TITLE 45—RAILROADS

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CHAPTER 1—SAFETY APPLIANCES AND EQUIPMENT ON RAILROAD ENGINES AND CARS, AND PROTECTION OF EMPLOYEES AND TRAVELERS

§§ 1 to 14. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 1, acts Mar. 2, 1893, ch. 196, §1, 27 Stat. 531; June 22, 1988, Pub. L. 100–342, §13(1)(A), 102 Stat. 630, related to use of power driving-wheel brakes and appliances for operating train-brake systems. See section 20302 of Title 49, Transportation.

Section 2, acts Mar. 2, 1893, ch. 196, §2, 27 Stat. 531; June 22, 1988, Pub. L. 100–342, §13(1)(B), 102 Stat. 630, related to use of cars not equipped with automatic couplers. See section 20302 of Title 49.

Section 3, acts Mar. 2, 1893, ch. 196, §3, 27 Stat. 531; June 22, 1988, Pub. L. 100–342, §13(1)(C), 102 Stat. 630, related to refusal to receive insufficiently equipped cars from connecting lines. See section 20302 of Title 49.

Section 4, acts Mar. 2, 1893, ch. 196, §4, 27 Stat. 531; Oct. 15, 1966, Pub. L. 89–670, §6(e)(1)(A), 80 Stat. 939; June 22, 1988, Pub. L. 100–342, §13(1)(D), 102 Stat. 630, related to grab irons or handholds for security in coupling and uncoupling cars. See section 20302 of Title 49.

Section 5, acts Mar. 2, 1893, ch. 196, §5, 27 Stat. 531; June 22, 1988, Pub. L. 100–342, §13(1)(E), 102 Stat. 630, related to exclusion from traffic of freight cars not complying with prescribed standard for height of drawbars.

Section 6, acts Mar. 2, 1893, ch. 196, §6, 27 Stat. 532; Apr. 1, 1896, ch. 87, 29 Stat. 85; June 25, 1948, ch. 646, §1, 62 Stat. 909; Aug. 14, 1957, Pub. L. 85–135, §1(1), 71 Stat. 352; Oct. 15, 1966, Pub. L. 89–670, §6(e)(1)(A), 80 Stat. 939; July 8, 1976, Pub. L. 94–348, §3(a), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95–574, §7(a), 92 Stat. 2461; Oct. 10, 1980, Pub. L. 96–423, §8(b), 94 Stat. 1814; June 22, 1988, Pub. L. 100–342, §13(1)(F), 102 Stat. 630; Sept. 3, 1992, Pub. L. 102–365, §§4(a)(1), (c)(3), 9(a)(3), 106 Stat. 973, 974, 977, related to use of cars in violation of sections 1 to 7 of this title and enforcement duties of United States attorneys and Secretary of Transportation. See sections 20301, 21302, and 21304 of Title 49, Transportation.

Section 7, acts Mar. 2, 1893, ch. 196, §8, 27 Stat. 532; June 22, 1988, Pub. L. 100–342, §13(1)(H), 102 Stat. 631, related to assumption of risk by railroad employees. See section 20304 of Title 49.

Section 8, acts Mar. 2, 1903, ch. 976, §1, 32 Stat. 943; June 22, 1988, Pub. L. 100–342, §13(2)(A), 102 Stat. 631, extended provisions of sections 1 to 7 of this title to include railroads in the Territories and the District of Columbia and to apply in other cases. See sections 20301, 20302, 20304, and 21302 of Title 49.

Section 9, acts Mar. 2, 1903, ch. 976, §2, 32 Stat. 943; Apr. 11, 1958, Pub. L. 85–375, 72 Stat. 86; Oct. 15, 1966, Pub. L. 89–670, §6(e)(1)(B), 80 Stat. 939; June 22, 1988, Pub. L. 100–342, §13(2)(B), 102 Stat. 631, provided that locomotive engineers were to operate power and train brakes on not less than 50 percent of cars of trains operated with power or train brakes, and retained rules, standards, and instructions of Association of American Railroads for installation, inspection, maintenance, and repair of such brakes. See sections 20301, 20302, and 21302 of Title 49.

Section 10, acts Mar. 2, 1903, ch. 976, §3, 32 Stat. 943; June 25, 1948, ch. 646, §1, 62 Stat. 909; Oct. 15, 1966, Pub. L. 89–670, §6(e)(1)(B), 80 Stat. 939; June 22, 1988, Pub. L. 100–342, §13(2)(C), 102 Stat. 631; Sept. 3, 1992, Pub. L. 102–365, §9(a)(4), 106 Stat. 977, related to continuation of duties, requirements, and liabilities specified under sections 1 to 7 of this title unless specifically amended by sections 8 to 10 of this title. See section 21302 of Title 49.

Section 11, acts Apr. 14, 1910, ch. 160, §2, 36 Stat. 298; June 22, 1988, Pub. L. 100–342, §13(3)(A), 102 Stat. 631, related to use of cars not equipped as required by sections 11 to 16 of this title. See section 20302 of Title 49.

Section 12, acts Apr. 14, 1910, ch. 160, §3, 36 Stat. 298; Oct. 15, 1966, Pub. L. 89–670, §6(e)(1)(C), 80 Stat. 939; June 22, 1988, Pub. L. 100–342, §13(3)(B), 102 Stat. 631,

continued to maintain designations of safety appliances by Secretary of Transportation as standards of equipment for railroad cars, unless changed by order of Secretary, and authorized Secretary to modify standard height of drawbars. See sections 20302 and 21302 of Title 49.

Section 13, acts Apr. 14, 1910, ch. 160, § 4, 36 Stat. 299; Aug. 14, 1957, Pub. L. 85–135, § 1(2), 71 Stat. 352; July 8, 1976, Pub. L. 94–348, § 3(b), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95–574, § 7(b), 92 Stat. 2461; Jan. 14, 1983, Pub. L. 97–468, title VII, § 704, 96 Stat. 2580; June 22, 1988, Pub. L. 100–342, § 13(3)(C), 102 Stat. 632; Sept. 3, 1992, Pub. L. 102–365, §§ 4(a)(1), (c)(4), 9(a)(5), 106 Stat. 973, 974, 978, related to penalty for using cars not equipped as provided by sections 1 to 16 of this title, with provisos for hauling cars for repairs when equipment becomes defective, liability for death or injury to employees in connection with such hauling, and use of chains instead of drawbars in conducting such hauling. See sections 20303, 21302, and 21304 of Title 49.

Section 14, acts Apr. 14, 1910, ch. 160, § 5, 36 Stat. 299; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(C), 80 Stat. 939; June 22, 1988, Pub. L. 100–342, § 13(3)(D), 102 Stat. 632, related to liability for using cars with defective or insecure equipment. See section 21302 of Title 49.

§ 15. Repealed. Pub. L. 97–449, § 7(b), Jan. 12, 1983, 96 Stat. 2444

Section, acts Apr. 14, 1910, ch. 160, § 6, 36 Stat. 299; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(C), 80 Stat. 939, provided that it was the duty of the Secretary of Transportation to enforce the provisions of sections 11 to 16 of this title as to equipment of each car with safety appliances and that all powers theretofore granted to the Interstate Commerce Commission were extended to the Secretary for the purpose of such enforcement. See section 501(b) of Title 49, Transportation.

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

Section, acts Apr. 14, 1910, ch. 160, § 1, 36 Stat. 298; June 22, 1988, Pub. L. 100–342, § 13(3)(E), 102 Stat. 632, defined ''railroad'' as used in sections 1 to 16 of this title. See section 20102 of Title 49, Transportation.

§§ 17 to 21. Repealed. Pub. L. 97–468, title VII, § 705, Jan. 14, 1983, 96 Stat. 2580

Section 17, act May 30, 1908, ch. 225, §§ 1, 2, 35 Stat. 476, related to locomotives to be equipped with safety ash pans.

Section 18, acts May 30, 1908, ch. 225, § 3, 35 Stat. 476; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(D), 80 Stat. 939, set forth penalties for violations and authorized United States attorneys to bring actions for enforcement of provisions.

Section 19, acts May 30, 1908, ch. 225, § 4, 35 Stat. 476; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(D), 80 Stat. 939, provided for enforcement of the provisions of sections 17 to 21 of this title by the Secretary of Transportation.

Section 20, act May 30, 1908, ch. 225, § 5, 35 Stat. 476, specified those to be included in the term ''common carrier''.

Section 21, act May 30, 1908, ch. 225, § 6, 35 Stat. 476, provided that the provisions of sections 17 to 21 of this title not be applicable to locomotives on which an ash pan is not necessary.

§§ 22 to 43a. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 22, acts Feb. 17, 1911, ch. 103, § 1, 36 Stat. 913; June 7, 1924, ch. 355, § 1, 43 Stat. 659; June 22, 1988, Pub. L. 100–342, § 14(1), 102 Stat. 632, defined ''railroad'' as used in sections 22 to 29 and 31 to 34 of this title. See section 20102 of Title 49, Transportation.

Section 23, acts Feb. 17, 1911, ch. 103, § 2, 36 Stat. 913; Mar. 4, 1915, ch. 169, § 1, 38 Stat. 1192; June 7, 1924, ch. 355, § 2, 43 Stat. 659; June 22, 1988, Pub. L. 100–342, § 14(2), 102 Stat. 632, made it unlawful for railroads to use locomotives and appurtenances unless they were safe and inspected in accordance with provisions of sections 22 to 29 and 31 to 34 of this title and tested as prescribed by rules and regulations. See section 20701 of Title 49.

Section 24, acts Feb. 17, 1911, ch. 103, § 3, 36 Stat. 914; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; May 27, 1947, ch. 85, § 1, 61 Stat. 120; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; June 22, 1988, Pub. L. 100–342, § 14(3), 102 Stat. 633, provided for appointment and salaries of a director of locomotive inspection and two assistant directors of locomotive inspection, and was previously omitted pursuant to Reorg. Plan No. 3 of 1965, eff. July 27, 1965, 30 F.R. 9351, 79 Stat. 1320, formerly set out in the Appendix to Title 5, Government Organization and Employees, which abolished the offices of director of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of locomotives. Acts June 26, 1918, ch. 105, 40 Stat. 616; June 7, 1924, ch. 355, § 6, 43 Stat. 659; June 27, 1930, ch. 644, § 1, 46 Stat. 822, which provided for the pay of chief inspector, assistant inspectors, and district directors of locomotives, and related to office allowances for each inspector, and which were cited as a credit to section 24, were repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 643, 646, 648.

Section 25, acts Feb. 17, 1911, ch. 103, § 3, 36 Stat. 914; June 7, 1924, ch. 355, § 3, 43 Stat. 659; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; May 27, 1947, ch. 85, § 1, 61 Stat. 120, provided for location of office of director of locomotive inspection in Washington, D.C., and for staffing of such office, and was previously omitted pursuant to Reorg. Plan No. 3 of 1965, formerly set out in the Appendix to Title 5.

Section 26, acts Feb. 17, 1911, ch. 103, § 4, 36 Stat. 914; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; May 27, 1947, ch. 85, § 2, 61 Stat. 120, directed director of locomotive inspection to divide country into 50 locomotive boiler inspection districts so as to most effectively divide up work of inspector for each such district, and was previously omitted pursuant to Reorg. Plan No. 3 of 1965, formerly set out in the Appendix to Title 5, which abolished the offices of director of locomotive inspection, assistant directors of locomotive inspection, and district inspectors of locomotives, together with the function of the director of locomotive inspection with respect to dividing the country into districts. Acts June 26, 1918, ch. 105, 40 Stat. 616; June 27, 1930, ch. 644, § 2, 46 Stat. 823, which were cited as a credit to section 26, were repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 643, 648.

Section 27, act Feb. 17, 1911, ch. 103, § 4 (par), as added June 7, 1924, ch. 355, § 4, 43 Stat. 659; amended Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148, authorized appointment of 15 additional boiler inspectors over and above number authorized by section 26 of this title as the needs of the service may require, and was previously omitted pursuant to Reorg. Plan No. 3 of 1965, formerly set out in the Appendix to Title 5.

Section 28, acts Feb. 17, 1911, ch. 103, § 5, 36 Stat. 914; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(E), 80 Stat. 939; June 22, 1988, Pub. L. 100–342, § 14(4), 102 Stat. 633, related to rules and instructions for inspection of locomotive boilers. See section 20702 of Title 49, Transportation.

Section 29, acts Feb. 17, 1911, ch. 103, § 6, 36 Stat. 915; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(E), 80 Stat. 939; Oct. 10, 1980, Pub. L. 96–423, § 13, 94 Stat. 1816; June 22, 1988, Pub. L. 100–342, § 14(5), 102 Stat. 633, related to duties of district inspectors to make railroads inspect and repair locomotive boilers and notify railroads when boilers were not in serviceable condition and provided that railroads could appeal to director of locomotive inspection to have boiler reexamined and could then appeal to Secretary of Transportation if district inspector's decision was sustained by director. See section 20702 of Title 49.

Section 30, acts Mar. 4, 1915, ch. 169, § 2, 38 Stat. 1192; Apr. 22, 1940, ch. 124, § 2, 54 Stat. 148, related to powers,

duties, and examinations of locomotive inspectors and provided that provisions of sections 22 to 29 and 31 to 34 of this title were applicable to all parts of locomotives and tenders. See sections 20701 to 20703 and 21302 of Title 49.

Section 31, acts Feb. 17, 1911, ch. 103, § 7, 36 Stat. 916; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(E), 80 Stat. 939, related to annual report of director of locomotive inspection to Secretary of Transportation.

Section 32, acts Feb. 17, 1911, ch. 103, § 8, 36 Stat. 916; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; June 22, 1988, Pub. L. 100–342, § 14(6), 102 Stat. 633, required railroad to report accidents resulting from failure of locomotive boilers or appurtenances to director of locomotive inspection and to preserve disabled parts for inspection, investigation, and report by director. See section 20703 of Title 49, Transportation.

Section 33, acts Feb. 17, 1911, ch. 103, § 8, 36 Stat. 916; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(E), 80 Stat. 939; Jan. 3, 1975, Pub. L. 93–633, title III, § 304, 88 Stat. 2168, related to reports by Secretary of Transportation of accident investigations conducted pursuant to section 32 of this title. See section 20703 of Title 49.

Section 34, acts Feb. 17, 1911, ch. 103, § 9, 36 Stat. 916; Apr. 22, 1940, ch. 124, § 1, 54 Stat. 148; Aug. 14, 1957, Pub. L. 85–135, § 3, 71 Stat. 352; July 8, 1976, Pub. L. 94–348, § 3(c), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95–574, § 7(c), 92 Stat. 2461; Oct. 10, 1980, Pub. L. 96–423, § 8(c), 94 Stat. 1814; June 22, 1988, Pub. L. 100–342, § 14(7), 102 Stat. 633; Sept. 3, 1992, Pub. L. 102–365, §§ 4(a)(1), (c)(7), 9(a)(8), 106 Stat. 973, 975, 978, related to penalty for willful violations of sections 22 to 29 and 31 to 34 of this title, or rules or regulations made thereunder, or any lawful order of any inspector, duty of United States attorney to sue for such violations, and duty of director of locomotive inspection to inform proper United States attorney of violations coming to his knowledge. See sections 21302 and 21304 of Title 49.

Section 35, acts June 30, 1906, No. 46, 34 Stat. 838; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(H), 80 Stat. 939, directed Secretary of Transportation to investigate and report on block-signal systems and appliances for automatic control of trains and empowered Secretary to obtain evidence to carry out and give effect to this provision.

Section 36, acts May 27, 1908, ch. 200, § 1, 35 Stat. 325; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(I), 80 Stat. 939, related to investigation and testing by Secretary of Transportation of appliances or systems to promote safety of railway operation. See section 20504 of Title 49, Transportation.

Section 37, acts May 27, 1908, ch. 200, § 1, 35 Stat. 325; Mar. 4, 1909, ch. 299, § 1, 35 Stat. 965; Aug. 12, 1970, Pub. L. 91–375, § 4(a), 84 Stat. 773, related to inspection of mail cars. See section 20305 of Title 49.

Section 38, acts May 6, 1910, ch. 208, § 1, 36 Stat. 350; Sept. 13, 1960, Pub. L. 86–762, § 1, 74 Stat. 903; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(K), 80 Stat. 939; June 22, 1988, Pub. L. 100–342, § 15(1), 102 Stat. 633, related to duty of railroad to make monthly reports of railroad accidents to Secretary of Transportation and defined ''railroad'' for purposes of sections 38 to 43 of this title. See sections 20102 and 20901 of Title 49.

Section 39, acts May 6, 1910, ch. 208, § 2, 36 Stat. 351; Jan. 3, 1975, Pub. L. 93–633, title II, § 204(b), 88 Stat. 2166; June 22, 1988, Pub. L. 100–342, § 15(2), 102 Stat. 634; Sept. 3, 1992, Pub. L. 102–365, § 4(a)(3), 106 Stat. 973, related to penalty for failure of railroad to make report provided for in section 38 of this title. See sections 20901 and 21311 of Title 49.

Section 40, acts May 6, 1910, ch. 208, § 3, 36 Stat. 351; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(K), 80 Stat. 939; Jan. 3, 1975, Pub. L. 93–633, title III, § 304, 88 Stat. 2168; June 22, 1988, Pub. L. 100–342, § 15(3), 102 Stat. 634, authorized Secretary of Transportation to investigate railroad accidents, with proviso that Secretary cooperate with State commissions in such investigations if convenient and make reports of such investigations when in the public interest. See section 20902 of Title 49.

Section 41, act May 6, 1910, ch. 208, § 4, 36 Stat. 351, provided that reports required by sections 38 and 40 of this title were not admissible as evidence in suits for damages. See section 20903 of Title 49.

Section 42, acts May 6, 1910, ch. 208, § 5, 36 Stat. 351; Sept. 13, 1960, Pub. L. 86–762, § 2, 74 Stat. 904; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(1)(K), 80 Stat. 939, authorized Secretary of Transportation to prescribe rules, regulations, and forms for making reports as necessary to implement and effectuate purposes of sections 38 to 43 of this title.

Section 43, acts May 6, 1910, ch. 208, § 7, 36 Stat. 351; Sept. 13, 1960, Pub. L. 86–762, § 3, 74 Stat. 904; June 22, 1988, Pub. L. 100–342, § 15(4), 102 Stat. 634; Sept. 3, 1992, Pub. L. 102–365, §§ 4(a)(1), (c)(5), 9(a)(6), 106 Stat. 973, 974, 978, related to penalty for willful violations by any person of sections 38 to 43 of this title or any rule, regulation, order, or standard issued under such sections or the Federal Railroad Safety Act of 1970 (formerly 45 U.S.C. § 431 et seq.) and duty of United States attorney to sue for such violations. See sections 21302 and 21304 of Title 49, Transportation.

Section 43a, Pub. L. 100–342, § 24, June 22, 1988, 102 Stat. 639, related to accident reports in which railroads assign human error as cause of accident or incident and provision that such reports contain an explanatory statement by employees involved. See section 20901 of Title 49.

SHORT TITLE

Act May 6, 1910, ch. 208, 36 Stat. 350, as amended, popularly known as the ''Accident Reports Act'', was classified to sections 38 to 43 of this title prior to repeal by Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379.

§§ 44 to 46. Transferred

CODIFICATION

Sections 44 to 46 were transferred to sections 1201 to 1203, respectively, of former Title 49, Transportation, and were subsequently repealed and restated in section 80504 of Title 49, Transportation, by Pub. L. 103–272, §§ 1(e), 7(b), July 5, 1994, 108 Stat. 1358, 1379.

Section 44, acts Feb. 23, 1905, ch. 744, § 1, 33 Stat. 743; June 13, 1957, Pub. L. 85–50, § 1(1), 71 Stat. 69, related to awards for acts of heroism involving railroads or motor vehicles.

Section 45, act Feb. 23, 1905, ch. 744, § 2, 33 Stat. 743, related to issuance of rosettes and ribbons.

Section 46, acts Feb. 23, 1905, ch. 744, § 3, 33 Stat. 743; June 13, 1957, Pub. L. 85–50, § 1(2), 71 Stat. 69, related to authorization of appropriations for carrying out sections 44 and 45 of this title.

CHAPTER 2—LIABILITY FOR INJURIES TO EMPLOYEES

Sec.
51. Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; employee defined.
52. Carriers in Territories or other possessions of United States.
53. Contributory negligence; diminution of damages.
54. Assumption of risks of employment.
54a. Certain Federal and State regulations deemed statutory authority.
55. Contract, rule, regulation, or device exempting from liability; set-off.
56. Actions; limitation; concurrent jurisdiction of courts.
57. Who included in term ''common carrier''.
58. Duty or liability of common carriers and rights of employees under other acts not impaired.
59. Survival of right of action of person injured.
60. Penalty for suppression of voluntary information incident to accidents; separability.

