuring their availability for potential railroad use in the future, a discussion of interim uses for such rights-of-way, the development of conveyancing and leasing forms, conditions, and practices to assure such availability, a projection as to the costs of such a program, and recommendations regarding the administration of such a program;

(3) a survey of existing Federal, State, and local programs utilizing or attempting to utilize abandoned railroad rights-of-way for public purposes, including an assessment of the benefits and costs of each; and

(4) an assessment and evaluation of suggestions for more effective public utilization of abandoned railroad rights-of-way, including recommendations for legislative, administrative, and regulatory action, if any, and proposals as to the optimum level of funding therefor.

(b) INFORMATION AND FUNDING.—The Secretary of the Interior, after consultation with the Secretary, shall, in accordance with this subsection, provide financial, educational, and technical assistance to local, State, and Federal governmental entities for programs involving the conversion of abandoned railroad rights-of-way to recreational and conservational uses, in such manner as to coordinate and accelerate such conversion, where appropriate. Such assistance shall include—

(1) encouraging and facilitating exchanges of information dealing with the availability of railroad rights-of-way, the technology involved in converting such properties to such public purposes, and related matters;

(2) making grants, in consultation with the Bureau of Outdoor Recreation of the Department of the Interior, to State and local governmental entities to enable them to plan, acquire, and develop recreational or conservational facilities on abandoned railroad rights-of-way, which grants shall cover not more than 90 percent of the cost of the planning, acquisition, or development activity of the particular project for which funds are sought;

(3) allocating funds to other Federal programs concerned with recreation or conservation in order to enable abandoned railroad rights-of-way, where appropriate, to be included in or made into national parks, national trails, national recreational areas, wildlife refuges, or other national areas dedicated to recreational or conservational uses; and

(4) providing technical assistance to other Federal agencies, States, local agencies, and private groups for the purpose of enhancing conversion projects. To increase the available information and expertise, the Secretary may contract for special studies or projects and may otherwise collect, evaluate, and disseminate information dealing with the utilization of such rights-of-way.

49 USC 1a.

(c) CONFORMING AMENDMENT.—Section 1a of the Interstate Commerce Act, as inserted by this Act, is amended by redesignating paragraph (10) thereof as paragraph (11), and by inserting immediately after paragraph (9) the following new paragraph:

"(10) In any instance in which the Commission finds that the present or future public convenience and necessity permit abandonment or discontinuance, the Commission shall make a further finding whether such properties are suitable for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Commission finds that the properties proposed to be abandoned are suitable for other public purposes, it shall order that such rail properties not be sold, leased, exchanged, or otherwise disposed of except in accordance with such reasonable terms and conditions as are prescribed by the Commission, including, but not limited to, a prohibition on any such disposal, for a period not to exceed 180 days after the effective date of the order permitting abandonment unless such properties have first been offered, upon reasonable terms, for acquisition for public purposes.".

49 USC 1a note.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section, not to exceed $6,000,000 for the fiscal year and the transitional fiscal period ending September 30, 1976, not to exceed $7,000,000 for the fiscal year ending September 30, 1977, and not to exceed $7,000,000 for the fiscal year ending September 30, 1978. Sums appropriated pursuant to this authorization are authorized to remain available until expended. Of the funds appropriated, at least four-fifths are to be made available to the Secretary of the Interior to carry out subsection (b) of this section.

RAIL BANK

49 USC 1653a.

SEC. 810. (a) ESTABLISHMENT.—The Secretary shall, within 180 days after the date of enactment of this Act, and after consultation with the Secretary of the Interior and the Secretary of Commerce, in accordance with this section, establish a rail bank to consist of rail trackage and other rail properties eligible under this subsection, for purposes of preserving existing service in certain areas of the United States in which fossil fuel natural resources or agricultural production is located. The Secretary may include in such rail bank any railroad trackage or other rail properties which are listed for consideration for inclusion in a rail bank under part III, section C, of the final system plan.

(b) POWERS.—(1) The Secretary may acquire, by lease, purchase, or in such other manner as he considers appropriate, rail properties or any interests therein eligible for inclusion in the rail bank established under this section. Except as provided in paragraph (2) of this subsection, the Secretary may hold rail properties acquired for such rail bank, and may sell, lease, grant rights over, or otherwise dispose of interests or rights in connection with such rail properties.

(2) The Secretary may not dispose of any such rail properties pursuant to paragraph (1) of this subsection if he determines, after consultation with the Secretary of the Interior and the Secretary of Commerce, that such disposition would adversely affect the availability of such properties for any continued necessary access to, and egress by rail from, facilities in which fossil fuels are being or can be extracted or processed.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for purposes of carrying out the

provisions of this section such sums as are necessary, not to exceed $6,000,000. Sums appropriated pursuant to this section are authorized to remain available until expended.