§ 51. Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; employee defined

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter.

(Apr. 22, 1908, ch. 149, § 1, 35 Stat. 65; Aug. 11, 1939, ch. 685, § 1, 53 Stat. 1404.)

AMENDMENTS

1939—Act Aug. 11, 1939, inserted last par.

SHORT TITLE

The Act of Apr. 22, 1908, as amended, which comprises this chapter, is popularly known as the "Employers' Liability Act".

The following are also popularly known as Employers' Liability Acts:

June 11, 1906, ch. 3073, 34 Stat. 232 [Unconstitutional].

Apr. 5, 1910, ch. 143, 36 Stat. 291. See sections 56 and 59 of this title.

Aug. 11, 1939, ch. 685, 53 Stat. 1404. See sections 51, 54, 56, and 60 of this title.

§ 52. Carriers in Territories or other possessions of United States

Every common carrier by railroad in the Territories, the District of Columbia, the Panama Canal Zone, or other possessions of the United States shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

(Apr. 22, 1908, ch. 149, § 2, 35 Stat. 65.)

§ 53. Contributory negligence; diminution of damages

In all actions on and after April 22, 1908 brought against any such common carrier by railroad under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided*, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

(Apr. 22, 1908, ch. 149, § 3, 35 Stat. 66.)

§ 54. Assumption of risks of employment

In any action brought against any common carrier under or by virtue of any of the provisions of this chapter to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where such injury or death resulted in whole or in part from the negligence of any of the officers, agents, or employees of such carrier; and no employee shall be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

(Apr. 22, 1908, ch. 149, § 4, 35 Stat. 66; Aug. 11, 1939, ch. 685, § 1, 53 Stat. 1404.)

AMENDMENTS

1939—Act Aug. 11, 1939, inserted "where such injury or death resulted in whole or in part from the negligence of any of the officers, agents, or employees of such carrier; and no employee shall be held to have assumed the risks of his employment in any case" after "of his employment in any case".

§ 54a. Certain Federal and State regulations deemed statutory authority

A regulation, standard, or requirement in force, or prescribed by the Secretary of Transportation under chapter 201 of title 49 or by a State agency that is participating in investigative and surveillance activities under section 20105 of title 49, is deemed to be a statute under sections 53 and 54 of this title.

(Apr. 22, 1908, ch. 149, § 4A, as added Pub. L. 103–272, § 4(i), July 5, 1994, 108 Stat. 1365.)

§ 55. Contract, rule, regulation, or device exempting from liability; set-off

Any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall

to that extent be void: *Provided*, That in any action brought against any such common carrier under or by virtue of any of the provisions of this chapter, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which said action was brought.

(Apr. 22, 1908, ch. 149, § 5, 35 Stat. 66.)

§ 56. Actions; limitation; concurrent jurisdiction of courts

No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States.

(Apr. 22, 1908, ch. 149, § 6, 35 Stat. 66; Apr. 5, 1910, ch. 143, § 1, 36 Stat. 291; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Aug. 11, 1939, ch. 685, § 2, 53 Stat. 1404; June 25, 1948, ch. 646, § 18, 62 Stat. 989.)

CODIFICATION

The first par. of this section is from act Apr. 22, 1908. The second par. of this section is from act Apr. 5, 1910.

AMENDMENTS

1948—Act June 25, 1948, struck out provision in last sentence relating to removal of actions.

1939—Act Aug. 11, 1939, changed limitation in first sentence from two to three years.

CHANGE OF NAME

''District court'' substituted in text for ''circuit court'' to conform to act Mar. 3, 1911, which transferred powers and duties of circuit courts to district courts.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

§ 57. Who included in term "common carrier"

The term ''common carrier'' as used in this chapter shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

(Apr. 22, 1908, ch. 149, § 7, 35 Stat. 66.)

§ 58. Duty or liability of common carriers and rights of employees under other acts not impaired

Nothing in this chapter shall be held to limit the duty or liability of common carriers or to impair the rights of their employees under any other Act or Acts of Congress.

(Apr. 22, 1908, ch. 149, § 8, 35 Stat. 66.)

§ 59. Survival of right of action of person injured

Any right of action given by this chapter to a person suffering injury shall survive to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury.

(Apr. 22, 1908, ch. 149, § 9, as added Apr. 5, 1910, ch. 143, § 2, 36 Stat. 291.)

§ 60. Penalty for suppression of voluntary information incident to accidents; separability

Any contract, rule, regulation, or device whatsoever, the purpose, intent, or effect of which shall be to prevent employees of any common carrier from furnishing voluntarily information to a person in interest as to the facts incident to the injury or death of any employee, shall be void, and whoever, by threat, intimidation, order, rule, contract, regulation, or device whatsoever, shall attempt to prevent any person from furnishing voluntarily such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employee for furnishing voluntarily such information to a person in interest, shall, upon conviction thereof, be punished by a fine of not more than $1,000 or imprisoned for not more than one year, or by both such fine and imprisonment, for each offense: *Provided*, That nothing herein contained shall be construed to void any contract, rule, or regulation with respect to any information contained in the files of the carrier, or other privileged or confidential reports.

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

(Apr. 22, 1908, ch. 149, § 10, as added Aug. 11, 1939, ch. 685, § 3, 53 Stat. 1404.)

CHAPTER 3—HOURS OF SERVICE OF EMPLOYEES

§§ 61 to 64b. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 61, acts Mar. 4, 1907, ch. 2939, § 1, 34 Stat. 1415; Dec. 26, 1969, Pub. L. 91–169, § 1, 83 Stat. 463; July 8, 1976, Pub. L. 94–348, § 4(c), 90 Stat. 818; Nov. 2, 1978, Pub. L. 95–574, §§ 5, 6, 92 Stat. 2461; June 22, 1988, Pub. L. 100–342, § 16(1), 102 Stat. 634, provided that this chapter applied to any railroad and defined ''railroad'', ''employee'', ''time on duty'', and ''designated terminal'' for purposes of this chapter. See sections 20102, 21101, and 21103 of Title 49, Transportation.

Section 62, acts Mar. 4, 1907, ch. 2939, § 2, 34 Stat. 1416; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(2), 80 Stat. 939; Dec. 26, 1969, Pub. L. 91–169, § 1, 83 Stat. 463; July 8, 1976, Pub. L. 94–348, § 4(a), (b), 90 Stat. 818; June 22, 1988, Pub. L. 100–342, §§ 16(2), 19(b)(1), 102 Stat. 634, 638, related to limitations on employees' hours of service, determination of number of hours an employee is on duty, additional duty for crew of wreck or relief trains during emergencies, and inapplicability of this section when provisions of section 63 of this title applied, and defined ''employees'' for purpose of subsec. (a)(3) of this section. See sections 21103, 21105, and 21106 of Title 49.

Section 63, acts Mar. 4, 1907, ch. 2939, § 3, 34 Stat. 1416; May 4, 1916, ch. 109, § 1, 39 Stat. 61; Aug. 14, 1957, Pub. L. 85–135, § 2, 71 Stat. 352; Oct. 15, 1966, Pub. L. 89–670,

§ 6(e)(2), 80 Stat. 939; Dec. 26, 1969, Pub. L. 91–169, § 1, 83 Stat. 464; June 22, 1988, Pub. L. 100–342, § 16(3), 102 Stat. 635, related to dispatchers' hours of service. See section 21105 of Title 49.

Section 63a, acts Mar. 4, 1907, ch. 2939, § 3A, as added July 8, 1976, Pub. L. 94–348, § 4(d), 90 Stat. 819; amended Nov. 2, 1978, Pub. L. 95–574, § 4(a), (b), 92 Stat. 2459, 2460; June 22, 1988, Pub. L. 100–342, § 16(4), 102 Stat. 635, related to signal system employees' hours of service. See sections 21102, 21104 to 21107, and 21303 of Title 49.

Section 64, acts Mar. 4, 1907, ch. 2939, § 4, 34 Stat. 1417; Oct. 15, 1966, Pub. L. 89–670, § 6(e)(2), 80 Stat. 939; Dec. 26, 1969, Pub. L. 91–169, § 1, 83 Stat. 464; June 22, 1988, Pub. L. 100–342, § 16(5), 102 Stat. 635, provided that time on duty requirements of this chapter were maximum permissible hours of service, but shorter periods were proper subjects for collective bargaining. See section 21107 of Title 49.

Section 64a, acts Mar. 4, 1907, ch. 2939, § 5, 34 Stat. 1417; Dec. 26, 1969, Pub. L. 91–169, § 1, 83 Stat. 464; July 8, 1976, Pub. L. 94–348, § 4(e), 90 Stat. 819; Oct. 10, 1980, Pub. L. 96–423, § 12, 94 Stat. 1816; June 22, 1988, Pub. L. 100–342, § 16(6), 102 Stat. 635; Sept. 3, 1992, Pub. L. 102–365, §§ 4(a)(2), (c)(2), 9(a)(2), 106 Stat. 973, 974, 977, related to manner of enforcing this chapter concerning hours of service of employees. See sections 21102, 21303, and 21304 of Title 49.

Section 64b, act Mar. 4, 1907, ch. 2939, § 6, as added Dec. 26, 1969, Pub. L. 91–169, § 1, 83 Stat. 465, provided that Secretary of Transportation was to have duty to carry out provisions of this chapter.

SHORT TITLE

Act Mar. 4, 1907, ch. 2939, 34 Stat. 1415, which enacted this chapter and which was repealed by Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379, was popularly known as the ''Hours of Service Act''.

§§ 65, 66. Repealed. Pub. L. 104–287, § 10(b), Oct. 11, 1996, 110 Stat. 3401

Section 65, act Sept. 3, 5, 1916, ch. 436, § 1, 39 Stat. 721, established eight hour work day for employees of railroads. See section 28301 of Title 49, Transportation.

Section 66, act Sept. 3, 5, 1916, ch. 436, § 4, 39 Stat. 722, provided penalty for violation of section 65 of this title. See section 28302 of Title 49, Transportation.

SHORT TITLE

Act Sept. 3, 5, 1916, ch. 436, 39 Stat. 721, which enacted sections 65 and 66 of this title, was popularly known as the ''Adamson Law''.

CHAPTER 4—CARE OF ANIMALS IN TRANSIT

§§ 71 to 74. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 71, act June 29, 1906, ch. 3594, § 1, 34 Stat. 607, related to transportation of animals, provided maximum time for their confinement while in transit, unloading for rest and feeding, and included special provision for unloading sheep. See section 80502 of Title 49, Transportation.

Section 72, act June 29, 1906, ch. 3594, § 2, 34 Stat. 608, provided that animals in transit were to be fed and watered by or at expense of owner and that railroad was to have a lien upon such animals for food, care, and custody. See section 80502 of Title 49.

Section 73, act June 29, 1906, ch. 3594, § 3, 34 Stat. 608, provided penalty for failure to comply with provisions of sections 71 and 72 of this title with proviso that provisions regarding unloading of animals would not apply when animals in transit had proper food, water, space, and opportunity to rest. See section 80502 of Title 49.

Section 74, acts June 29, 1906, ch. 3594, § 4, 34 Stat. 608; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, provided that penalty created by section 73 of this title was recoverable by civil action and that United States attorneys had duty to prosecute violations of this chapter. See section 80502 of Title 49.

SHORT TITLE

Act June 29, 1906, ch. 3594, 34 Stat. 607, which enacted this chapter and which was repealed by Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379, was popularly known as the ''Live Stock Transportation Act'' and also as the ''Cruelty to Animals Act'', ''Twenty-Eight Hour Law'', and ''Food and Rest Law''.

§§ 75, 76. Transferred

CODIFICATION

Section 75, acts Mar. 3, 1891, ch. 521, § 1, 26 Stat. 833; May 28, 1928, ch. 824, 45 Stat. 789, relating to rules as to accommodations for export animals, was transferred to section 466a of Title 46, Shipping, and subsequently repealed and reenacted as section 3901 of Title 46 by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500. Section 3901 of Title 46 was subsequently repealed by Pub. L. 107–171, title X, § 10418(a)(20), May 13, 2002, 116 Stat. 508.

Section 76, acts Mar. 3, 1891, ch. 521, § 2, 26 Stat. 833; May 28, 1928, ch. 824, 45 Stat. 790, relating to penalties for rule violations, was transferred to section 466b of Title 46, and subsequently repealed and reenacted as section 3902 of Title 46 by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500. Section 3902 of Title 46 was subsequently repealed by Pub. L. 107–171, title X, § 10418(a)(20), May 13, 2002, 116 Stat. 508.

CHAPTER 5—GOVERNMENT-AIDED RAILROADS

§§ 81 to 92. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 81, R.S. § 5256; Nov. 6, 1978, Pub. L. 95–598, title III, § 322(g), 92 Stat. 2679, related to Union Pacific Railroad Company, its books, records, correspondence, other documents, dividends, stock issuance, mortgages or pledges, and directors or officers.

Section 82, R.S. § 5257, provided for connection of other roads with Union Pacific Railroad or any of its branches.

Section 83, acts July 2, 1864, ch. 216, § 15, 13 Stat. 362; June 20, 1874, ch. 331, 18 Stat. 111; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, provided that companies authorized by Pacific Railroad Acts to construct railroads were required to operate roads and telegraphs as one continuous line and to afford equal advantages and facilities as to rates, time, and transportation to the other companies without discrimination.

Section 84, R.S. § 5258, authorized interstate transport by railroads.

Section 85, R.S. § 5259, related to compensation of directors, engineers, commissioners, or other agents appointed by the United States to examine roads or to act in conjunction with other officers of railroads or other corporations receiving land grants or other subsidies.

Section 86, R.S. § 5260, related to withholding by Secretary of the Treasury of payments to certain railroads.

Section 87, R.S. § 5261; June 25, 1948, ch. 646, § 4, 62 Stat. 986; Apr. 2, 1982, Pub. L. 97–164, title I, § 161(8), 96 Stat. 49; Oct. 29, 1992, Pub. L. 102–572, title IX, § 902(b)(2), 106 Stat. 4516, provided that companies from whom payments for freight and transportation had been withheld under provisions of section 86 of this title could sue in Court of Federal Claims.

Section 88, R.S. § 5262; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, related to jurisdiction of proper United States district court to hear and determine all cases of mandamus to compel Union Pacific Railroad Company to operate its road.

Section 89, acts June 22, 1874, ch. 414, 18 Stat. 200; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, directed Secretary of the Treasury to require that railroad companies, their successors and assigns, pay United States a percentage of net earnings as provided for by law.

Section 90, act Mar. 3, 1879, ch. 183, § 1, 20 Stat. 420, authorized Secretary of the Treasury to settle accounts

of Union Pacific, Central Pacific, Kansas Pacific, Western Pacific, and Sioux City and Pacific Railroad Companies for services provided to Government in transporting the Army and mails.

Section 91, act Mar. 3, 1897, ch. 386, 29 Stat. 663, provided that provisions of section 90 of this title were extended and made applicable to Navy and Marine Corps transportation.

Section 92, act Mar. 3, 1901, ch. 831, § 1, 31 Stat. 1023, authorized and directed Secretary of the Treasury to settle claims stemming from Government transportation over non-bond-aided lines.

§ 92a. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section 92a, acts Feb. 14, 1933, ch. 51, 47 Stat. 800; Mar. 2, 1933, ch. 187, 47 Stat. 1424, related to compensation of certain railroads for transportation of property and troops of United States. See section 10721 of Title 49, Transportation.

Prior to repeal, section was classified to section 1375b of former Title 10, Army and Air Force.

§ 93. Transferred

CODIFICATION

Section, act Apr. 30, 1908, ch. 153, 35 Stat. 73, relating to transportation of Indian goods and supplies, was transferred to section 443b of Title 25, Indians.

§§ 94, 95. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 94, act Mar. 3, 1887, ch. 345, § 4, 24 Stat. 491, authorized Secretary of the Treasury, whenever deemed necessary by President, to redeem liens, mortgages, or other incumbrances paramount to right, title, or interest of United States in railroad property.

Section 95, act Mar. 3, 1887, ch. 345, § 5, 24 Stat. 492, related to permissible investments of sinking funds held to secure debts of railroad companies to United States.

CHAPTER 6—MEDIATION, CONCILIATION, AND ARBITRATION IN CONTROVERSIES BETWEEN CARRIERS AND EMPLOYEES

§§ 101 to 125. Repealed. May 20, 1926, ch. 347, § 14, 44 Stat. 587

Section 101, act July 15, 1913, ch. 6, § 1, 38 Stat. 103, related to carriers and shipping affected by application of provisions of this chapter. See section 151 et seq. of this title.

Section 102, act July 15, 1913, ch. 6, § 1, 38 Stat. 103, defined ''railroad'' and ''transportation'' as used throughout this chapter. See section 151 et seq. of this title.

Section 103, act July 15, 1913, ch. 6, § 1, 38 Stat. 103, related to employees affected by application of provisions of this chapter. See section 151 et seq. of this title.

Section 104, act July 15, 1913, ch. 6, § 1, 38 Stat. 103, defined ''employer'' and ''employee'' as used throughout this chapter. See section 151 et seq. of this title.

Section 105, act July 15, 1913, ch. 6, § 2, 38 Stat. 104, related to submission of controversies to the Board of Mediation and Conciliation for adjustment. See section 151 et seq. of this title.

Section 106, act July 15, 1913, ch. 6, § 2, 38 Stat. 104, related to proffer of services by board in public interest in urgent cases. See section 151 et seq. of this title.

Section 107, act July 15, 1913, ch. 6, § 2, 38 Stat. 104, related to application of board's opinions as to meaning of agreement after mediation. See section 151 et seq. of this title.

Section 108, act July 15, 1913, ch. 6, § 3, 38 Stat. 104, related to submission of controversies to board of arbitrators and selection of members. See section 151 et seq. of this title.

Section 109, act July 15, 1913, ch. 6, § 4, 38 Stat. 105, related to requirements for a valid agreement to arbitrate under terms of this chapter. See section 151 et seq. of this title.

Section 110, act July 15, 1913, ch. 6, § 5, 38 Stat. 106, related to authority of arbitrators for purposes of this chapter and arbitration hereunder. See section 151 et seq. of this title.

Section 111, act July 15, 1913, ch. 6, § 6, 38 Stat. 106, related to acknowledgement and filing of an agreement of arbitration under this chapter. See section 151 et seq. of this title.

Section 112, act July 15, 1913, ch. 6, § 6, 38 Stat. 106, related to written notification of appointment to be submitted to selected arbitrators. See section 151 et seq. of this title.

Section 113, act July 15, 1913, ch. 6, § 6, 38 Stat. 106, related to notice to Board of Mediation and Conciliation by selected arbitrators. See section 151 et seq. of this title.

Section 114, act July 15, 1913, ch. 6, § 6, 38 Stat. 106, related to reconvention of board of arbitration when desired by parties. See section 151 et seq. of this title.

Section 115, act July 15, 1913, ch. 6, § 7, 38 Stat. 106, related to organization and procedure of board of arbitration under this chapter. See section 151 et seq. of this title.

Section 116, act July 15, 1913, ch. 6, § 7, 38 Stat. 106, related to particular papers bearing on mediation or arbitration under former law. See section 151 et seq. of this title.

Section 117, act July 15, 1913, ch. 6, § 8, 38 Stat. 107, related to time when an award under this chapter was to be operative. See section 151 et seq. of this title.

Section 118, act July 15, 1913, ch. 6, § 8, 38 Stat. 107, related to procedure for appeal to former circuit court of appeals under this chapter. See section 151 et seq. of this title.

Section 119, act July 15, 1913, ch. 6, § 8, 38 Stat. 107, related to finality of a determination of former circuit court of appeals. See section 151 et seq. of this title.

Section 120, act July 15, 1913, ch. 6, § 8, 38 Stat. 107, related to judgment on exception to award and judgment by agreement. See section 151 et seq. of this title.

Section 121, act July 15, 1913, ch. 6, § 8, 38 Stat. 107, related to compulsory labor under this chapter. See section 151 et seq. of this title.

Section 122, act July 15, 1913, ch. 6, § 9, 38 Stat. 107, related to rights of employees under Federal court receivers. See section 151 et seq. of this title.

Section 123, acts July 15, 1913, ch. 6, § 10, 38 Stat. 108; June 5, 1920, ch. 235, § 1, 41 Stat. 886, related to pay and expenses of arbitrators. See section 151 et seq. of this title.

Section 124, act July 15, 1913, ch. 6, § 11, 38 Stat. 108, related to constitution of United States Board of Mediation and Conciliation. See section 151 et seq. of this title.

Section 125, act July 15, 1913, ch. 6, § 11, 38 Stat. 108, related to repeal of certain prior law.

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

Section, act Dec. 15, 1921, ch. 1, § 1, 42 Stat. 328, abolished offices of Commissioner and Assistant Commissioner of Mediation and Conciliation.

CHAPTER 7—ADJUSTMENT BOARDS AND LABOR BOARDS

§§ 131 to 146. Repealed. May 20, 1926, ch. 347, § 14, 44 Stat. 587

Section 131, act Feb. 28, 1920, ch. 91, § 300, 41 Stat. 469, defined terms for purposes of this chapter. See section 151 et seq. of this title.

Section 132, act Feb. 28, 1920, ch. 91, § 301, 41 Stat. 469, related to disputes between carriers and their officers, agents, and employees. See section 151 et seq. of this title.

Section 133, act Feb. 28, 1920, ch. 91, § 302, 41 Stat. 469, related to establishment of railroad boards of labor adjustment. See section 151 et seq. of this title.

Section 134, act Feb. 28, 1920, ch. 91, § 303, 41 Stat. 469, related to duty of boards to hear and decide disputes. See section 151 et seq. of this title.

Section 135, act Feb. 28, 1920, ch. 91, § 304, 41 Stat. 470, related to establishment and composition of Railroad Labor Board. See section 151 et seq. of this title.

Section 136, act Feb. 28, 1920, ch. 91, § 305, 41 Stat. 470, related to selection of members of board by President. See section 151 et seq. of this title.

Section 137, act Feb. 28, 1920, ch. 91, § 306, 41 Stat. 470, related to effect of subsequent ineligibility of certain members. See section 151 et seq. of this title.

Section 138, act Feb. 28, 1920, ch. 91, § 306, 41 Stat. 470, related to terms of office, salary, and removal from office of board members. See section 151 et seq. of this title.

Section 139, act Feb. 28, 1920, ch. 91, § 307, 41 Stat. 470, related to disputes within jurisdiction of board. See section 151 et seq. of this title.

Section 140, act Feb. 28, 1920, ch. 91, § 308, 41 Stat. 472, related to certain powers and duties of board. See section 151 et seq. of this title.

Section 141, act Feb. 28, 1920, ch. 91, § 309, 41 Stat. 472, related to right to hearing by a party in dispute. See section 151 et seq. of this title.

Section 142, act Feb. 28, 1920, ch. 91, § 310, 41 Stat. 472, related to certain procedural powers of board. See section 151 et seq. of this title.

Section 143, act Feb. 28, 1920, ch. 91, § 311, 41 Stat. 472, related to access to books, accounts, and records. See section 151 et seq. of this title.

Section 144, act Feb. 28, 1920, ch. 91, § 313, 41 Stat. 473, related to determination of violations of decisions of board. See section 151 et seq. of this title.

Section 145, act Feb. 28, 1920, ch. 91, § 314, 41 Stat. 473, related to appointment and salary of Secretary of Board. See section 151 et seq. of this title.

Section 146, act Feb. 28, 1920, ch. 91, § 316, 41 Stat. 474, related to jurisdiction of adjustment or labor board as excluding mediation board. See section 151 et seq. of this title.

CHAPTER 8—RAILWAY LABOR

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SUBCHAPTER II—CARRIERS BY AIR

181. Application of subchapter I to carriers by air.
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SUBCHAPTER I—GENERAL PROVISIONS

§ 151. Definitions; short title

When used in this chapter and for the purposes of this chapter—

First. The term ''carrier'' includes any railroad subject to the jurisdiction of the Surface Transportation Board, any express company that would have been subject to subtitle IV of title 49, as of December 31, 1995,,[1] and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such ''carrier'': *Provided, however*, That the term ''carrier'' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term ''carrier'' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term ''Adjustment Board'' means the National Railroad Adjustment Board created by this chapter.

Third. The term ''Mediation Board'' means the National Mediation Board created by this chapter.

Fourth. The term ''commerce'' means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term ''employee'' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Board pursuant to the authority which is conferred upon it to enter orders amending or interpreting such

[1] So in original.

existing orders: *Provided, however*, That no occupational classification made by order of the Surface Transportation Board shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Board.

The term ''employee'' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term ''representative'' means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term ''district court'' includes the United States District Court for the District of Columbia; and the term ''court of appeals'' includes the United States Court of Appeals for the District of Columbia.

This chapter may be cited as the ''Railway Labor Act.''

(May 20, 1926, ch. 347, §1, 44 Stat. 577; June 7, 1934, ch. 426, 48 Stat. 926; June 21, 1934, ch. 691, §1, 48 Stat. 1185; June 25, 1936, ch. 804, 49 Stat. 1921; Aug. 13, 1940, ch. 664, §§2, 3, 54 Stat. 785, 786; June 25, 1948, ch. 646, §32(a), (b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 104–88, title III, §322, Dec. 29, 1995, 109 Stat. 950; Pub. L. 104–264, title XII, §1223, Oct. 9, 1996, 110 Stat. 3287.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act May 20, 1926, ch. 347, 44 Stat. 577, as amended, known as the Railway Labor Act, which enacted this chapter and amended sections 225 and 348 of former Title 28, Judicial Code and Judiciary. Sections 225 and 348 of former Title 28 were repealed by section 39 of act June 25, 1948, ch. 646, 62 Stat. 992, section 1 of which enacted Title 28, Judiciary and Judicial Procedure. Section 225 of former Title 28 was reenacted as sections 1291 to 1294 of Title 28. For complete classification of this Act to the Code, see this section and Tables.

CODIFICATION

Provisions of act Aug. 13, 1940, §2, similar to those comprising par. First of this section, limiting the term ''employer'' as applied to mining, etc., of coal, were formerly contained in section 228a of this title. Provisions of section 3 of the act, similar to those comprising par. Fifth of this section, limiting the term ''employee'' as applied to mining, etc., of coal, were formerly contained in sections 228a, 261, and 351 of this title, and section 1532 of former Title 26, Internal Revenue Code, 1939.

As originally enacted, par. Seventh contained references to the Supreme Court of the District of Columbia. Act June 25, 1936 substituted ''the district court of the United States for the District of Columbia'' for ''the Supreme Court of the District of Columbia'', and act June 25, 1948, as amended by act May 24, 1949, substituted ''United States District Court for the District of Columbia'' for ''district court of the United States for the District of Columbia''.

As originally enacted, par. Seventh contained references to the ''circuit court of appeals''. Act June 25, 1948, as amended by act May 24, 1949, substituted ''court of appeals'' for ''circuit court of appeals''.

As originally enacted, par. Seventh contained references to the ''Court of Appeals of the District of Columbia''. Act June 7, 1934, substituted ''United States Court of Appeals for the District of Columbia'' for ''Court of Appeals of the District of Columbia''.

AMENDMENTS

1996—Par. First. Pub. L. 104–264 inserted '', any express company that would have been subject to subtitle IV of title 49, as of December 31, 1995,'' after ''Board'' the first place it appeared.

1995—Par. First. Pub. L. 104–88, §322(1), (2), substituted ''railroad subject to the jurisdiction of the Surface Transportation Board'' for ''express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act'' and ''Surface Transportation Board'' for ''Interstate Commerce Commission''.

Par. Fifth. Pub. L. 104–88, §322(2), (3), substituted ''Surface Transportation Board'' for ''Interstate Commerce Commission'' in two places and ''Board'' for ''Commission'' in two places.

1940—Act Aug. 13, 1940, inserted last sentence of par. First, and second par. of par. Fifth.

1934—Act June 21, 1934, added par. Sixth and redesignated provisions formerly set out as par. Sixth as Seventh.

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of Title 49, Transportation.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

RESTRICTION ON ESTABLISHMENT OF NEW ANNUITIES OR PENSIONS

Pub. L. 91–215, §7, Mar. 17, 1970, 84 Stat. 72, provided that: ''No carrier and no representative of employees, as defined in section 1 of the Railway Labor Act [this section], shall, before April 1, 1974, utilize any of the procedures of such Act [this chapter], to seek to make any changes in the provisions of the Railroad Retirement Act of 1937 [section 228a et seq. of this title] for supplemental annuities or to establish any new class of pensions or annuities, other than annuities payable out of the Railroad Retirement Account provided under section 15(a) of the Railroad Retirement Act of 1937 [subsection (a) of section 228*o* of this title], to become effective prior to July 1, 1974; nor shall any such carrier or representative of employees until July 1, 1974, engage in any strike or lockout to seek to make any such changes or to establish any such new class of pensions or annuities: *Provided*, That nothing in this section shall inhibit any carrier or representative of employees from seeking any change with respect to benefits payable out of the Railroad Retirement Account provided under section 15(a) of the Railroad Retirement Act of 1937 [subsection (a) of section 228*o* of this title].''

SOCIAL INSURANCE AND LABOR RELATIONS OF RAILROAD COAL-MINING EMPLOYEES; RETROACTIVE OPERATION OF ACT AUGUST 13, 1940; EFFECT ON PAYMENTS, RIGHTS, ETC.

Sections 4–7 of act Aug. 13, 1940, as amended by Reorg. Plan No. 2 of 1946, §4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, with regard to the operation and effect of the laws amended, provided:

''SEC. 4. (a) The laws hereby expressly amended (section 1532 of Title 26, I.R.C. 1939 [former Title 26, Internal Revenue Code of 1939] and sections 151, 215, 228a, 261,

and 351 of this title), the Social Security Act, approved August 14, 1935 (section 301 et seq. of Title 42), and all amendments thereto, shall operate as if each amendment herein contained had been enacted as a part of the law it amends, at the time of the original enactment of such law.

''(b) No person (as defined in the Carriers Taxing Act of 1937 [section 261 et seq. of this title]) shall be entitled, by reason of the provisions of this Act, to a refund of, or relief from liability for, any income or excise taxes paid or accrued, pursuant to the provisions of the Carriers Taxing Act of 1937 or subchapter B of chapter 9 of the Internal Revenue Code [section 1500 et seq. of former Title 26, Internal Revenue Code of 1939], prior to the date of the enactment of this Act [Aug. 13, 1940] by reason of employment in the service of any carrier by railroad subject to part I of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.], but any individual who has been employed in such service of any carrier by railroad subject to part I of the Interstate Commerce Act as is excluded by the amendments made by this Act from coverage under the Carriers Taxing Act of 1937 and subchapter B of chapter 9 of the Internal Revenue Code, and who has paid income taxes under the provisions of such Act or subchapter, and any carrier by railroad subject to part I of the Interstate Commerce Act which has paid excise taxes under the provisions of the Carriers Taxing Act of 1937 or subchapter B of chapter 9 of the Internal Revenue Code, may, upon making proper application therefor to the Bureau of Internal Revenue [now Internal Revenue Service], have the amount of taxes so paid applied in reduction of such tax liability with respect to employment, as may, by reason of the amendments made by this Act, accrue against them under the provisions of title VIII of the Social Security Act [section 1001 et seq. of Title 42] or the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code) [section 1400 et seq. of former Title 26].

''(c) Nothing contained in this Act shall operate (1) to affect any annuity, pension, or death benefit granted under the Railroad Retirement Act of 1935 [section 215 et seq. of this title] or the Railroad Retirement Act of 1937 [section 228a et seq. of this title], prior to the date of enactment of this Act [Aug. 13, 1940], or (2) to include any of the services on the basis of which any such annuity or pension was granted, as employment within the meaning of section 210(b) of the Social Security Act or section 209(b) of such Act, as amended [sections 410(b) and 409(b), respectively, of Title 42]. In any case in which a death benefit alone has been granted, the amount of such death benefit attributable to services, coverage of which is affected by this Act, shall be deemed to have been paid to the deceased under section 204 of the Social Security Act [section 404 of Title 42] in effect prior to January 1, 1940, and deductions shall be made from any insurance benefit or benefits payable under the Social Security Act, as amended [section 301 et seq. of Title 42], with respect to wages paid to an individual for such services until such deductions total the amount of such death benefit attributable to such services.

''(d) Nothing contained in this Act shall operate to affect the benefit rights of any individual under the Railroad Unemployment Insurance Act [section 351 et seq. of this title] for any day of unemployment (as defined in section 1(k) of such Act [section 351(k) of this title]) occurring prior to the date of enactment of this Act. [Aug. 13, 1940]

''SEC. 5. Any application for payment filed with the Railroad Retirement Board prior to, or within sixty days after, the enactment of this Act shall, under such regulations as the Federal Security Administrator may prescribe, be deemed to be an application filed with the Federal Security Administrator by such individual or by any person claiming any payment with respect to the wages of such individual, under any provision of section 202 of the Social Security Act, as amended [section 402 of Title 42].

''SEC. 6. Nothing contained in this Act, nor the action of Congress in adopting it, shall be taken or considered as affecting the question of what carriers, companies, or individuals, other than those in this Act specifically provided for, are included in or excluded from the provisions of the various laws to which this Act is an amendment.

''SEC. 7. (a) Notwithstanding the provisions of section 1605(b) of the Internal Revenue Code [section 1605(b) of former Title 26, Internal Revenue Code of 1939], no interest shall, during the period February 1, 1940, to the eighty-ninth day after the date of enactment of this Act [Aug. 13, 1940], inclusive, accrue by reason of delinquency in the payment of the tax imposed by section 1600 with respect to services affected by this Act performed during the period July 1, 1939, to December 31, 1939, inclusive, with respect to which services amounts have been paid as contributions under the Railroad Unemployment Insurance Act [section 351 et seq. of this title] prior to the date of enactment of this Act.

''(b) Notwithstanding the provisions of section 1601(a)(3) of the Internal Revenue Code [section 1601(a)(3) of former Title 26, Internal Revenue Code of 1939], the credit allowable under section 1601(a) against the tax imposed by section 1600 for the calendar year 1939 shall not be disallowed or reduced by reason of the payment into a State unemployment fund after January 31, 1940, of contributions with respect to services affected by this Act performed during the period July 1, 1939, to December 31, 1939, inclusive, with respect to which services amounts have been paid as contributions under the Railroad Unemployment Insurance Act [section 351 et seq. of this title] prior to the date of enactment of this Act [Aug. 13, 1940]: *Provided*, That this subsection shall be applicable only if the contributions with respect to such services are paid into the State unemployment fund before the ninetieth day after the date of enactment of this Act.''

§ 151a. General purposes

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

(May 20, 1926, ch. 347, § 2, 44 Stat. 577; June 21, 1934, ch. 691, § 2, 48 Stat. 1186.)

CODIFICATION

Section is comprised of the first sentence of section 2 of act May 20, 1926. The remainder of section 2 of act May 20, 1926, is classified to section 152 of this title.

AMENDMENTS

1934—Act June 21, 1934, reenacted provisions comprising this section without change.

§ 152. General duties

First. Duty of carriers and employees to settle disputes

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working con-

ditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. Consideration of disputes by representatives

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Designation of representatives

Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. Agreements to join or not to join labor organizations forbidden

No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. Conference of representatives; time; place; private agreements

In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. Change in pay, rules, or working conditions contrary to agreement or to section 156 forbidden

No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

Eighth. Notices of manner of settlement of disputes; posting

Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this chapter, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. Disputes as to identity of representatives; designation by Mediation Board; secret elections

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to

investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. Violations; prosecution and penalties

The willful failure or refusal of any carrier, its officers or agents, to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000, nor more than $20,000, or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any United States attorney to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

Eleventh. Union security agreements; check-off

Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First division of paragraph (h) of section 153 of this title defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however*, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing

his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further*, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended.

(May 20, 1926, ch. 347, § 2, 44 Stat. 577; June 21, 1934, ch. 691, § 2, 48 Stat. 1186; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Jan. 10, 1951, ch. 1220, 64 Stat. 1238.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in par. Fifth, probably means May 20, 1926, the date of approval of act May 20, 1926, ch. 347, 44 Stat. 577.

CODIFICATION

Section is comprised of pars. designated First to Eleventh of section 2 of act May 20, 1926. The remainder of section 2 of act May 20, 1926, is classified to section 151a of this title.

AMENDMENTS

1951—Act Jan. 10, 1951, added par. Eleventh.

1934—Act June 21, 1934, substituted ''by the carrier or carriers'' for ''by the carriers'' in par. Second, generally amended pars. Third, Fourth, and Fifth, and added pars. Sixth to Tenth.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorney'' for ''district attorney of the United States''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

§ 153. National Railroad Adjustment Board

First. Establishment; composition; powers and duties; divisions; hearings and awards; judicial review

There is established a Board, to be known as the ''National Railroad Adjustment Board'', the members of which shall be selected within thirty days after June 21, 1934, and it is provided—

(a) That the said Adjustment Board shall consist of thirty-four members, seventeen of whom shall be selected by the carriers and seventeen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of sections 151a and 152 of this title.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one voting representative on any division of the Board.

(c) Except as provided in the second paragraph of subsection (h) of this section, the national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one voting representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after June 21, 1934, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with sections 151a and 152 of this title and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of paragraph (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall

be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of eight members, four of whom shall be selected and designated by the carriers and four of whom shall be selected and designated by the labor organizations, national in scope and organized in accordance with sections 151a and 152 of this title and which represent employees in engine, train, yard, or hostling service: *Provided, however*, That each labor organization shall select and designate two members on the First Division and that no labor organization shall have more than one vote in any proceedings of the First Division or in the adoption of any award with respect to any dispute submitted to the First Division: *Provided further, however*, That the carrier members of the First Division shall cast no more than two votes in any proceedings of the division or in the adoption of any award with respect to any dispute submitted to the First Division.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however*, That except as provided in paragraph (h) of this section, final awards as to any such dispute must be made by the entire division as hereinafter provided.

(*l*) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as ''referee'', to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award, the division of the board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board eligible to vote shall be competent to make an award with respect to any dispute submitted to it.

(*o*) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named. In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the division shall make an order to the petitioner stating such determination.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of

the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: *Provided*, *however*, That such order may not be set aside except for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division, or to set it aside, in whole or in part, or it may remand the proceedings to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28.

(r) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(s) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(t) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(u) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(v) The Adjustment Board shall meet within forty days after June 21, 1934, and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided*, *however*, That the chairmanship and vice-chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(w) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this chapter, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this chapter and disbursed by such agencies, employees, and officers.

(x) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and man-

ner as provided in paragraph (*l*) of this section, with respect to a division of the Adjustment Board.

Second. System, group, or regional boards: establishment by voluntary agreement; special adjustment boards: establishment, composition, designation of representatives by Mediation Board, neutral member, compensation, quorum, finality and enforcement of awards

Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this chapter, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the board, the carrier or representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board. Each member of the board shall be compensated by the party he is to represent. The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to agree upon an award disposing of the dispute or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the members of the board designated by the parties are unable, within ten days after their failure to agree upon an award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment. The neutral person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforcible by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.

(May 20, 1926, ch. 347, § 3, 44 Stat. 578; June 21, 1934, ch. 691, § 3, 48 Stat. 1189; Pub. L. 89–456, §§ 1, 2, June 20, 1966, 80 Stat. 208, 209; Pub. L. 91–234, §§ 1–6, Apr. 23, 1970, 84 Stat. 199, 200.)

AMENDMENTS

1970—Par. First, (a). Pub. L. 91–234, § 1, substituted ''thirty-four members, seventeen of whom shall be selected by the carriers and seventeen'' for ''thirty-six members, eighteen of whom shall be selected by the carriers and eighteen''.

Par. First, (b). Pub. L. 91–234, § 2, provided that no carrier or system of carriers have more than one voting representative on any division of the National Railroad Adjustment Board.

Par. First, (c). Pub. L. 91–234, § 3, inserted ''Except as provided in the second paragraph of subsection (h) of this section'' before ''the national labor organizations'', and provided that no labor organization have more than one voting representative on any division of the National Railroad Adjustment Board.

Par. First, (h). Pub. L. 91–234, § 4, decreased number of members on First division of Board from ten to eight members, with an accompanying decrease of five to four as number of members of such Board elected respectively by the carriers and by the national labor organizations satisfying the enumerated requirements, and set forth provisos which limited voting by each labor organization or carrier member in any proceedings of the division or in adoption of any award.

Par. First, (k). Pub. L. 91–234, § 5, inserted ''except as provided in paragraph (h) of this section'' after proviso.

Par. First, (n). Pub. L. 91–234, § 6, inserted ''eligible to vote'' after ''Adjustment Board''.