TITLE IX—MISCELLANEOUS PROVISIONS

COMPREHENSIVE STUDY OF RAIL SYSTEM

SEC. 901. The Secretary shall conduct a comprehensive study of the American railway system. Such study shall commence not later than 45 days after the date of enactment of this Act. Such study shall include— 49 USC 1654 note.

(1) a showing of the potential cost savings and of possible improvements in service quality which could result from restructuring the railroads in the United States;

(2) an identification of the potential economies and improvements in performance which could result from the improvement of local and terminal operations;

(3) estimates as to potential savings in the cost of rehabilitating the United States railway system if rehabilitation is limited to those portions of such system which are essential to interstate commerce or national defense;

(4) an assessment of the extent to which common or public ownership of fixed facilities could improve the national rail transportation system;

(5) an assessment of the potential effects of alternative rail corporate structures upon the national rail transportation system;

(6) a listing, in order of descending priority, of the rail properties which should be improved to the extent necessary to permit high-speed rail passenger or freight service over such properties, in terms of the costs and benefits of such improvements and the reasons therefor; and

(7) an estimate of the potential benefits of railroad electrification for high density rail lines in the United States, and an evaluation of the costs and benefits of electrifying rail lines in the United States with a high density of traffic, including—

(A) the capital costs of such electrification and the oil fuel economies which would be derived therefrom, the ability of existing power facilities to supply the additional power required, and the amount of coal or other fossil fuels required to generate the power necessary for railroad electrification; and

(B) the advantages to the environment of electrification of railroads in terms of reduced fuel consumption and air pollution, and the disadvantages to the environment from increased use of fuels such as coal; and

(8) a survey and analysis of the financial and physical condition of the facilities, rolling stock, and equipment of the various railroads in the United States.

Within 540 days after the date of enactment of this Act, the Secretary shall submit a report to the Congress setting forth the results of the study conducted pursuant to this section. Report to Congress.

STUDY OF AID TO RAIL TRANSPORTATION

SEC. 902. (a) STUDY.—Within 30 days after the date of the enactment of this Act, the Secretary shall initate a comprehensive study and analysis of (1) past and present policies and methods of providing Federal aid for the construction, improvement, operation, and 49 USC 1654 note.

maintenance of rail transportation facilities and services, (2) the relationship of such policies and methods to the policies and methods of providing Federal aid for other modes of transportation, and (3) whether common carriers by railroad have been or are disadvantaged by reason of such policies and methods, and, if such carriers have been or are disadvantaged, the extent of such disadvantage. The Secretary shall examine ways and means by which future policy respecting Federal aid to rail transportation may be so determined and developed as to encourage the establishment and maintenance of an open and competitive market in which rail transportation competes on equal terms with other modes of transportation, and in which market shares are governed by customer preference based upon the service and full economic costs.

(b) COOPERATION.—The Commission and the Secretary of the Army are authorized and directed to cooperate fully with the Secretary in carrying out the purposes of this section, and also to submit such independent and separate reports, comments, and recommendations as they consider appropriate.

(c) INFORMATION.—In carrying out the purposes of this section, the Secretary may require all common carriers by railroad to file such reports containing such information as the Secretary considers necessary. The Secretary shall have the power to require by subpoena the production of such books, papers, tariffs, contracts, agreements, or other documents or data of a common carrier by railroad related to the study and analysis as he considers relevant. The Secretary may treat as confidential and privileged any document, data, or information received for such study and analysis, notwithstanding the provisions of section 552 of title 5, United States Code.

(d) REPORT TO CONGRESS.—Within 1 year after the date of enactment of this Act, the Secretary shall complete the study and analysis authorized and directed by this section, and shall transmit a report to the Congress containing his findings and conclusions, together with his recommendations for a sound and rational policy with respect to Federal aid to rail transportation.

STUDY OF CONGLOMERATES

49 USC 5c note.

SEC. 903. The Commission shall undertake a study of conglomerates and of such other corporate structures as are presently found within the rail transportation industry. The Commission shall determine what effects, if any, such diverse structures have on effective transportation, on intermodal competition, on revenue levels, and on such other aspects of national transportation as the Commission considers to be legitimate subjects of study. The Commission shall prepare a report with appropriate recommendations and shall submit its report to the Congress within 1 year after the date of enactment of this Act.

Report to Congress.

RAIL ABANDONMENT REPORT

Report to Congress.
45 USC 745 note.