1966—Par. First, (m). Pub. L. 89–456, § 2(a), struck out '', except insofar as they shall contain a money award'' from second sentence.

Par. First, (*o*). Pub. L. 89–456, § 2(b), inserted provision for a division to make an order to the petitioner stating that an award favorable to the petitioner should not be made in any dispute referred to it.

Par. First, (p). Pub. L. 89–456, § 2(c), (d), substituted in second sentence ''conclusive on the parties'' for ''prima facie evidence of the facts therein stated'' and inserted in last sentence reasons for setting aside orders of a division of the Adjustment Board, respectively.

Par. First, (q) to (x). Pub. L. 89–456, § 2(e), added par. (q) and redesignated former pars. (q) to (w) as (r) to (x), respectively.

Par. Second. Pub. L. 89–456, § 1, provided for establishment of special adjustment boards upon request of employees or carriers to resolve disputes otherwise referable to the Adjustment Board and made awards of such boards final.

1934—Act June 21, 1934, amended provisions comprising this section generally.

§ 154. National Mediation Board

First. Board of Mediation abolished; National Mediation Board established; composition; term of office; qualifications; salaries; removal

The Board of Mediation is abolished, effective thirty days from June 21, 1934, and the members, secretary, officers, assistants, employees, and agents thereof, in office upon June 21, 1934, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this chapter had not been passed. There is established, as an independent agency in the executive branch of the Government, a board to be known as the ''National Mediation Board'', to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. Each member of the Mediation Board in office on January 1, 1965, shall be deemed to have been appointed for a term of office which shall expire on July 1 of the year his term would have otherwise expired. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this chapter. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

All cases referred to the Board of Mediation and unsettled on June 21, 1934, shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. Chairman; principal office; delegation of powers; oaths; seal; report

The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. Appointment of experts and other employees; salaries of employees; expenditures

The Mediation Board may (1) subject to the provisions of the civil service laws, appoint such experts and assistants to act in a confidential capacity and such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with chapter 51 and subchapter III of chapter 53 of title 5, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 153 of this title, and boards of arbitration, in accordance with the provisions of this section and sections 153 and 157 of this title, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. Delegation of powers and duties

The Mediation Board is authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this chapter or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, [and] such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. Transfer of officers and employees of Board of Mediation; transfer of appropriation

All officers and employees of the Board of Mediation (except the members thereof, whose offices are abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

(May 20, 1926, ch. 347, § 4, 44 Stat. 579; June 21, 1934, ch. 691, § 4, 48 Stat. 1193; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Pub. L. 88–542, Aug. 31, 1964, 78 Stat. 748.)

REFERENCES IN TEXT

The civil service laws, referred to in par. Third, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In par. First, provisions that prescribed the basis compensation of members of the Board were omitted to conform to the provisions of the Executive Schedule. See sections 5314 and 5315 of Title 5, Government Organization and Employees.

In par. Third, ''subject to the provisions of the civil service laws, appoint such experts and assistants to act in a confidential capacity and such other officers and employees'' substituted for ''appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees''. All such appointments are now subject to the civil service laws unless specifically excepted by such laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5.

In par. Third, ''chapter 51 and subchapter III of chapter 53 of title 5'' substituted for ''the Classification Act of 1949, as amended'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1964—Par. First. Pub. L. 88–542 inserted sentences providing that each member of the Board in office on Jan. 1, 1965, shall be deemed to have been appointed for a term of office which shall expire on July 1 of the year his term would have otherwise expired, and that upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified, and struck out provisions which related to terms of office of members first appointed.

1949—Par. First. Act Oct. 15, 1949, increased basic rate of compensation for members of the board to $15,000 per year.

Par. Third. Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

1934—Act June 21, 1934, amended section generally.

REPEALS

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

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in par. Second relating to the requirement that the Board make an annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 6th item on page 184 of House Document No. 103–7.

§ 155. Functions of Mediation Board

First. Disputes within jurisdiction of Mediation Board

The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of this title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. Interpretation of agreement

In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this chapter, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

Third. Duties of Board with respect to arbitration of disputes; arbitrators; acknowledgment of agreement; notice to arbitrators; reconvening of arbitrators; filing contracts with Board; custody of records and documents

The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 157 of this title:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 157 of this title, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this chapter, shall be removed by such Board as provided by this chapter, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this chapter for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgement of an agreement to arbitrate under this chapter. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after June 21, 1934, every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact, including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

(May 20, 1926, ch. 347, § 5, 44 Stat. 580; June 21, 1934, ch. 691, § 5, 48 Stat. 1195; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

As originally enacted, par. Third (b) contained a reference to the ''circuit court of appeals''. Act June 25, 1948, as amended by act May 24, 1949 substituted ''court of appeals'' for ''circuit court of appeals''.

AMENDMENTS

1934—Act June 21, 1934, amended generally par. First and par. Second, (e) and (f).

§ 156. Procedure in changing rates of pay, rules, and working conditions

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and

the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

(May 20, 1926, ch. 347, § 6, 44 Stat. 582; June 21, 1934, ch. 691, § 6, 48 Stat. 1197.)

AMENDMENTS

1934—Act June 21, 1934, inserted ''in agreements'' after ''intended change'' in text, struck out provision formerly contained in text concerning changes requested by more than one class, and substituted ''Mediation Board'' for ''Board of Mediation'' wherever appearing.

WAGE AND SALARY ADJUSTMENTS

Ex. Ord. No. 9299, eff. Feb. 4, 1943, 8 F.R. 1669, provided procedure with respect to wage and salary adjustments for employees subject to this chapter.

§ 157. Arbitration

First. Submission of controversy to arbitration

Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in sections 151—156 of this title such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise.

Second. Manner of selecting board of arbitration

Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. Board of arbitration; organization; compensation; procedure

(a) Notice of selection or failure to select arbitrators

When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board; and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this chapter, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) Organization of board; procedure

The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however*, That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Duty to reconvene; questions considered

Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) Competency of arbitrators

No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Compensation and expenses

Each member of any board of arbitration created under the provisions of this chapter named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary

traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) Award; disposition of original and copies

The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however*, That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under subtitle IV of title 49.

(g) Compensation of assistants to board of arbitration; expenses; quarters

A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) Testimony before board; oaths; attendance of witnesses; production of documents; subpoenas; fees

All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he is, authorized, and it shall be his duty, to issue such subpoenas.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

(May 20, 1926, ch. 347, §7, 44 Stat. 582; June 21, 1934, ch. 691, §7, 48 Stat. 1197; Pub. L. 91–452, title II, §238, Oct. 15, 1970, 84 Stat. 930.)

CODIFICATION

In par. Third (f), ''subtitle IV of title 49'' substituted for ''the Interstate Commerce Act, as amended [49 U.S.C. 1 et seq.]'' on authority of Pub. L. 95–473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1970—Par. Third, (h). Pub. L. 91–452 struck out provisions authorizing board to invoke aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to same extent and under same conditions and penalties as provided for in the Interstate Commerce Act.

1934—Act June 21, 1934, substituted ''Mediation Board'' for ''Board of Mediation'' wherever appearing.

EFFECTIVE DATE OF 1970 AMENDMENT

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

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

WORK RULES DISPUTE

Pub. L. 88–108, Aug. 28, 1963, 77 Stat. 132, provided:

''[SEC. 1. Settlement of disputes]. That no carrier which served the notices of November 2, 1959, and no labor organizations which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any of such notices, or engage in any strike or lockout over any dispute arising from any of such notices. Any action heretofore taken which would be prohibited by the foregoing sentence shall be forthwith rescinded and the status existing immediately prior to such action restored.

''SEC. 2. [Arbitration board]. There is hereby established an arbitration board to consist of seven members. The representatives of the carrier and organization parties to the aforesaid dispute are hereby directed, respectively, within five days after the enactment hereof [Aug. 28, 1963] each to name two persons to serve as members of such arbitration board. The four members thus chosen shall select three additional members. The seven members shall then elect a chairman. If the members chosen by the parties shall fail to name one or more of the additional three members within ten days, such additional members shall be named by the President. If either party fails to name a member or members to the arbitration board within the five days provided, the President shall name such member or members in lieu of such party and shall also name the additional three members necessary to constitute a board of seven members, all within ten days after the date of enactment of this joint resolution [Aug. 28, 1963]. Notwithstanding any other provision of law, the National Mediation Board is authorized and di-

rected: (1) to compensate the arbitrators not named by the parties at a rate not in excess of $100 for each day together with necessary travel and subsistence expenses, and (2) to provide such services and facilities as may be necessary and appropriate in carrying out the purposes of this joint resolution.

''SEC. 3. [Decision of board]. Promptly upon the completion of the naming of the arbitration board the Secretary of Labor shall furnish to the board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, and the papers therewith submitted to the parties, together with memorandums and such other data as the board may request setting forth the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement. The arbitration board shall make a decision, pursuant to the procedures hereinafter set forth, as to what disposition shall be made of those portions of the carriers' notices of November 2, 1959, identified as 'Use of Firemen (Helpers) on Other Than Steam Power' and 'Consist of Road and Yard Crews' and that portion of the organizations' notices of September 7, 1960, identified as 'Minimum Safe Crew Consist' and implementing proposals pertaining thereto. The arbitration board shall incorporate in such decision any matters on which it finds the parties were in agreement, shall resolve the matters on which the parties were not in agreement, and shall, in making its award, give due consideration to those matters on which the parties were in tentative agreement. Such award shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration.

''SEC. 4. [Award]. To the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act [this section and section 158 of this title], the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act [section 159 of this title]. The United States District Court for the District of Columbia is hereby designated as the court in which the award is to be filed, and the arbitration board shall report to the National Mediation Board in the same manner as arbitration boards functioning pursuant to the Railway Labor Act [this chapter]. The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise.

''SEC. 5. [Hearings]. The arbitration board shall begin its hearings thirty days after the enactment of this joint resolution [Aug. 28, 1963] or on such earlier date as the parties to the dispute and the board may agree upon and shall make and file its award not later than ninety days after the enactment of this joint resolution [Aug. 28, 1963]: *Provided*, *however*, That said award shall not become effective until sixty days after the filing of the award.

''SEC. 6. [Collective bargaining for issues not arbitrated]. The parties to the disputes arising from the aforesaid notices shall immediately resume collective bargaining with respect to all issues raised in the notices of November 2, 1959, and September 7, 1960, not to be disposed of by arbitration under section 3 of this joint resolution and shall exert every reasonable effort to resolve such issues by agreement. The Secretary of Labor and the National Mediation Board are hereby directed to give all reasonable assistance to the parties and to engage in mediatory action directed toward promoting such agreement.

''SEC. 7. [Considerations affecting award; enforcement.]

''(a) In making any award under this joint resolution the arbitration board established under section 2 shall give due consideration to the effect of the proposed award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

''(b) The obligations imposed by this joint resolution, upon suit by the Attorney General, shall be enforcible through such orders as may be necessary by any court of the United States having jurisdiction of any of the parties.

''SEC. 8. [Expiration date]. This joint resolution shall expire one hundred and eighty days after the date of its enactment [Aug. 28, 1963], except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence.

''SEC. 9. [Separability]. If any provision of this joint resolution or the application thereof is held invalid, the remainder of this joint resolution and the application of such provision to other parties or in other circumstances not held invalid shall not be affected thereby.''

§ 158. Agreement to arbitrate; form and contents; signatures and acknowledgment; revocation

The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this chapter;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district

shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(*l*) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however*, That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this chapter, delivered to such board of arbitration.

(May 20, 1926, ch. 347, § 8, 44 Stat. 584; June 21, 1934, ch. 691, § 7, 48 Stat. 1197; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

As originally enacted, par. (d) contained a reference to the ''circuit court of appeals''. Act June 25, 1948, as amended by act May 24, 1949, substituted ''court of appeals'' for ''circuit court of appeals''.

AMENDMENTS

1934—Act June 21, 1934, substituted ''Mediation Board'' for ''Board of Mediation'' wherever appearing.

§ 159. Award and judgment thereon; effect of chapter on individual employee

First. Filing of award

The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. Conclusiveness of award; judgment

An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Impeachment of award; grounds

Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this chapter for such awards, or that the proceedings were not substantially in conformity with this chapter;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however*, That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this chapter: *Provided further*, That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. Effect of partial invalidity of award

If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however*, That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. Appeal; record

At the expiration of 10 days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said 10 days either party shall appeal therefrom to the court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. Finality of decision of court of appeals

The determination of said court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. Judgment where petitioner's contentions are sustained

If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Duty of employee to render service without consent; right to quit

Nothing in this chapter shall be construed to require an individual employee to render labor

or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

(May 20, 1926, ch. 347, § 9, 44 Stat. 585; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

As originally enacted, pars. Fifth and Sixth contained references to the ''circuit court of appeals''. Act June 25, 1948, as amended by act May 24, 1949, substituted ''court of appeals'' for ''circuit court of appeals''.

§ 159a. Special procedure for commuter service

(a) Applicability of provisions

Except as provided in section 590(h)[1] of this title, the provisions of this section shall apply to any dispute subject to this chapter between a publicly funded and publicly operated carrier providing rail commuter service (including the Amtrak Commuter Services Corporation) and its employees.

(b) Request for establishment of emergency board

If a dispute between the parties described in subsection (a) of this section is not adjusted under the foregoing provisions of this chapter and the President does not, under section 160 of this title, create an emergency board to investigate and report on such dispute, then any party to the dispute or the Governor of any State through which the service that is the subject of the dispute is operated may request the President to establish such an emergency board.

(c) Establishment of emergency board

(1) Upon the request of a party or a Governor under subsection (b) of this section, the President shall create an emergency board to investigate and report on the dispute in accordance with section 160 of this title. For purposes of this subsection, the period during which no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose shall be 120 days from the day of the creation of such emergency board.

(2) If the President, in his discretion, creates a board to investigate and report on a dispute between the parties described in subsection (a) of this section, the provisions of this section shall apply to the same extent as if such board had been created pursuant to paragraph (1) of this subsection.

(d) Public hearing by National Mediation Board upon failure of emergency board to effectuate settlement of dispute

Within 60 days after the creation of an emergency board under this section, if there has been no settlement between the parties, the National Mediation Board shall conduct a public hearing on the dispute at which each party shall appear and provide testimony setting forth the reasons it has not accepted the recommendations of the emergency board for settlement of the dispute.

(e) Establishment of second emergency board

If no settlement in the dispute is reached at the end of the 120-day period beginning on the date of the creation of the emergency board, any party to the dispute or the Governor of any State through which the service that is the subject of the dispute is operated may request the President to establish another emergency board, in which case the President shall establish such emergency board.

(f) Submission of final offers to second emergency board by parties

Within 30 days after creation of a board under subsection (e) of this section, the parties to the dispute shall submit to the board final offers for settlement of the dispute.

(g) Report of second emergency board

Within 30 days after the submission of final offers under subsection (f) of this section, the emergency board shall submit a report to the President setting forth its selection of the most reasonable offer.

(h) Maintenance of status quo during dispute period

From the time a request to establish a board is made under subsection (e) of this section until 60 days after such board makes its report under subsection (g) of this section, no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

(i) Work stoppages by employees subsequent to carrier offer selected; eligibility of employees for benefits

If the emergency board selects the final offer submitted by the carrier and, after the expiration of the 60-day period described in subsection (h) of this section, the employees of such carrier engage in any work stoppage arising out of the dispute, such employees shall not be eligible during the period of such work stoppage for benefits under the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

(j) Work stoppages by employees subsequent to employees offer selected; eligibility of employer for benefits

If the emergency board selects the final offer submitted by the employees and, after the expiration of the 60-day period described in subsection (h) of this section, the carrier refuses to accept the final offer submitted by the employees and the employees of such carrier engage in any work stoppage arising out of the dispute, the carrier shall not participate in any benefits of any agreement between carriers which is designed to provide benefits to such carriers during a work stoppage.

(May 20, 1926, ch. 347, § 9A, as added Pub. L. 97–35, title XI, § 1157, Aug. 13, 1981, 95 Stat. 681.)

REFERENCES IN TEXT

Section 590(h) of this title, referred to in subsec. (a), was repealed by Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379.

The Railroad Unemployment Insurance Act, referred to in subsec. (i), is act June 25, 1938, ch. 680, 52 Stat.

[1] See References in Text note below.

1094, as amended, which is classified principally to chapter 11 (§ 351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

EFFECTIVE DATE

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

§ 160. Emergency board

If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this chapter and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however*, That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

(May 20, 1926, ch. 347, § 10, 44 Stat. 586; June 21, 1934, ch. 691, § 7, 48 Stat. 1197.)

AMENDMENTS

1934—Act June 21, 1934, substituted ''Mediation Board'' for ''Board of Mediation'' wherever appearing.

§ 161. Effect of partial invalidity of chapter

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

(May 20, 1926, ch. 347, § 11, 44 Stat. 587.)

SEPARABILITY; REPEAL OF INCONSISTENT PROVISIONS

Section 8 of act June 21, 1934, provided that: ''If any section, subsection, sentence, clause, or phrase of this Act [amending sections 151 to 158, 160, and 162 of this title] is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.''

§ 162. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this chapter.

(May 20, 1926, ch. 347, § 12, 44 Stat. 587; June 21, 1934, ch. 691, § 7, 48 Stat. 1197.)

AMENDMENTS

1934—Act June 21, 1934, substituted ''Mediation Board'' for ''Board of Mediation''.

§ 163. Repeal of prior legislation; exception

Chapters 6 and 7 of this title, providing for mediation, conciliation, and arbitration, and all Acts and parts of Acts in conflict with the provisions of this chapter are repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office on May 20, 1926, shall receive their salaries for a period of 30 days from such date, in the same manner as though this chapter had not been passed.

(May 20, 1926, ch. 347, § 14, 44 Stat. 587.)

REFERENCES IN TEXT

Chapters 6 and 7 of this title, referred to in text, were in the original references to the act of July 15, 1913, and title III of the Transportation Act, 1920, respectively.

§ 164. Repealed. Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111

Section, act Feb. 11, 1927, ch. 104, § 1, 44 Stat. 1072, related to advertisements for proposals for purchases or services rendered for Board of Mediation, including arbitration boards. See section 5 of Title 41, Public Contracts.

SUBCHAPTER II—CARRIERS BY AIR

§ 181. Application of subchapter I to carriers by air

All of the provisions of subchapter I of this chapter except section 153 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

(May 20, 1926, ch. 347, § 201, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189.)

§ 182. Duties, penalties, benefits, and privileges of subchapter I applicable

The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of subchapter I of this chapter except section 153 of this title shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of ''carrier'' and ''employee'', respectively, in section 151 of this title.

(May 20, 1926, ch. 347, § 202, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189.)

§ 183. Disputes within jurisdiction of Mediation Board

The parties or either party to a dispute between an employee or a group of employees and a carrier or carriers by air may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board, as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The services of the Mediation Board may be invoked in a case under this subchapter in the same manner and to the same extent as are the disputes covered by section 155 of this title.

(May 20, 1926, ch. 347, § 203, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189.)

§ 184. System, group, or regional boards of adjustment

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936 before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this subchapter, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this chapter shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this subchapter, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

(May 20, 1926, ch. 347, § 204, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189.)

§ 185. National Air Transport Adjustment Board

When, in the judgment of the National Mediation Board, it shall be necessary to have a permanent national board of adjustment in order to provide for the prompt and orderly settlement of disputes between said carriers by air, or any of them, and its or their employees, growing out of grievances or out of the interpretation or application of agreements between said carriers by air or any of them, and any class or classes of its or their employees, covering rates of pay, rules, or working conditions, the National Mediation Board is empowered and directed, by its order duly made, published, and served, to direct the said carriers by air and such labor organizations of their employees, national in scope, as have been or may be recognized in accordance with the provisions of this chapter, to select and designate four representatives who shall constitute a board which shall be known as the ''National Air Transport Adjustment Board.'' Two members of said National Air Transport Adjustment Board shall be selected by said carriers by air and two members by the said labor organizations of the employees, within thirty days after the date of the order of the National Mediation Board, in the manner and by the procedure prescribed by section 153 of this title for the selection and designation of members of the National Railroad Adjustment Board. The National Air Transport Adjustment Board shall meet within forty days after the date of the order of the National Mediation Board directing the selection and designation of its members and shall organize and adopt rules for conducting its proceedings, in the manner prescribed in section 153 of this title. Vacancies in membership or office shall be filled, members shall be appointed in case of failure of the carriers or of labor organizations of the employees to select and designate representatives, members of the National Air Transport Adjustment Board shall be compensated, hearings shall be held, findings and awards made, stated, served, and enforced, and the number and compensation of any necessary assistants shall be determined and the compensation of such employees shall be paid, all in the same manner and to the same extent as provided with reference to the National Railroad Adjustment Board by section 153 of this title. The powers and duties prescribed and established by the provisions of section 153 of this title with reference to the National Railroad Adjustment Board and the several divisions thereof are conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Air Transport Adjustment Board, not exceeding, however, the jurisdiction conferred upon said National Air Transport Adjustment Board by the provisions of this subchapter. From and after the organization of the National Air Transport Adjustment Board, if any system, group, or regional board of adjustment established by any carrier or carriers by air and any class or classes of its or their employees is not satisfactory to either party thereto, the said party, upon ninety days' notice to the other party, may elect to come under the jurisdiction of the National Air Transport Adjustment Board.

(May 20, 1926, ch. 347, § 205, as added Apr. 10, 1936, ch. 166, 49 Stat. 1190.)

§ 186. Omitted

CODIFICATION

Section, act May 20, 1926, ch. 347, § 206, as added Apr. 10, 1936, ch. 166, 49 Stat. 1191, transferred certain pending cases before National Labor Relations Board to Mediation Board.

§ 187. Separability

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

(May 20, 1926, ch. 347, § 207, as added Apr. 10, 1936, ch. 166, 49 Stat. 1191.)

§ 188. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this chapter.

(May 20, 1926, ch. 347, § 208, as added Apr. 10, 1936, ch. 166, 49 Stat. 1191.)

CHAPTER 9—RETIREMENT OF RAILROAD EMPLOYEES

SUBCHAPTER I—RAILROAD RETIREMENT ACT OF 1934

Sec.
201 to 214. Omitted or Repealed.

SUBCHAPTER II—RAILROAD RETIREMENT ACT OF 1935

215 to 228. Omitted.

SUBCHAPTER III—RAILROAD RETIREMENT ACT OF 1937

228a to 228z–1. Omitted or Repealed.

SUBCHAPTER IV—RAILROAD RETIREMENT ACT OF 1974

231. Definitions.
231a. Annuity eligibility requirements.
231b. Computation of annuities.
231c. Computation of spouse and survivor annuities.
231d. Annuity beginning and ending dates.
231e. Lump sum payments.
231f. Railroad Retirement Board.
231f–1. Annual actuarial report.
231g. Court jurisdiction.
231h. Returns of compensation; conclusiveness.
231i. Erroneous payments.
231j. Waiver of annuities.
231k. Incompetence.
231*l*. Penalties.
231m. Assignability; exemption from levy.
231n. Railroad Retirement Account.
231n–1. Social Security Equivalent Benefit Account.
231*o*. Private pensions.
231p. Free transportation.
231q. Crediting service under Social Security Act.
231r. Automatic benefit eligibility requirement adjustments.
231s. Separability.
231t. Short title.
231u. Benefit preservation.
231v. Computation and certification of account benefit ratios.

SUBCHAPTER I—RAILROAD RETIREMENT ACT OF 1934

§§ 201 to 208. Omitted

CODIFICATION

Sections 201 to 208, sections 1 to 8, respectively, of act June 27, 1934, ch. 868, § 1, 48 Stat. 1283–1286, were omitted pursuant to the decision in the case of *Railroad Retirement Board v. Alton R. Co.* (Dist. of Col., 1935), 295 U.S. 330, 55 S.Ct. 758, 79 L.Ed. 1468, declaring this subchapter unconstitutional.

Section 201 defined terms for purposes of this subchapter.

Section 202 stated purposes of this subchapter and required a special report to be sent from the Railroad Retirement Board to the President.

Section 203 related to annuities paid under this subchapter.

Section 204 related to compulsory retirement.

Section 205 related to employee contributions.

Section 206 related to existing pension systems.

Section 207 related to employee representatives.

Section 208 related to retirement fund established under this subchapter.

Provisions relating to refund of sums paid by railroads and other carriers of the United States under this subchapter were contained in act June 1, 1938, ch. 315, §§ 1, 2, 52 Stat. 608.

§ 209. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 649

Section, act June 27, 1934, ch. 868, § 9, 48 Stat. 1287, established a Railroad Retirement Board and set out its functions.

§§ 210 to 214. Omitted

CODIFICATION

Sections 210 to 214, sections 10 to 14, respectively, of act June 27, 1934, ch. 868, § 10, 48 Stat. 1288, 1289, were omitted as unconstitutional. See section 201 of this title.

Section 210 related to jurisdiction of certain courts.

Section 211 related to exemption of annuities or death payments from legal process.

Section 212 related to penalties for missed payments by carriers and has been omitted from the Code as unconstitutional.

Section 213 related to certain other penalties.

Section 214 related to separability of provisions.

SUBCHAPTER II—RAILROAD RETIREMENT ACT OF 1935

CODIFICATION

This subchapter was comprised of act Aug. 29, 1935, ch. 812, §§ 1–14, 49 Stat. 967 to 973, known as the Railroad Retirement Act of 1935, and was amended in its entirety and completely revised by act June 24, 1937, ch. 382, 50 Stat. 307. The act, as amended and revised, was redesignated the Railroad Retirement Act of 1937 and was classified to subchapter III of this chapter. The Railroad Retirement Act of 1935 continued in effect with respect to individuals granted annuities prior to enactment of the Railroad Retirement Act of 1937. It was specifically amended by act June 11, 1940, ch. 307, § 2, 54 Stat. 264, and by act Aug. 13, 1940, ch. 664, §§ 2, 3, 54 Stat. 785.

§§ 215 to 228. Omitted

CODIFICATION

Sections 215 to 228 were omitted pursuant to the amendment and revision of act Aug. 29, 1935, ch. 812 by act June 24, 1937, ch. 382, 50 Stat. 307, known as the Railroad Retirement Act of 1937.

Section 215, acts Aug. 29, 1935, ch. 812, § 1, 49 Stat. 967; June 11, 1940, ch. 307, § 2, 54 Stat. 264; Aug. 13, 1940, ch.

664, §§2, 3, 54 Stat. 780, defined terms for purposes of this subchapter.

Section 216, act Aug. 29, 1935, ch. 812, §2, 49 Stat. 968, related to reductions in annuities of employees working beyond age sixty-five.

Section 217, act Aug. 29, 1935, ch. 812, §3, 49 Stat. 969, related to employees eligible for annuities under this subchapter.

Section 218, act Aug. 29, 1935, ch. 812, §4, 49 Stat. 969, related to annuities to representatives under this subchapter.

Section 219, act Aug. 29, 1935, ch. 812, §5, 49 Stat. 970, related to death payments under this subchapter.

Section 220, act Aug. 29, 1935, ch. 812, §6, 49 Stat. 970, related to establishment of Railroad Retirement Board.

Section 221, act Aug. 29, 1935, ch. 812, §7, 49 Stat. 971, related to issuance of a special report on retirement system by Board.

Section 222, act Aug. 29, 1935, ch. 812, §8, 49 Stat. 972, related to establishment of Investigation Commission.

Section 223, act Aug. 29, 1935, ch. 812, §9, 49 Stat. 973, related to court jurisdiction under this subchapter.

Section 224, act Aug. 29, 1935, ch. 812, §10, 49 Stat. 973, related to assignability of annuity payments.

Section 225, act Aug. 29, 1935, ch. 812, §11, 49 Stat. 973, related to penalties under this subchapter.

Section 226, act Aug. 29, 1935, ch. 812, §12, 49 Stat. 973, related to separability of provisions.

Section 227, act Aug. 29, 1935, ch. 812, §13, 49 Stat. 973, related to authorization of appropriations under this subchapter.

Section 228, act Aug. 29, 1935, ch. 812, §14, 49 Stat. 973, related to short title of this subchapter.

EFFECT OF AMENDMENTS TO SECTION 215 OF THIS TITLE

Act June 11, 1940, ch. 307, §2, 54 Stat. 264, provided that the amendment of section 215 of this title by act June 11, 1940, was to have the same effect as if it had been part of the Railroad Retirement Act of 1935 from its enactment on Aug. 29, 1935.

SHORT TITLE; CONTINUATION AND EFFECT OF RAILROAD RETIREMENT ACT OF 1935

Act June 24, 1937, ch. 382, §§201–205, 50 Stat. 318, 319, as amended by acts Oct. 8, 1940, ch. 757, title VI, pt. II, 54 Stat. 1014; Apr. 8, 1942, ch. 227, §10, 56 Stat. 207; Oct. 30, 1966, Pub. L. 89–700, title I, §111, 80 Stat. 1085, provided that act Aug. 29, 1935, ch. 812, §§1 to 14, 49 Stat. 967 to 973, comprising subchapter II of this chapter, as in effect prior to amendment by act June 24, 1937, was to be known as the Railroad Retirement Act of 1935 and that such act, as amended by act June 24, 1937, was to be known as the Railroad Retirement Act of 1937, set out transitional provisions for adjudication of claims under both the Railroad Retirement Acts of 1935 and 1937, and provided that the enactment of act June 24, 1937 was to have no effect on members of the Railroad Retirement Board in office on June 24, 1937, except that persons experienced in railroad service were to be retained in the employ of the Board, even if unqualified for service under the civil service law and rules, where the Board determined that they possessed the necessary qualifications.

SUBCHAPTER III—RAILROAD RETIREMENT ACT OF 1937

CODIFICATION

This subchapter was comprised of act Aug. 29, 1935, ch. 812, as restated by act June 24, 1937, ch. 382, 50 Stat. 307, known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended in its entirety and completely revised by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, effective Jan. 1, 1975. The act, as amended and revised by Pub. L. 93–445, was redesignated the Railroad Retirement Act of 1974 and is classified to subchapter IV of this chapter.

§§ 228a to 228c–1. Omitted

CODIFICATION

Sections 228a to 228c–1 were omitted pursuant to the amendment and revision of act Aug. 29, 1935, ch. 812, by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, known as the Railroad Retirement Act of 1974.

Section 228a, act Aug. 29, 1935, ch. 812, §1, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 307; amended June 11, 1940, ch. 307, §1, 54 Stat. 264; Aug. 13, 1940, ch. 664, §§1, 3, 54 Stat. 785, 786; Oct. 10, 1940, ch. 842, §25, 54 Stat. 1100; Apr. 8, 1942, ch. 227, §13, 56 Stat. 209; July 31, 1946, ch. 709, §§1, 2, 201 to 204, 60 Stat. 722, 725 to 727; Oct. 30, 1951, ch. 632, §1, 65 Stat. 683; July 18, 1952, ch. 945, §6(d)(1), 66 Stat. 777; Aug. 31, 1954, ch. 1164, pt. I, §1, 68 Stat. 1038; Sept. 1, 1954, ch. 1206, title IV, §401(a), 68 Stat. 1097; Aug. 1, 1956, ch. 836, title I, §120(a), 70 Stat. 836; Aug. 1, 1956, ch. 837, title IV, §408(c), 70 Stat. 877; Aug. 30, 1957, Pub. L. 85–238, §4(a), 71 Stat. 520; Aug. 28, 1958, Pub. L. 85–840, title VII, §703, 72 Stat. 1056; Sept. 13, 1960, Pub. L. 86–778, title VII, §708, 74 Stat. 997; June 30, 1961, Pub. L. 87–64, title III, §301, 75 Stat. 142; July 30, 1965, Pub. L. 89–97, title III, §326(a), 79 Stat. 400; Sept. 29, 1965, Pub. L. 89–212, §2(f), 79 Stat. 860; Oct. 30, 1966, Pub. L. 89–700, title I, §101, 80 Stat. 1079; Feb. 15, 1968, Pub. L. 90–257, title I, §101, 82 Stat. 16; Oct. 22, 1968, Pub. L. 90–624, §2, 82 Stat. 1316, defined terms for purposes of this subchapter. See section 231 of this title.

Section 228b, act Aug. 29, 1935, ch. 812, §2, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 309; amended July 31, 1946, ch. 709, §§205, 206, 60 Stat. 727, 728; Oct. 30, 1951, ch. 632, §§2, 3, 5, 65 Stat. 683; Aug. 31, 1954, ch. 1164, pt. I, §§2, 3, 68 Stat. 1038; Sept. 1, 1954, ch. 1206, title IV, §401(b), 68 Stat. 1097; Aug. 12, 1955, ch. 869, §1, 69 Stat. 715; May 19, 1959, Pub. L. 86–28, pt. I, §1, 73 Stat. 25; Sept. 22, 1961, Pub. L. 87–285, §§1, 2, 75 Stat. 585; Sept. 29, 1965, Pub. L. 89–212, §1, 79 Stat. 858; Oct. 30, 1966, Pub. L. 89–699, title II, §201(a), 80 Stat. 1075; Oct. 30, 1966, Pub. L. 89–700, title I, §102, 80 Stat. 1079; Feb. 15, 1968; Pub. L. 90–257, title I, §§102, 103, 82 Stat. 16; Aug. 12, 1970, Pub. L. 91–377, §2, 84 Stat. 791; July 2, 1971, Pub. L. 92–46, §2, 85 Stat. 101; Oct. 4, 1972, Pub. L. 92–460, §1(b), (c), 86 Stat. 765; July 10, 1973, Pub. L. 93–69, title I, §§101, 104(b), (c), 87 Stat. 162, 164, related to eligibility of individuals for annuities under this subchapter. See section 231a of this title.

Section 228c, act Aug. 29, 1935, ch. 812, §3, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 310; amended July 31, 1946, ch. 709, §§207–211, 60 Stat. 728, 729; June 23, 1948, ch. 608, §1, 62 Stat. 576; Oct. 30, 1951, ch. 632; §§6–10, 65 Stat. 684; June 16, 1954, ch. 300, §1, 68 Stat. 250; Aug. 31, 1954, ch. 1164, pt. I, §§4–7, 68 Stat. 1038, 1039; Aug. 7, 1956, ch. 1022, §1, 70 Stat. 1076; Sept. 6, 1958, Pub. L. 85–927, pt. I, §1, 72 Stat. 1778; May 19, 1959, Pub. L. 86–28, pt. I, §2, 73 Stat. 26; Sept. 13, 1960, Pub. L. 86–778, title II, §211(*o*)(1), 74 Stat. 958; Oct. 5, 1963, Pub. L. 88–133, title I, §§1, 2, 77 Stat. 219; Sept. 29, 1965, Pub. L. 89–212, §3(a), (b), 79 Stat. 860; Oct. 30, 1966, Pub. L. 89–699, title I, §1, title II, §201(b), (c), 80 Stat. 1073, 1075, 1076; Oct. 30, 1966, Pub. L. 89–700, title I, §103, title III, §301(i), (iv)(a), 80 Stat. 1080, 1088; Feb. 15, 1968, Pub. L. 90–257, title I, §104, 82 Stat. 17; Mar. 17, 1970, Pub. L. 91–215, §§1, 2, 84 Stat. 70; Aug. 12, 1970, Pub. L. 91–377, §1, 84 Stat. 791, July 2, 1971, Pub. L. 92–46, §1, 85 Stat. 101; Oct. 4, 1972, Pub. L. 92–460, §1(a), (d), 86 Stat. 765; July 6, 1973, Pub. L. 93–58, §1, 87 Stat. 141; July 10, 1973, Pub. L. 93–69, title I, §104(a), 87 Stat. 163; Oct. 16, 1974, Pub. L. 93–445, title VI, §601, 88 Stat. 1360, related to computation of annuities under this subchapter. See section 231b of this title.

Section 228c–1, act Aug. 29, 1935, ch. 812, §4, as restated June 24, 1937, ch. 382, pt. I, §1, as added Oct. 8, 1940, ch. 757, title VI, pt. II, §625, 54 Stat. 1014; amended Apr. 8, 1942, ch. 227, §§1–8, 56 Stat. 204–206; July 31, 1946, ch. 709, §212, 60 Stat. 729; Oct. 30, 1951, ch. 632, §4, 65 Stat. 683; Aug. 1, 1956, ch. 837, title IV, §408(a), (b), 70 Stat. 876; Oct. 5, 1963, Pub. L. 88–133, title I, §§3, 4, 77 Stat. 219; Oct. 30, 1966, Pub. L. 89–700, title I, §104, 80 Stat. 1081, related to consideration of time spent in

military service in computation of annuities. See section 228a of this title.

ANNUITIES, PENSIONS, AND JOINT AND SURVIVOR ANNUITY ELECTIONS

Act July 31, 1946, ch. 709, §§ 404–407, 60 Stat. 742, provided that the rights of persons to whom pensions or annuities were awarded before July 31, 1946 were to be governed by the applicable provisions of law in effect prior to that date, that the election of a joint and survivor annuity made before July 31, 1946, by a person to whom the annuity accrued before Jan. 1, 1947, was to be given effect as though the provisions of law under which the election was made had continued to be operative, that death payments under sections 219 and 228e of this title, other than survivor annuities pursuant to an election, were to be made only with respect to deaths occurring before Jan. 1, 1947, and that any person to whom an annuity accrued before Jan. 1, 1947, and who would as of the date of the initial accrual have been entitled to an annuity in a greater amount by reason of the amendments by act July 31, 1946, had such amendments been in effect at the date of initial accrual, was to be awarded the annuity in such greater amount without additional application therefor.

REDUCTION OF ANNUITY BECAUSE OF PRIOR DISABILITY ANNUITY TERMINATED BY RECOVERY

Act July 31, 1946, ch. 709, § 408, 60 Stat. 742, provided that no annuities accruing after July 1946 were to be reduced under section 228b(a)(3) of this title in order to compensate for an annuity terminated by recovery from a disability.

DUAL BENEFIT PROVISION; RETROACTIVE PAYMENT TO SURVIVORS

Act June 16, 1954, ch. 300, § 2, 68 Stat. 250, provided that in the case of a decedent dying before July 1, 1954, so much of any annuity or pension payment due such decedent under section 228c(b) of this title, was to be paid only to the widow or widower of the decedent, if living, or to the child or children of such decedent, in the alternative, if living.

PERCENTAGE ADJUSTMENT

Pub. L. 92–46, § 4, July 2, 1971, 85 Stat. 101, authorized the Railroad Retirement Board to make certain adjustments in allowance percentages under this subchapter, so that the percentages when applied against certain social security benefits, would result in amounts comparable to those in effect prior to the changes made by Pub. L. 92–5, Mar. 17, 1971, 85 Stat. 5, known as the Social Security Amendments of 1971.

RECERTIFICATIONS BY RAILROAD RETIREMENT BOARD

Pub. L. 93–69, § 106, July 10, 1973, 87 Stat. 165, provided that all recertifications required by reason of the amendments made by sections 104 and 105 of Pub. L. 93–69 were to be made by the Board without application therefor.

Pub. L. 92–460, § 3, Oct. 4, 1972, 86 Stat. 766, provided that all recertifications required by reason of the amendments made by Pub. L. 92–460 were to be made by the Board without application therefor.

Pub. L. 92–46, § 6, July 2, 1971, 85 Stat. 102, provided that all recertifications required by reason of the amendments made by Pub. L. 92–46 were to be made by the Board without application therefor.

Pub. L. 91–377, § 4(b)(2), Aug. 12, 1970, 84 Stat. 792, provided that all recertifications required by reason of the amendments made by Pub. L. 91–377 to sections 228b, 228c, 228e, and 228o of this title were to be made by the Board without application therefor.

Pub. L. 90–257, § 108(c), Feb. 15, 1968, 82 Stat. 23, provided that all recertifications required by reason of the amendments made by Pub. L. 90–257 to sections 228a, 228b, 228c, 228e, and 228j of this title were to be made by the Board without application therefor.

Pub. L. 89–699, § 202(b), Oct. 30, 1966, 80 Stat. 1077, provided that all recertifications required by reason of the amendments made by Pub. L. 89–699 were to be made by the Board without application therefor.

Pub. L. 86–28, § 6(b), Mar. 19, 1959, 73 Stat. 28, provided that all recertifications required by reason of the amendments made by Pub. L. 86–28 to sections 228b, 228c, 228e, 228s–1 and the enactment of section 228z–1 of this title were to be made by the Board without application therefor.

Act Oct. 30, 1951, ch. 632, § 25(j), 65 Stat. 691, provided that all recertifications by the Board under act Oct. 30, 1951 were to be made without applications therefor unless required by reason of section 9 of act Oct. 30, 1951, in which case, recertifications were to be made only upon application therefor in such manner and form as the Board was to prescribe.

Act June 23, 1948, ch. 608, § 3, 62 Stat. 577, provided in part that all recertifications required by reason of act June 23, 1948 were to be made by the Board without application therefor.