SEC. 904. The Secretary shall submit to the Congress, within 90 days after the date of enactment of this Act, a comprehensive report on the anticipated effect, including the environmental impact, of any abandonments of lines of railroad and any discontinuances of rail service in States outside the region, as defined in section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702).

NONDISCRIMINATION

45 USC 803.

SEC. 905. (a) GENERAL.—No person in the United States shall on the ground of race, color, national origin, or sex be excluded from

participation in, or denied the benefits of, or be subjected to discrimination under, any project, program, or activity funded in whole or in part through financial assistance under this Act.

(b) COMPLIANCE.—(1) Whenever the Secretary determines that any person receiving financial assistance, directly or indirectly, under this Act, or under any provision of law amended by this Act, has failed to comply with subsection (a) of this section, with any Federal civil rights statute, or with any order or regulation issued under such a statute, the Secretary shall notify such person of such determination and shall direct such person to take such action as may be necessary to assure compliance with such subsection.

(2) If, within a reasonable period of time after receiving notification pursuant to paragraph (1) of this subsection, such person fails or refuses to comply with subsection (a) of this section, the Secretary shall—

(A) direct that no further Federal financial assistance be provided to such person;

(B) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(C) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); and/or

(D) take such other actions as may be provided by law.

(c) CIVIL ACTION.—Whenever a matter is referred to the Attorney General pursuant to subsection (b) of this section, or whenever the Attorney General has reason to believe that any person is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may commence a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(d) REGULATIONS.—The Secretary may prescribe such regulations and take such actions as are necessary to monitor, enforce, and affirmatively carry out the purposes of this section.

(e) JUDICIAL REVIEW.—Any determinations made or actions taken by the Secretray pursuant to this section shall be subject to judicial review.

(f) DEFINITION.—For purposes of this section, the term "financial assistance" includes obligation guarantees.

MINORITY RESOURCE CENTER

SEC. 906. The Department of Transportation Act (49 U.S.C. 1651 et seq.) is amended (1) by redesignating sections 11 through 15 thereof as sections 12 through 16 thereof, and (2) by inserting a new section 11 as follows:

49 USC 1651 notes, 1658, 1659.

"MINORITY RESOURCE CENTER

"SEC. 11. (a) The Secretary shall, within 180 days after the date of enactment of this section, establish a Minority Resource Center (hereafter in this section referred to as the 'Center').

Establishment. 49 USC 1657a.

"(b) The Center shall have an Advisory Committee, which shall consist of 5 individuals appointed by the Secretary from lists of 3 qualified individuals recommended by minority-dominated trade associations in the minority business community.

"(c) The Center is authorized to—

"(1) establish and maintain, and disseminate information from, a national information clearinghouse for minority entrepreneurs and businesses, for purposes of furnishing, to such entrepreneurs and businesses, information with respect to business opportunities

involving the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation's railroads;

"(2) assist minority entrepreneurs and businesses in obtaining investment capital and debt financing;

"(3) conduct market research, planning, economic and business analyses, and feasibility studies to identify such opportunities;

"(4) design and conduct programs to encourage, promote, and assist minority entrepreneurs and businesses to secure contracts, subcontracts, and projects related to the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation's railroads;

"(5) enter into such contracts, cooperative agreements, or other transactions as may be necessary in the conduct of its functions and duties;

"(6) develop support mechanisms, including venture capital, surety and bonding organizations, and management and technical services, which will enable minority entrepreneurs and businesses to take advantage of business opportunities related to the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation's railroads; and

"(7) participate in, and cooperate with, all Federal programs and other programs designed to provide financial, management, and other forms of support and assistance to minority entrepreneurs and businesses.

"(d) The United States Railway Association, the Consolidated Rail Corporation, and the Secretary shall provide the Center with such relevant information, including procurement schedules, bids, and specifications with respect to particular maintenance, rehabilitation, restructuring, improvement, and revitalization projects, as may be requested by the Center in connection with the performance of its functions.

"Minority."

"(e) As used in this section, the term 'minority' includes women.".

Approved February 5, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-725 accompanying H.R. 10979 (Comm. on Interstate and Foreign Commerce) and Nos. 94-768 and 94-781 (Comm. of Conference).

SENATE REPORTS: No. 94-499 (Comm. on Commerce) and Nos. 94-585 and 94-595 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 121 (1975): Dec. 2, 4, considered and passed Senate.
Dec. 17, considered and passed House, amended, in lieu of H.R. 10979.
Dec. 19, Senate and House agreed to conference report.

Vol. 122 (1975): Jan. 20, House vacated certain actions and recommitted the bill to committee of conference.
Jan. 21, Senate vacated certain actions and recommitted the bill to committee of conference.
Jan. 28, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 12, No. 6 (1976): Feb. 5, Presidential statement.