RESTRICTIONS ON ESTABLISHMENT OF NEW ANNUITIES AND USE OF CERTAIN LABOR TACTICS

Pub. L. 91–215, § 7, Mar. 17, 1970, 84 Stat. 72, placed certain limitations on the utilization of particular procedures established under the Railway Labor Act, section 151 et seq. of this title, when alterations in the provisions of this subchapter regarding certain annuity payments were being sought and placed similar limitations on the use of strikes and lockouts as labor practices when such changes were being sought.

§ 228d. Repealed. July 31, 1946, ch. 709, § 212, 60 Stat. 729

Section, act Aug. 29, 1935, ch. 812, § 4, as restated June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 311, related to joint and survivor annuity.

§§ 228e to 228z–1. Omitted

CODIFICATION

Sections 228e to 228z–1 were omitted pursuant to the amendment and revision of act Aug. 29, 1935, ch. 812, by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, known as the Railroad Retirement Act of 1974.

Section 228e, act Aug. 29, 1935, ch. 812, § 5, as restated June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 312; amended Apr. 8, 1942, ch. 227, § 12, 56 Stat. 208; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946; 11 F.R. 7873, 60 Stat. 1095; acts July 31, 1946, ch. 709, § 213, 60 Stat. 729; June 23, 1948, ch. 608, § 2, 62 Stat. 577; Oct. 30, 1951, ch. 632, §§ 11 to 23, 65 Stat. 685; July 18, 1952, ch. 945, § 6(d)(2), (3), 66 Stat. 777; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953 18 F.R. 2053, 67 Stat. 631; acts Aug. 31, 1954, ch. 1164, pt. I, §§ 8–14, 68 Stat. 1039; Sept. 1, 1954, ch. 1206, title I, § 106(f), title IV, § 401(b)–(d), 68 Stat. 1081, 1097; Aug. 12, 1955, ch. 869, §§ 2, 3, 69 Stat. 716; Aug. 1, 1956, ch. 836, title I, § 120(b), (c), 70 Stat. 836; Aug. 7, 1956, ch. 1022, § 2, 70 Stat. 1076; Aug. 30, 1957, Pub. L. 85–238, § 4(b), (c), 71 Stat. 520; Sept. 6, 1958, Pub. L. 85–927, § 2, 72 Stat. 1779; May 19, 1959, Pub. L. 86–28, pt. I, § 3, 73 Stat. 27; Sept. 13, 1960, Pub. L. 86–778, title II, § 211(*o*)(2), 74 Stat. 958; Sept. 22, 1961, Pub. L. 87–285, § 3, 75 Stat. 585; Oct. 5, 1963, Pub. L. 88–133, title I, §§ 5, 6, 77 Stat. 220; July 30, 1965, Pub. L. 89–97, title I, § 111(b)(2), title III, § 326(b), 79 Stat. 341, 400; Sept. 29, 1965, Pub. L. 89–212, § 3(c)–(e), 79 Stat. 860; Oct. 30, 1966, Pub. L. 89–699, title II, § 201(d)–(f), 80 Stat. 1076; Oct. 30, 1966, Pub. L. 89–700, title I, § 105, title III, § 301(i), (iv)(b), (c), 80 Stat. 1082, 1088; Jan. 2, 1968, Pub. L. 90–248, title I, § 151(d)(3), 81 Stat. 860; Feb. 15, 1968, Pub. L. 90–257, title I, § 105, 82 Stat. 19; Aug. 12, 1970, Pub. L. 91–377, § 3, 84 Stat. 791, July 2, 1971, Pub. L. 92–46, § 3, 85 Stat. 101; Oct. 4, 1972, Pub. L. 92–460, § 1(e), (f), 86 Stat. 766; July 6, 1973, Pub. L. 93–58, § 2, 87 Stat. 141; July 10, 1973, Pub. L. 93–69, title I, § 104(d), 87 Stat. 164, related to annuities and lump sum payments for survivors. See sections 231c and 231e of this title.

Section 228f, act Aug. 29, 1935, ch. 812, § 6, as restated June 24, 1937, ch. 382, pt. I, § 1, 50 Stat. 312, related to

pensions to individuals on pension or gratuity rolls of employers. See section 231*o* of this title.

Section 228g, act Aug. 29, 1935, ch. 812, §7, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 313, related to additional pensions or gratuities by employers. See section 231*o* of this title.

Section 228h, act Aug. 29, 1935, ch. 812, §8, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 313; amended July 31, 1946, ch. 709, §214, 60 Stat. 735; Oct. 30, 1966, Pub. L. 89–700, title I, §106, 80 Stat. 1085, related to filing of compensation returns by employers with Board. See section 231h of this title.

Section 228h–1, act Oct. 9, 1940, ch. 797, §4, 54 Stat. 1089, related to records of service and compensation prior to Jan. 1, 1937, was transferred to a note set out under section 228h of this title.

Section 228i, act Aug. 29, 1935, ch. 812, §9, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 314; amended Oct. 10, 1940, ch. 842, §26, 54 Stat. 1100; Oct. 30, 1966, Pub. L. 89–700, title I, §107, 80 Stat. 1085, related to erroneous payments by the Board. See section 231i of this title.

Section 228j, act Aug. 29, 1935, ch. 812, §10, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 314; amended 1940 Reorg. Plan No. III, §1(a), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; acts June 25, 1948, ch. 646, 19§§1, 32(b), 62 Stat. 875, 895, 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Oct. 15, 1949, ch. 695, §5(a), 63 Stat. 880; Aug. 12, 1955, ch. 869, §5, 69 Stat. 716; Sept. 6, 1958, Pub. L. 85–927, pt. I, §3, 72 Stat. 1781; Sept. 6, 1966, Pub. L. 89–554, §8(a), 80 Stat. 660; Oct. 30, 1966, Pub. L. 89–700, title I, §108, 80 Stat. 1085; Feb. 15, 1968, Pub. L. 90–257, title I, §106, 82 Stat. 21, related to establishment of Railroad Retirement Board. See section 231f of this title.

Section 228k, act Aug. 29, 1935, ch. 812, §11, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 315; amended July 31, 1946, ch. 709, §215, 60 Stat. 735, related to court jurisdiction under this subchapter. See section 231g of this title.

Section 228*l*, act Aug. 29, 1935, ch. 812, §12, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 316 and amended Aug. 12, 1955, ch. 869, §4, 69 Stat. 716, related to assignability of annuities and pension payments under this subchapter. See section 231m of this title.

Section 228m, act Aug. 29, 1935, ch. 812, §13, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 316; amended Sept. 6, 1958, Pub. L. 85–927, pt. I, §4, 72 Stat. 1781, related to penalties under this subchapter. See section 231*l* of this title.

Section 228n, act Aug. 29, 1935, ch. 812, §14, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 316, related to separability of provisions. See section 231s of this title.

Section 228*o*, act Aug. 29, 1935, ch. 812, §15, as restated June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 316; amended Sept. 22, 1959, Pub. L. 86–346, title I, §104(4), 73 Stat. 622; Oct. 5, 1963, Pub. L. 88–133, title I, §7(a), 77 Stat. 220; Oct. 30, 1966, Pub. L. 89–699, title I, §2, 80 Stat. 1074; Mar. 17, 1970, Pub. L. 91–215, §3, 84 Stat. 70; Aug. 12, 1970, Pub. L. 91–377, §5, 84 Stat. 792, related to establishment of Railroad Retirement Account. See section 231n of this title.

Section 228p, act Aug. 29, 1935, ch. 812, §16, as added June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 317, related to authorization of appropriations under this subchapter.

Section 228q, act Aug. 29, 1935, ch. 812, §17, as added June 24, 1937, ch. 382, pt. I, §1, 50 Stat. 317; amended Oct. 30, 1951, ch. 632, §24, 65 Stat. 690, defined ''employment'' as used in this subchapter. See section 231q of this title.

Section 228r, act Aug. 29, 1935, ch. 812, §18, as added June 24, 1917, ch. 382, pt. I, §1, 50 Stat. 318, related to free transportation. See section 231p of this title.

Section 228s, act Aug. 29, 1935, ch. 812, §19(a), (b), as added June 24, 1917, ch. 382, pt. I, §1, as added Apr. 8, 1942, ch. 227, §11, 56 Stat. 207, 208; amended Oct. 30, 1966, Pub. L. 89–700, title I, §109, 80 Stat. 1085, related to incompetence. See section 231k of this title.

Section 228s–1, act June 24, 1937, ch. 382, pt. I, §20, as added Aug. 31, 1954, ch. 1164, pt. I, §15, 68 Stat. 1040; amended May 19, 1959, Pub. L. 86–28, pt. I, §4, 73 Stat. 28; Aug. 29, 1959, Pub. L. 86–211, §8(c), 73 Stat. 436; Oct. 30, 1966, Pub. L. 89–700, title I, §110, 80 Stat. 1085, related to waiver of annuities and pensions under this subchapter. See section 231k of this title

Section 228s–2, act Aug. 29, 1935, ch. 812, §21, as added July 30, 1965, Pub. L. 89–97, title I, §105(a)(1), 79 Stat. 335; amended July 30, 1965, Pub. L. 89–97, title I, §111(b)(1), 79 Stat. 340; Jan. 2, 1968, Pub. L. 90–248, title I, §129(c)(13), 81 Stat. 849, related to hospital insurance benefits for the aged. See section 231f of this title.

Section 228s–3, act Aug. 29, 1935, ch. 812, §22, as added Oct. 30, 1972, Pub. L. 92–603, title II, §201(d), 86 Stat. 1373, related to hospital insurance benefits for the disabled. See section 231f of this title.

Section 228t, act Oct. 30, 1951, ch. 632, §25(d), 65 Stat. 690, related to certain retirement or survivor annuities awarded prior to Oct. 30, 1951.

Section 228u, act Oct. 30, 1951, ch. 632, §25(e), 65 Stat. 690, related to determination of entitlement to a survivor annuity.

Section 228v, act Oct. 30, 1951, ch. 632, §25(f), 65 Stat. 691, related to law governing the awards of annuities.

Section 228w, act Oct. 30, 1951, ch. 632, §25(g), 65 Stat. 691, related to increased pensions after Nov. 30, 1961.

Section 228x, act Oct. 30, 1951, ch. 632, §25(h), 65 Stat. 691, related to increased annuities under subchapter II of this chapter.

Section 228y, act Oct. 30, 1951, ch. 632, §25(i), 65 Stat. 691, related to certain reduced annuities.

Section 228z, act Aug. 7, 1956, ch. 1022, §3, 70 Stat. 1076, related to increased pensions and annuities awarded before July 1, 1956 and annuities under subchapter II of this chapter.

Section 228z–1, Pub. L. 86–28, pt. I, §5, May 19, 1959, 73 Stat. 28, related to additional increases in certain pensions and annuities.

ACTUARIAL SOUNDNESS OF THE RAILROAD RETIREMENT SYSTEM

Pub. L. 93–69, title I, §107, July 10, 1973, 87 Stat. 165, authorized certain designated representatives of employees and representatives of carriers to submit to the Senate Committee on Labor and Public Welfare and the House Committee on Interstate and Foreign Commerce, no later than Apr. 1, 1974, a report containing their recommendations for restructuring the railroad retirement system to assure long-term actuarial soundness.

ADOPTED CHILD'S REENTITLEMENT TO ANNUITY

Pub. L. 93–58, §4(b), July 6, 1973, 87 Stat. 141, provided that any child whose entitlement to an annuity under section 228e(c) of this title was terminated by reason of his or her adoption prior to July 6, 1973, and who otherwise would have been entitled to an annuity under such section for a month after July, 1973, could become reentitled to his or her annuity by proper application.

CERTAIN PERSONS BECOMING EMPLOYERS

Act July 31, 1946, ch. 709, §409, 60 Stat. 743, provided that in the application of section 228f of this title with respect to persons who were not employers before the enactment of act July 31, 1946, the dates Jan. 1, 1946, and Jan. 1, 1947, were to be substituted for Mar. 1, 1937 and July 1, 1937, respectively.

COMMISSION ON RAILROAD RETIREMENT

Pub. L. 91–377, §7, Aug. 12, 1970, 84 Stat. 792, as amended by Pub. L. 92–46, §7, July 2, 1971, 85 Stat. 102, established a commission on railroad retirement, prescribed its composition, designated the rates of pay for its members, authorized a study of the retirement system and its financing, authorized appropriations for funding the expenses of the commission, and required that the commission submit a full report on its work no later than June 30, 1972.

CONGRESSIONAL DECLARATION OF 1974 LEGISLATIVE INTENT

Pub. L. 93–69, title I, §108, July 10, 1973, 87 Stat. 165, provided that the Congress declared its intent to enact

legislation in 1974, effective not later than Jan. 1, 1975, which would assure the long-term actuarial soundness of the railroad retirement system.

CONVERSION OF SPECIAL OBLIGATIONS IN RAILROAD RETIREMENT ACCOUNT ON OCT. 5, 1963; INTEREST RATE

Pub. L. 88–133, § 7(b), Oct. 5, 1963, 77 Stat. 220, provided that: ''The Secretary of the Treasury is authorized to retire the special obligations held by the account on the date of enactment of this Act [Oct. 5, 1963] and to issue in lieu thereof special obligations with an interest rate determined as provided for in section 15(b) of the Railroad Retirement Act of 1937, as amended by this Act [Pub. L. 88–133].''

DETERMINATION OF AMOUNTS OF SOCIAL SECURITY BENEFITS

Pub. L. 91–377, § 4(c), Aug. 12, 1970, 84 Stat. 792, provided that the amount by which a social security benefit computed under Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, known as the Social Security Amendments of 1967, for purposes of Pub. L. 91–377, was to be deemed to be an amount equal to 87 per cent of such benefit computed under Pub. L. 91–172, title X, Dec. 30, 1969, 83 Stat. 737, known as the Social Security Amendments of 1969, and the amount by which an individual's social security benefit was increased by reason of the Social Security Amendments of 1969 was to be deemed to be 13 per cent of such individual's social security benefit as computed under the Social Security Amendments of 1969.

ENTITLEMENT TO ANNUITY OR PENSION UNDER RAILROAD RETIREMENT ACT OF 1937 AS INCLUDING ENTITLEMENT UNDER RAILROAD RETIREMENT ACT OF 1935

Pub. L. 89–97, title I, § 105(a)(2), July 30, 1965, 79 Stat. 335, provided that for purposes of section 21 of the Railroad Retirement Act of 1937, section 21 of act Aug. 29, 1935, as added by section 105(a)(1) of Pub. L. 89–97, and for certain other purposes, entitlement to an annuity or pension under this subchapter was to be deemed to include entitlement under subchapter II of this chapter.

HOSPITAL INSURANCE BENEFITS FOR THE AGED

Act Aug. 29, 1935, ch. 812, § 21, as added July 30, 1965, Pub. L. 89–97, title I, § 105(a)(1), 79 Stat. 335, required the Railroad Retirement Board to certify to the Secretary of Health, Education, and Welfare, in order to provide hospital insurance benefits for annuitants, pensioners, and certain other aged individuals for purposes of the Social Security program, the name of anyone aged 65 who was entitled to an annuity or pension under this subchapter, would have been so entitled had he ceased compensated service and had applied for such annuity, or bore a particular relationship to certain qualified employees, and specified such additional information as such certification was to include.

INCREASES IN CERTAIN PENSIONS AND ANNUITIES

Pub. L. 93–69, title I, § 105, July 10, 1973, 87 Stat. 164, provided that if title II of the Social Security Act, section 401 et seq. of Title 42, The Public Health and Welfare, was amended to provide an increase in benefits at any time during the period July 1, 1973 to Dec. 31, 1974, the pension of each recipient under section 228f of this title and the annuity of each recipient under this subchapter was to be increased by an amount computed under the method set forth in section 228c(a)(6) of this title.

Pub. L. 92–460, § 2 Sept. 4, 1972, 86 Stat. 766, provided for 20 per cent increases in pensions under section 228f of this title, annuities under subchapter II of this chapter, certain survivor annuities, and certain widows' and widowers' insurance annuities.

Pub. L. 92–46, § 5, July 2, 1971, 85 Stat. 101, provided for 10 per cent increases in pensions under section 228f of this title, annuities under subchapter II of this chapter, certain survivor annuities, and certain widows' and widowers' insurance annuities.

Pub. L. 91–377, § 4(b)(1), Aug. 12, 1970, 84 Stat. 792, provided for 15 per cent increases in pensions under section 228f of this title, annuities under subchapter II of this chapter, certain survivor annuities, and certain widows' and widowers' insurance annuities, provided that there would be a reduction in the amount of the increase where the recipient was also a recipient of certain social security benefits.

Pub. L. 90–257, § 107, Feb. 15, 1968, 82 Stat. 22, provided for certain increases in pensions under section 228f of this title, annuities under subchapter II of this chapter, survivor annuities and widows' and widowers' insurance annuities, provided that there would be a reduction in the amount of the increase where the recipient was also a recipient of certain social security benefits.

Pub. L. 89–699, § 201(g), Oct. 30, 1966, 80 Stat. 1077, provided for 7 per cent increases in pensions under section 228f of this title, annuities under subchapter II of this chapter, certain survivor annuities, and certain widows' and widowers' insurance annuities, provided that there would be a reduction in the amount of the increase where the recipient was also a recipient of certain social security benefits.

PERMANENCY OF INCREASES IN CERTAIN PENSIONS AND ANNUITIES

Pub. L. 92–460, § 6, Sept. 4, 1972, 86 Stat. 767, provided that it was the policy of Congress that the 20 per cent increase in pension and annuity benefits provided by section 2 of Pub. L. 92–460, as well as the 10 per cent and 15 per cent increases provided by section 5 of Pub. L. 92–46 and section 4(b)(1) of Pub. L. 91–377, respectively, could become permanent only if measures were taken to assure that the Railroad Retirement Account would remain solvent, and required representatives of employees, retirees, and carriers to submit to Congress reports containing their recommendations for such solvency measures no later than Mar. 1, 1973, and required the Railroad Retirement Board to submit its solvency recommendations to Congress no later than Apr. 1, 1973.

PRESUMPTION OF HIGHER INCREASES IN ANNUITIES

Pub. L. 90–257, § 108(b), Feb. 15, 1968, 82 Stat. 23, provided that in cases where an annuity was payable in the month before the month with respect to which increases in benefits under title II of the Social Security Act, sections 401 et seq. of Title 42, The Public Health and Welfare, provided for by Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, known as the Social Security Amendments of 1967, became effective in an amount determined under this subchapter, other than under the first proviso of section 228c(e) of this title, the provisions of Pub. L. 90–257 were to be presumed to provide a higher amount of increase in annuity than the provisions of the Social Security Amendments of 1967 would provide under the first proviso of section 228c(e) of this title.

RAILROAD RETIREMENT AND OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE SYSTEM

Pub. L. 89–97, § 105(c), July 30, 1965, 79 Stat. 336, provided that amendments preserving the relationship between the railroad retirement and old-age, survivors, and disability insurance systems were contained in section 326 of Pub. L. 89–97, which amended sections 228 and 228e of this title.

TRANSFER OF FUNDS FOR PAYMENT OF SUPPLEMENTAL ANNUITIES

Pub. L. 91–215, § 6, Mar. 17, 1970, 84 Stat. 71, authorized the Railroad Retirement Board to request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the Railroad Retirement Supplemental Account such funds as were necessary to meet the payment of the supplemental annuities pursuant to section 228c(j) of this title, as well as the administrative expenses necessarily involved for the six months following Mar. 17, 1970, and required the Board to request the return of an equal amount plus interest to the Railroad Retirement Account from the Supplemental Account within one year from Mar. 17, 1970.

Pub. L. 89–699, § 3(b), Oct. 30, 1966, 80 Stat. 1075, authorized the Railroad Retirement Board to request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the Railroad Retirement Supplemental Account such funds as were necessary to meet the payment of the supplemental annuities pursuant to section 228c(j) of this title, as well as the administrative expenses necessarily involved for the six months following Oct. 30, 1966, and required the Board to request the return of an equal amount plus interest to the Railroad Retirement Account from the Supplemental Account within one year from Oct. 30, 1966.

SUBCHAPTER IV—RAILROAD RETIREMENT ACT OF 1974

CODIFICATION

This subchapter is comprised of act Aug. 29, 1935, ch. 812, as amended in its entirety and completely revised by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and as further amended in its entirety and completely revised by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, eff. Jan. 1, 1975. The Act, as restated by Pub. L. 93–445, was redesignated the Railroad Retirement Act of 1974. See section 231t of this title. The Act is set out in this subchapter carrying a statutory credit showing restatement by act June 24, 1937 and a further restatement by Pub. L. 93–445 without reference to amendments made to the Act between its original enactment in 1935 and 1974. For history of the Act, credits, and note material, see subchapters II and III of this chapter.

§ 231. Definitions

For the purposes of this subchapter—

(a)(1) The term ''employer'' shall include—

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

(iii) any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in paragraph (i) or (ii) of this subdivision;

(iv) any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency and any other association, bureau, agency, or organization which is controlled and maintained wholly or principally by two or more employers as defined in paragraph (i), (ii), or (iii) of this subdivision and which is engaged in the performance of services in connection with or incidental to railroad transportation; and

(v) any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act, as amended [45 U.S.C. 151 et seq.], and its State and National legislative committees, general committees, insurance departments, and local lodges and divisions, established pursuant to the constitution or bylaws of such organization.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, the term ''employer'' shall not include—

(i) any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities, and

(ii) any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general diesel-railroad system of transportation, but shall not exclude any part of the general diesel-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is hereby authorized and directed upon request of the Railroad Retirement Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this paragraph.

(b)(1) The term ''employee'' means (i) any individual in the service of one or more employers for compensation, (ii) any individual who is in the employment relation to one or more employers, and (iii) an employee representative: *Provided, however*, That the term ''employee'' shall include an employee of a local lodge or division defined as an employer in subsection (a) of this section only if he was in the service of or in the employment relation to an employer as defined in paragraph (i) of subsection (a)(1) of this section on or after August 29, 1935.

(2) The term ''employee'' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) The term ''employee representative'' means any officer or official representative of a railway labor organization other than a labor organization included in the term ''employer'' as defined in subsection (a) of this section who before or after August 29, 1935, was in the service of an employer as defined in subsection (a) of this section and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended [45 U.S.C. 151 et seq.], and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d)(1) An individual is in the service of an employer whether his service is rendered within or without the United States if—

(i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and

(ii) he renders such service for compensation, or a method of computing the monthly compensation for such service is provided in section 231b(j) of this title.

(2) Notwithstanding the provisions of subdivision (1) of this subsection—

(i) an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States;

(ii) an individual shall be deemed to be in the service of a local lodge or division of a railway-labor-organization employer not conducting the principal part of its business in the United States only if (A) all, or substantially all, the individuals constituting the membership of such local lodge or division are employees of an employer conducting the principal part of its business in the United States; or (B) the headquarters of such local lodge or division is located in the United States; and

(iii) an individual shall be deemed to be in the service of a general committee of a railway-labor-organization employer not conducting the principal part of its business in the United States only if (A) he is representing a local lodge or division described in clause (A) or (B) of paragraph (ii); or (B) all, or substantially all, the individuals represented by such general committee are employees of an employer conducting the principal part of its business in the United States; or (C) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof. For purposes of this subdivision, the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e)(1) An individual shall be deemed to have been in the employment relation to an employer on August 29, 1935, if—

(i) he was on that date on leave of absence from his employment, expressly granted to him by the employer by whom he was employed, or by a duly authorized representative of such employer, and the grant of such leave of absence will have been established to the satisfaction of the Board before July 1947;

(ii) he was in the service of an employer after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive;

(iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last employer by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such employer and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (B) solely for such last stated reason an employer by whom he was employed before August 29, 1935, or an employer who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in paragraph (ii); or

(iv) he was on August 29, 1935, absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the employer, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his senority[1] rights.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, an individual shall not be deemed to have been in the employment relation to an employer on August 29, 1935, if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 [45 U.S.C. 228f], or if during the last payroll period before August 29, 1935, in which he rendered service to an employer he was not in the service of an employer, in accordance with subsection (d) of this section, with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a) of this section.

(f)(1) The term ''years of service'' shall mean the number of years an individual as an employee shall have rendered service to one or more employers for compensation or received remuneration for time lost, and shall be computed in accordance with the provisions of sec-

[1] So in original. Probably should be ''seniority''.

tion 231b(i) of this title. Twelve calendar months, consecutive or otherwise, in each of which an employee has rendered such service or received such wages for time lost, shall constitute a year of service. Ultimate fractions shall be taken at their actual value.

(2) Where service prior to August 29, 1935, may be included in the computation of years of service as provided in subdivision (3) of section 231b(i) of this title, it may be included as to—

(i) service rendered to a person which was an employer on August 29, 1935, irrespective of whether such person was an employer at the time such service was rendered;

(ii) service rendered to any express company, sleeping-car company, or carrier by railroad which was a predecessor of a company which, on August 29, 1935, was an employer as defined in paragraph (i) of subsection (a)(1) of this section, irrespective of whether such predecessor was an employer at the time such service was rendered; and

(iii) service rendered to a person not an employer in the performance of operations involving the use of standard railroad equipment if such operations were performed by an employer on August 29, 1935.

(g)(1) For purposes of section 231b(i)(2) of this title, an individual shall be deemed to have been in ''military service'' when commissioned or enrolled in the active service of the land or naval forces of the United States and until resignation or discharge therefrom; and the service of any individual in any reserve component of the land or naval forces of the United States, while serving in the land or naval forces of the United States for any period, even though less than thirty days, shall be deemed to have been active service in such force during such period.

(2) For purposes of section 231b(i)(2) of this title, a ''war service period'' shall mean (A) any war period, or (B) with respect to any particular individual, any period during which such individual (i) having been in military service at the end of a war period, was required to continue in military service, or (ii) was required by call of the President, or by any Act of Congress or regulation, order, or proclamation pursuant thereto, to enter and continue in military service, or (C) any period after September 7, 1939, with respect to which a state of national emergency was duly declared to exist which requires a strengthening of the national defense. For purposes of section 231b(i)(2) of this title, the period beginning on June 15, 1948, and ending on December 15, 1950, shall be deemed to be a war service period with respect to any individual who without intervening employment not covered by this subchapter rendered service as an employee to an employer under this subchapter in the year such individual was released from active military service or in the year immediately following such year.

(3) For purposes of section 231b(i)(2) of this title, a ''war period'' shall be deemed to have begun on whichever of the following dates is the earliest: (A) the date on which the Congress of the United States declared war; or (B) the date as of which the Congress of the United States declared that a state of war has existed; or (C) the date on which war was declared by one or more foreign states against the United States; or (D) the date on which any part of the United States or any territory under its jurisdiction was invaded or attacked by any armed force of one or more foreign states; or (E) the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government.

(4) For purposes of section 231b(i)(2) of this title, a ''war period'' shall be deemed to have ended on the date on which hostilities ceased.

(h)(1) The term ''compensation'' means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or if the employee establishes, subject to the provisions of section 231h of this title, the period during which such compensation will have been earned.

(2) An employee shall be deemed to be paid ''for time lost'' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

(3) Solely for purposes of determining amounts to be included in the compensation of an employee, the term ''compensation'' shall also include cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(4) Tips included as compensation by reason of the provisions of subdivision (3) shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1986 [26 U.S.C. 6053(a)] or, if no statement including such tips is so furnished, at the time received. Tips so deemed to be paid in any

month shall be deemed paid for services rendered in such month.

(5) In determining compensation, there shall be attributable as compensation paid to an employee in calendar months in which he is in military service creditable under section 231b(i)(2) of this title, in addition to any other compensation paid to him with respect to such months—

(i) for each such calendar month prior to 1968, $160;

(ii) for each such calendar month after 1967 and prior to 1975, $260; and

(iii) for each such calendar month after 1974, the amount which is creditable as such individual's ''wages'' under section 209(d) of the Social Security Act [42 U.S.C. 409(d)].

(6) Notwithstanding the provisions of the preceding subdivisions of this subsection, the term ''compensation'' shall not include—

(i) tips, except as is provided under subdivision (3) of this subsection;

(ii) remuneration for service which is performed by a non-resident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 1101(a)(15) of title 8, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be;

(iii) remuneration earned in the service of a local lodge or division of a railway-labor-organization employer with respect to any calendar month in which the amount of such remuneration is less than $25;

(iv) remuneration for service as a delegate to a national or international convention of a railway-labor-organization employer if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his ''years of service;''

(v) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability; and

(vi) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

(7) The term ''compensation'' includes any separation allowance or subsistence allowance paid under any benefit schedule provided under section 701 of title VII of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797][2] and any termination allowance paid under section 702 of that Act [45 U.S.C. 797a], but does not include any other benefits payable under that title [45 U.S.C. 797 et seq.]. The total amount of any subsistence allowance paid under a benefit schedule provided pursuant to section 701 of the Regional Rail Reorganization Act of 1973 shall be considered as having been earned in the month in which the employee first timely filed a claim for such an allowance.

(8) Notwithstanding any other provision of this subchapter, for the purposes of sections 231b(a)(1), 231c(a)(1), and 231c(f)(1) of this title, the term ''compensation'' includes any payment from any source to an employee or employee representative if such payment is subject to tax under section 3201 or 3211 of the Internal Revenue Code of 1986 [26 U.S.C. 3201, 3211].

(i) The term ''Board'' means the Railroad Retirement Board.

(j) The term ''company'' includes corporations, associations, and joint-stock companies.

(k) The term ''employee'' includes an officer of an employer.

(*l*) The term ''person'' means an individual, a partnership, an association, a joint-stock company, a corporation, or the United States or any other governmental body.

(m) The term ''United States,'' when used in a geographical sense, means the States and the District of Columbia.

(n) The term ''Social Security Act'' means the Social Security Act as amended [42 U.S.C. 301 et seq.] from time to time.

(*o*) An individual shall be deemed to have ''a current connection with the railroad industry'' at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under this subchapter begins to accrue to him, or the month in which he dies if that first occurs, he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer or employment with the Department of Transportation, the Interstate Commerce Commission, the Surface Transportation Board, the National Mediation Board, the National Transportation Safety Board, the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982 [45 U.S.C. 1201 et seq.]), so long as it is an instrumentality of the State of Alaska, or the Railroad Retirement Board in the period before such month and after the end of such thirty months. For purposes of section 231a(b) of this title and section 231a(d) of this title only, an individual shall be deemed also to have ''a current connection with the railroad industry'' if, after having completed twenty-five years of service, such individual involuntarily and without fault ceased rendering service as an employee under this subchapter and did not thereafter decline an offer of employment in the same class or craft as the individual's most recent employee service. For

[2] See References in Text note below.

purposes of section 231a(d) of this title only, an individual shall be deemed to have a ''current connection with the railroad industry'' if a pension will have been payable to that individual under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] or a retirement annuity based on service of not less than 10 years (as computed in awarding the annuity) will have begun to accrue to that individual prior to 1948 under the Railroad Retirement Act of 1937. For the purposes of section 231a(d) of this title only, an individual shall be deemed also to have a ''current connection with the railroad industry'' if he will have completed ten years of service and (A) he would be neither fully nor currently insured under the Social Security Act [42 U.S.C. 301 et seq.] if his service as an employee after December 31, 1936, were included in the term ''employment'' as defined in that Act, or (B) he has no quarters of coverage under the Social Security Act.

(p) The term ''annuity'' means a monthly sum which is payable on the first day of each calendar month for the accrual during the preceding calendar month.

(q) The terms ''quarter'' and ''calendar quarter'' shall mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(r) For purposes of this subchapter, a person shall be considered to be permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] on December 31, 1974, if he or she would be fully insured within the meaning of section 214(a) of that Act [42 U.S.C. 414(a)] when he or she attains age 62 solely on the basis of his or her quarters of coverage under that Act acquired prior to January 1, 1975.

(Aug. 29, 1935, ch. 812, §1, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305; amended Pub. L. 94–547, §4(a), Oct. 18, 1976, 90 Stat. 2526; Pub. L. 97–35, title XI, §1116, Aug. 13, 1981, 95 Stat. 628; Pub. L. 97–468, title VI, §615(b)(6), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98–76, title IV, §§402(a), 403(a), 410(a), Aug. 12, 1983, 97 Stat. 434, 435; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VII, §7304(a), Nov. 10, 1988, 102 Stat. 3778; Pub. L. 101–239, title X, §10208(d)(2)(B)(ii), Dec. 19, 1989, 103 Stat. 2481; Pub. L. 104–88, title III, §323, Dec. 29, 1995, 109 Stat. 950.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsecs. (a)(1)(v) and (c), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

Section 6 of the Railroad Retirement Act of 1937, referred to in subsec. (e)(2), which was classified to section 228f of this title, has been omitted from the Code.

The Regional Rail Reorganization Act of 1973, referred to in subsec. (h)(7), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended. Section 701 of title VII of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] was repealed by Pub. L. 99–509, title IV, §4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987). Title VII of the Regional Rail Reorganization Act of 1973 is classified generally to subchapter VII (§797 et seq.) of chapter 16 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The Social Security Act, referred to in subsecs. (n), (*o*), and (r), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Alaska Railroad Transfer Act of 1982, referred to in subsec. (*o*), is Pub. L. 97–468, title VI, §601 et seq., Jan 14, 1983, 96 Stat. 2556, as amended, which is classified principally to chapter 21 (§1201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of this title and Tables.

The Railroad Retirement Act of 1937, referred to in subsec. (*o*), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, which is classified principally to subchapter III (§228a et seq.) of this chapter. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to this subchapter. For complete classification of these Acts to the Code, see Tables.

AMENDMENTS

1995—Subsec. (a)(1)(i). Pub. L. 104–88, §323(1), added cl. (i) and struck out former cl. (i) which read as follows: ''any express company, sleeping car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;''.

Subsec. (a)(2)(ii). Pub. L. 104–88, §323(2), substituted ''Surface Transportation Board is hereby authorized and directed upon request of the Railroad Retirement Board'' for ''Interstate Commerce Commission is hereby authorized and directed upon request of the Board''.

Subsec. (*o*). Pub. L. 104–88, §323(3), inserted ''the Surface Transportation Board,'' after ''the Interstate Commerce Commission,''.

1989—Subsec. (h)(5)(iii). Pub. L. 101–239 substituted ''section 209(d)'' for ''the third paragraph of section 209''.

1988—Subsec. (g)(2). Pub. L. 100–647 inserted provision designating the period beginning on June 15, 1948, and ending on Dec. 15, 1950, as a war service period with respect to certain individuals.

1986—Subsec. (h)(4), (8). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1983—Subsec. (h)(6). Pub. L. 98–76, §402(a), struck out cl. (ii) which provided that term ''compensation'' would not include the voluntary payment by an employee, without deduction from the remuneration of the employee, of any tax not now or thereafter imposed with respect to the compensation of such employee, and redesignated cls. (iii) to (vii) as (ii) to (vi), respectively.

Subsec. (h)(7). Pub. L. 98–76, §403(a), added par. (7).

Subsec. (h)(8). Pub. L. 98–76, §410(a), added par. (8).

Subsec. (*o*). Pub. L. 97–468 inserted ''the State-owned railroad (as defined in the Alaska Railroad Transfer Act of 1982 [45 U.S.C. 1201 et seq.]), so long as it is an instrumentality of the State of Alaska,'' after ''National Transportation Safety Board,''.

1981—Subsec. (f)(1). Pub. L. 97–35, §1116(a), substituted ''Ultimate fractions shall be taken at their actual value'' for ''Ultimate fractions shall be taken at their actual value, except that if the individual will have had not less than one hundred twenty-six months of service, an ultimate fraction of six months or more shall be taken as one year''.

Subsec. (*o*). Pub. L. 97–35, §1116(b)(2), inserted after first sentence ''For purposes of section 231a(b) of this title and section 231a(d) of this title only, an individual shall be deemed also to have 'a current connection with the railroad industry' if, after having completed twenty-five years of service, such individual involuntarily and without fault ceased rendering service as an employee under this subchapter and did not thereafter decline an offer of employment in the same class or craft as the individual's most recent employee service. For

purposes of section 231a(d) of this title only, an individual shall be deemed to have a 'current connection with the railroad industry' if a pension will have been payable to that individual under the Railroad Retirement Act of 1937 or a retirement annuity based on service of not less than 10 years (as computed in awarding the annuity) will have begun to accrue to that individual prior to 1948 under the Railroad Retirement Act of 1937.''

Pub. L. 97–35, §1116(b)(1), inserted reference to National Transportation Safety Board.

1976—Subsec. (h)(6)(vi), (vii). Pub. L. 94–547 added pars. (vi) and (vii).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7304(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply with respect to annuities accruing in months after the date of enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 402(c) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section and section 351 of this title] shall apply to compensation paid for services rendered after June 30, 1983.''

Section 403(c) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section and section 351 of this title] shall be effective August 13, 1981.''

Section 410(b) of Pub. L. 98–76 provided that: ''The amendment made by this section [amending this section] shall apply with respect to payments made on or after January 1, 1982.''

Amendment by Pub. L. 97–468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title, see section 615(b) of Pub. L. 97–468.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1129 of Pub. L. 97–35, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) Except as otherwise provided in this section, the amendments made by this subtitle [subtitle D (§§1116–1129 of title XI of Pub. L. 97–35, enacting section 231u of this title, amending this section and sections 231a to 231f, 231i, 231n, 231q, 355, and 358 of this title, and enacting provisions set out as a note under section 231n of this title] shall take effect October 1, 1981, and shall apply only with respect to annuities awarded on or after that date.

''(b)(1) The amendment made by section 1116(a) of this Act [amending this section] shall take effect October 1, 1981, except that the years of service of an individual shall not be considered less after enactment of this Act [Aug. 13, 1981] for any individual who files an application before April 1, 1982 than such individual had during the month of September 1981.

''(2) The amendments made by sections 1116(b)(1), 1118(c)(2), 1119(b)(5), 1119(c), 1119(h)(3), 1119(i)(3), 1120(a), 1120(d), 1121(c)(1), 1121(c)(2), 1123, and 1125 of this Act [amending this section and sections 231b, 231c, 231d, 231e, 231i, and 231q of this title] shall take effect January 1, 1975.

''(3) The first sentence added to section 1(*o*) of the Railroad Retirement Act of 1974 [subsec. (*o*) of this section] by section 1116(b)(2) shall take effect October 1, 1981, and shall apply only with respect to individuals who did not die before that date and who ceased rendering service as an employee under the Railroad Retirement Act of 1974 [this subchapter] on or after October 1, 1975 or were on leave of absence or furlough on October 1, 1975. The second sentence added to section 1(*o*) of the Railroad Retirement Act of 1974 by section 1116(b)(2) shall take effect October 1, 1981.

''(c) The amendment made by section 1117(a) of this Act [amending section 231a of this title] shall take effect October 1, 1981, and shall apply only with respect to individuals whose supplemental annuity closing date under section 2(b) of the Railroad Retirement Act of 1974 [section 231a(b) of this title] before the effective date of the amendment to such section by this Act did not occur before October 1, 1981.

''(d) The amendments made by section 1119(b)(1) [amending section 231c of this title] shall not apply with respect to annuities awarded on the basis of employee annuities awarded before October 1, 1981.

''(e)(1) The amendments made by sections 1118(e)(3), 1119(d)(2), 1119(h)(1), and 1119(h)(4) of this Act [amending sections 231b and 231c of this title] shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

''(2) The amendment made by section 1118(d) of this Act [amending section 231b of this title] shall apply with respect to annuity increases which become effective on or after the date described in the next sentence. The date referred to in the last preceding sentence is the later of October 1, 1981 and the date (after July 1, 1981) on which there is an increase in the rate of any tax imposed under chapter 22 (relating to railroad retirement tax) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [chapter 22 of Title 26, Internal Revenue Code]. For the purposes of the amendment made by section 1118(d), with respect to annuities awarded before October 1, 1981, the annuity portions computed under subsections (b) and (d) of section 3 of the Railroad Retirement Act of 1974 [section 231b(b) and (d) of this title] as in effect before October 1, 1981, shall be treated as a portion of an annuity computed under section 3(b) of such Act as amended by this Act.

''(3) The amendment made by section 1118(a) of this Act [amending section 231b of this title] shall take effect on the later of October 1, 1981, and the date (after July 1, 1981) on which there is an increase in the rate of any tax imposed under chapter 22 (relating to railroad retirement tax) of the Internal Revenue Code of 1986 [chapter 22 of Title 26], and shall apply only with respect to annuities awarded on or after the date of that taking effect.

''(f) Section 4(g) of the Railroad Retirement Act of 1974 as amended by this Act [section 231c(g) of this title] (except subdivisions (5) and (6) of such section 4(g)) shall take effect October 1, 1981, with respect to awards made on or after that date in cases in which the employee did not begin receiving an annuity under section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title] before October 1, 1981, and did not die before that date, and to all awards made on or after October 1, 1986. In all other awards made on or after October 1, 1981, and before October 1, 1986, for purposes of determining the initial annuity amounts only, the provisions of section 4(g) of the Railroad Retirement Act of 1974, as in effect before amendment by this Act shall be applicable. Initial annuity amounts determined under the preceding sentence shall be increased only by the same percentage, or percentages, as an employee's annuity amount determined under section 3(b) of the Railroad Retirement Act of 1974 [section 231b(b) of this title] is increased under section 3(g) of the Railroad Retirement Act of 1974 [section 231b(g) of this title] on or after the date on which such initial annuity amount began to accrue. Annuity amounts determined under section 4(g) of the Railway Retirement Act of 1974 before amendment by this Act or under section 207(2) of Public Law 93–445 [set out as a note below] shall be increased only by the same percentage, or percentages, as an employee's annuity amount determined under section 3(b) of the Railroad Retirement Act of 1974 is increased under section 3(g) of the Railroad Retirement Act of 1974 on or after October 1, 1981. Section 4(g)(5) and 4(g)(6) of the Railroad Retirement Act of 1974, as amended by this Act, shall take effect on October 1, 1981.

''(g) The amendments made by sections 1118(b), 1118(g), 1120(b), 1122(a)(2), 1122(b)(1), 1122(c), 1124, 1126,

and 1127 of this Act [enacting section 231u of this title, amending sections 231b, 231d, 231f, and 231n of this title, and enacting provisions set out as a note under section 231n of this title] shall take effect October 1, 1981.

''(h) The amendments made by sections 1117(e)(2), 1117(f), 1118(h)(2), and 1119(i)(4) [amending sections 231a, 231b, and 231c of this title] shall take effect January 1, 1982.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 4(c)(1) of Pub. L. 94–547 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall be effective January 1, 1975.''

EFFECTIVE DATE

Section 602(a)–(d) of Pub. L. 93–445 provided that:

''(a) The provisions of title I of this Act [enacting this subchapter] shall become effective on January 1, 1975, except as otherwise provided herein: *Provided, however*, That annuities awarded under section 2 of the Railroad Retirement Act of 1974 [section 231a of this title] on the basis of an application therefor filed with the Board on or after such date may, subject to the limitations prescribed in section 5(a) of such Act [section 231d(a) of this title], begin prior to such date, except that no annuity under paragraph (ii) of section 2(a)(1) of such Act [subsec. (a)(1) of section 231a of this title] shall begin to accrue to a man prior to July 1, 1974.

''(b) The provision of section 1(*o*) of the Railroad Retirement Act of 1974 [section 231(*o*) of this title] which provides that a 'current connection with the railroad industry' will not be broken by 'employment with the Department of Transportation, the Interstate Commerce Commission, the National Mediation Board, or the Railroad Retirement Board' shall not be applicable (A) for purposes of paragraph (iv) of section 2(a)(1) of such Act [section 231a(a)(1)(iv) of this title], to an individual who became disabled, as provided for purposes of such paragraph, prior to January 1, 1975, (B) for purposes of section 2(b)(1) of such Act [section 231a(b)(1) of this title], to an individual whose annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(1) of this title] first began to accrue prior to January 1, 1975, and (C) for purposes of section 2(d)(1) [section 231a(d)(1) of this title] of such Act, to a survivor of a deceased employee if such employee died prior to January 1, 1975.

''(c) The provisions of clause (i)(B) and clause (ii)(B) of section 2(c)(1) of the Railroad Retirement Act of 1974 [subsec. (c)(1) of section 231a of this title] shall not be applicable to the spouse of an individual if (A) such individual will have completed thirty years of service and will have been awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [subsec. (a)(1) of section 231a of this title] which first began to accrue prior to July 1, 1974, or (B) such individual will have completed less than thirty years of service and will have been awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [subsec. (a)(1) section 231a of this title] which first began to accrue prior to January 1, 1975. For purposes of the entitlement of the spouse of an individual described in clause (A) or (B) of the preceding sentence to an annuity under such section 2(c)(1) [subsec. (c)(1) section 231a of this title], the provisions of clause (i)(B) of such section 2(c)(1) [subsec. (c)(1) of section 231a of this title] shall be deemed to read: '(B) has attained the age of 65'.

''(d) The provisions of section 2(b)(1) of the Railroad Retirement Act of 1974 [subsec. (b)(1) of section 231a of this title] which permit an individual to become entitled to a supplemental annuity thereunder if he 'has attained age 60 and completed thirty years of service' shall not be applicable to an individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] or section 2(a)(1) of the Railroad Retirement Act of 1974 [subsec. (a)(1) of section 231a of this title] which first began to accrue prior to July 1, 1974.''

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

TRANSITIONAL PROVISIONS

Sections 201 to 210 of title II of Pub. L. 93–445, effective Jan. 1, 1975, as amended by Pub. L. 94–92, title II, § 202(a), Aug. 9, 1975, 89 Stat. 465; Pub. L. 94–547, § 1, Oct. 18, 1976, 90 Stat. 2523, provided that:

''SEC. 201. The claims of individuals who, prior to the effective date of title I of this Act [see Effective Date note set out above], became eligible for annuities, supplemental annuities, or death benefits under section 2, 3(j), or 5 of the Railroad Retirement Act of 1937 [section 228b, 228c(j), or 228e of this title] shall be adjudicated by the Board under that Act [subchapter III of this chapter] in the same manner and with the same effect as if title I of this Act [enacting this subchapter] had not been enacted: *Provided, however*, That no annuity, supplemental annuity, or death benefit shall be awarded under the Railroad Retirement Act of 1937 [subchapter III of this chapter] on the basis of an application therefor filed with the Board on or after the effective date of title I of this Act: *Provided, further*, That no annuity under the Railroad Retirement Act of 1935 [subchapter II of this chapter], no annuity or supplemental annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter], and no pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] shall be payable for any month after December 31, 1974.

''SEC. 202. (a) Every individual who would have been entitled to an annuity under the Railroad Retirement Act of 1935 [subchapter II of this chapter] for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under paragraph (i) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title], beginning January 1, 1975, in an amount determined under the provisions of section 3(a) of such Act [section 231b(a) of this title], which amount shall initially be equal to the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in such individual's annuity under the Railroad Retirement Act of 1935 [subchapter II of this chapter] pursuant to the provisions of section 105 of Public Law 93–69 [set out as a note under sections 228e to 228z–1 of this title], less the amount of any monthly insurance benefit to which such individual is actually entitled (before any deductions on account of work) under the Social Security Act [section 301 et seq. of Title 42, The Public Health and Welfare].

''(b) The amount of the annuity of an individual under subsection (a) of this section shall be increased by an amount, if any, equal to the amount by which (i) his annuity under the Railroad Retirement Act of 1935 [subchapter II of this chapter] for the month of December 1974 exceeds (ii) his annuity under subsection (a) of this section for the month of January 1975.

''SEC. 203. (a) Every individual who would have been entitled to a pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] for the

month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under paragraph (i) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title] in an amount determined under the provisions of section 3(a) of such Act [section 231b(a) of this title], which amount shall initially be equal to the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in such individual's pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] pursuant to the provisions of section 105 of Public Law 93–69 [set out as a note under sections 228e to 228z–1 of this title], less the amount of any monthly insurance benefit to which such individual is actually entitled (before any deductions on account of work) under the Social Security Act [section 301 et seq. of Title 42].

''(b) The amount of the annuity of an individual under subsection (a) of this section shall be increased by an amount, if any, equal to the amount by which (i) his pension under section 6 of the Railroad Retirement Act of 1937 [section 228f of this title] for the month of December 1974 exceeds (ii) his annuity under subsection (a) of this section for the month of January 1975.

''(c) The annuities of each individual under the preceding subsections of this section shall be paid on January 1, 1975, and on the first day of each calendar month thereafter during his life.

''SEC. 204. (a) Every individual who was entitled to an annuity under section 2(a)1, 2(a)2, 2(a)3, 2(a)4, or 2(a)5 of the Railroad Retirement Act of 1937 [section 228b(a)1, 228b(a)2, 228b(a)3, 228b(a)4, or 228b(a)5 of this title] for the month of December 1974, or who would have been entitled to such an annuity for such month except for the provisions of section 2(d) of such Act [section 228b(d) of this title], and who would have been entitled to such an annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under paragraph (i), (ii), (iii), (iv), or (v), respectively, of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title], beginning January 1, 1975: *Provided, however*, That if an individual who was entitled to an annuity under section 2(a)4 or 2(a)5 of the Railroad Retirement Act of 1974 [probably should read ''Railroad Retirement Act of 1937'' classified to section 228b(a)4 or 228b(a)5, of this title] is age 65 or older, on January 1, 1975, such individual shall be entitled to an annuity under paragraph (i) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title]. For purposes of this subsection—

''(1) that portion of the individual's annuity as is provided under section 3(a) of the Railroad Retirement Act of 1974 [section 231b(a) of this title] shall initially be in an amount equal to (A) the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in the amount of such individual's annuity as computed under the provisions of section 3(a) [section 228c(a) of this title], and that part of section 3(e) which preceded the first proviso, of the Railroad Retirement Act of 1937 [section 228c(e) of this title] or (B), if less in a case where such individual is not entitled to an annuity amount provided under paragraph (3) of this subsection, the amount of the annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] (before any reduction on account of age and without regard to section 2(d) of such Act [section 228b(d) of this title]) which such individual would have received for the month of January 1975 if this Act [see Effective Date of 1976 Amendment set out hereunder] had not been enacted: *Provided, however*, That such annuity amount shall be subject to reduction in accordance with the provisions of section 3(m) of the Railroad Retirement Act of 1974 [section 231b(m) of this title] in the same manner as other annuity amounts provided under section 3(a) of the Railroad Retirement Act of 1974;

''(2) that portion of the individual's annuity as is provided under section 3(b)(1) of the Railroad Retirement Act of 1974 [section 231b(b)(1) of this title] shall be in an amount, if any, equal to the amount by which (A) his annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] for the month of December 1974 (before any reduction on account of age and without regard to section 2(d) of such Act [section 228b(d) of this title]) exceeds (B)(i), if such individual is entitled to an annuity amount provided under paragraph (3) of this subsection, the amount of the annuity which would have been provided such individual under paragraph (1) of this subsection (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act [section 301 et seq. of Title 42]) for the month of January 1975 if he had no wages or self-employment income under the Social Security Act other than wages derived from service as an employee under the Railroad Retirement Act of 1974 [this subchapter] after December 31, 1936, and before January 1, 1975, or (ii), if such individual is not entitled to an annuity amount provided under paragraph (3) of this subsection, the amount of his annuity provided under paragraph (1) of this subsection (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act) for the month of January 1975: *Provided, however*, That if the annuity of any individual under the Railroad Retirement Act of 1937 [subchapter III of this chapter] for the month of December 1974 was computed under the first proviso of section 3(e) of such Act [section 228c(e) of this title], the annuity of such individual for purposes of clause (A) of this paragraph shall be no greater than the annuity which such individual would have received under such Act [subchapter III of this chapter] for the month of December 1974, if no other person had been included in the computation of the annuity of such individual; and

''(3) if the individual was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act [section 301 et seq. of Title 42] on December 31, 1974, or was fully insured under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this subsection shall be increased by an amount determined under the provisions of section 3(h)(1) of the Railroad Retirement Act of 1974 [section 231b(h)(1) of this title]: *Provided, however*, That, if the individual was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act on December 31, 1974, such amount shall not be less nor more than an amount which would cause the total of the annuity amounts provided the individual by the provisions of this subsection for the month of January 1975 to equal the total of the annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter] (prior to any reduction on account of age and without regard to section 2(d) of that Act [section 228b(d) of this title]) plus the old-age or disability insurance benefit under the Social Security Act (before any reduction on account of age and deductions on account of work) which such individual would have received for such month if this Act [enacting this subchapter] had not been enacted.

''(4) if the individual was entitled to a wife's, husband's, widow's, or widower's insurance benefit under the Social Security Act [section 301 et seq. of Title 42] on December 31, 1974, or is the wife, husband, widow, or widower of a person who was fully insured under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this subsection shall be increased by an amount determined under the provisions of section 3(h)(3) of the Railroad Retirement Act of 1974 [section 231b(h)(3) of this title].

''(b) An individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title], but who could not have be-

come eligible for an annuity under paragraph 2 of such section, shall not be eligible for an annuity under paragraph (ii) of section 2(a)(1) of the Railroad Retirement Act of 1974 [section 231a(a)(1) of this title].

''(c) An individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title] shall not be entitled to an annuity amount computed under the provisions of section 3(c) of the Railroad Retirement Act of 1974 [section 231b(c) of this title]: *Provided, however*, That the provisions of this subsection shall not be applicable (i) to an individual who will have rendered at least twelve months of service as an employee to an employer (as defined in the Railroad Retirement Act of 1974 [this section] after December 31, 1974, or (ii) to an individual who was awarded an annuity under section 2(a)4 or 2(a)5 of the Railroad Retirement Act of 1937 [section 228b(a)4 or 228b(a)5 of this title] and who recovered from disability and returned to the service of an employer (as defined in the Railroad Retirement Act of 1974) [this section] after December 31, 1974.

[Section 202(b) of Pub. L. 94–92 provided that: ''The amendment made by this section [enacting section 204(c) of Pub. L. 93–445] shall be effective January 1, 1975.'']

''(d) The annuity amount provided an individual by paragraph (1) of this subsection as increased from time to time shall be deemed to be the primary insurance amount of such individual for purposes of computing the annuity of the spouse of such individual under section 4(a) of the Railroad Retirement Act of 1974. [section 231c(a) of this title].''

[Effective Date of 1976 Amendment. Section 1(d) of Pub. L. 94–547 provided that: ''The amendments made by this section [enacting section 204(d) and amending sections 204(a)(1), (2) and 206(1) of Pub. L. 93–445] shall be effective January 1, 1975: *Provided, however*, That the increases in annuities effective June 1, 1975, and June 1, 1976, shall be in the amount which would have been provided if this Act [enacting section 204(d) of Pub. L. 93–445, amending sections 204(a)(1), (2) and 206(1) of Pub. L. 93–445 and this section and section 231c and 231n of this title and section 3231 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under this section and sections 231c and 231n of this title and 3231 of Title 26] had not been enacted.'']

''SEC. 205. (a) Every individual who was entitled to a supplemental annuity under section 3(j) of the Railroad Retirement Act of 1937 [section 228c(j) of this title] for the month of December 1974, or who would have been entitled to such a supplemental annuity for such month except for the provisions of section 2(d) of such Act [section 228b(d) of this title], and who would have been entitled to such a supplemental annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to a supplemental annuity under section 2(b)(1) of the Railroad Retirement Act of 1974 [section 231a(b)(1) of this title], beginning January 1, 1975, in an amount, the provisions of section 3(e) of such Act [section 231b(e) of this title] notwithstanding, equal to the amount of the supplemental annuity to which such individual was entitled under section 3(j) of the Railroad Retirement Act of 1937 [section 228c(j) of this title] for the month of December 1974, or to which such individual would have been entitled for such month under such section 3(j) [section 228c(j) of this title] except for the provisions of section 2(d) of such Act [section 228b(d) of this title].

''(b) An individual who was awarded an annuity under section 2(a) of the Railroad Retirement Act of 1937 [section 228b(a) of this title], but who could not have become eligible for a supplemental annuity under section 3(j) of such Act [section 228c(j) of this title] if this Act had not been enacted, shall not be eligible for a supplemental annuity under section 2(b) of the Railroad Retirement Act of 1974 [section 231a(b) of this title].

''SEC. 206. Every spouse who was entitled to an annuity under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or 228b(h) of this title] for the month of December 1974, or who would have been entitled to such an annuity for such month except for the provisions of section 2(d) of such Act [section 228b(d) of this title], and who would have been entitled to such an annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under section 2(c) of the Railroad Retirement Act of 1974 [section 231a(c) of this title] beginning January 1, 1975. For purposes of this section—

''(1) that portion of the spouse's annuity as is provided under section 4(a) of the Railroad Retirement Act of 1974 [section 231c(a) of this title] shall initially be in an amount equal to (A) the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in the amount of such spouse's annuity as computed under the provisions of section 2 of the Railroad Retirement Act of 1937 [section 228b of this title] or (B), if less in a case where such spouse is not entitled to an annuity amount provided by paragraph (3) of this section, the amount of the annuity under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or (h) of this section] (before any reduction on account of age and without regard to section 2(d) of such Act [section 228b(d) of this title]) which such spouse would have received for the month of January 1975 if this Act [see Effective Date of 1976 Amendment set out under section 204(d) hereinabove] had not been enacted: *Provided, however*, That the amount of such annuity shall be subject to reduction in accordance with the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(k) or 402(q) of Title 42], other than a reduction on account of age, in the same manner as any wife's insurance benefit or husband's insurance benefit payable under section 202 of the Social Security Act [section 402 of Title 42] and shall also be subject to reduction in accordance with the provisions of section 4(i) of the Railroad Retirement Act of 1974 [section 231c(i) of this title];

[Effective Date of 1976 Amendment. See note set out under section 204(d) hereinabove.]

''(2) that portion of the spouse's annuity as is provided under section 4(b) of the Railroad Retirement Act of 1974 [section 231c(b) of this title] shall be in an amount, if any, equal to 50 per centum of the individual's annuity as computed in accordance with the provisions of paragraph (2) of section 204(a) of this title: *Provided, however*, That, in case of a spouse who is not entitled to an annuity amount provided under paragraph (3) of this section, if (A) the amounts of the annuity provided a spouse for the month of January 1975 by the provisions of paragraph (1) (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act [section 301 et seq. of Title 42]) and the proceeding provisions of this paragraph exceed (B) the amount of the annuity to which such spouse was entitled (before any reduction on account of age) for the month of December 1974 under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or 228b(h) of this title] (deeming, for this purpose, any increase in the amount of such annuity which, had this Act [enacting this subchapter] not been enacted, would have become effective January 1, 1975, by reason of an increase in the maximum amount payable as a wife's insurance benefit under the Social Security Act to have been effective for the month of December 1974), or to which such spouse would have been entitled for such month under such section 2(e) or 2(h) [section 228b(e) or 228b(h) of this title] except for the provisions of section 2(d) of such Act [section 228b(d) of this title], the amount of the annuity provided such spouse for the month of January 1975 by the preceding provisions of this paragraph shall be reduced until the total of the amounts described in clause (A) of this proviso equals the amount described in clause (B): *Provided further*, That, if the amount of the annuity of the spouse provided by paragraph (1) of this section is reduced by reason of the provisions of

section 4(i)(2) of the Railroad Retirement Act of 1974 [section 231c(i)(2) of this title], the amount of the annuity provided such spouse by the preceding provisions of this paragraph shall not be less than an amount which would cause the total of the annuity amounts provided such spouse under paragraph (1) (before any reduction pursuant to the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(k) or 402(q) of Title 42] and before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act) and paragraph (2) of this section for the month of January 1975 to equal the amount of the annuity (before any reduction on account of age) which such spouse would have received for such month under section 2(e) or 2(h) of the Railroad Retirement Act of 1937 [section 228b(e) or 228b(h) of this title] (without regard to the provisions of section 2(d) of that Act [section 228b(d) of this title]) if this Act [enacting this subchapter] had not been enacted; and

''(3) if the spouse was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act [section 301 et seq. of Title 42] of [on] December 31, 1974, or was fully insured under that Act on that date, or was entitled to a wife's or a husband's insurance benefit under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this section shall be increased by an amount determined under the provisions of section 4(e)(1) [section 231c(e)(1) of this title], or, if the spouse was entitled only to a wife's or husband's insurance benefit, 4(e)(3) [section 231c(e)(3) of this title] of the Railroad Retirement Act of 1974: *Provided, however*, That, if the spouse was entitled to a monthly insurance benefit under the Social Security Act of [on] December 31, 1974, such amount shall not be less nor more than an amount which would cause (A) the total of (i) the annuity amounts provided the spouse by the provisions of this section for the month of January 1975 plus (ii) the monthly insurance benefit to which such spouse is entitled for that month under the Social Security Act (before any reductions on account of age and deductions on account of work) to equal (B) the total of (i) the spouse's annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter] (prior to any reduction on account of age and without regard to section 2(d) of that Act [section 228b(d) of this title]) plus (ii) the monthly insurance benefit under the Social Security Act (before any reduction on account of age and deductions on account of work) which such spouse would have received for such month if this Act [enacting this subchapter] had not been enacted.

''SEC. 207. Every survivor who was entitled to an annuity under section 5 of the Railroad Retirement Act of 1937 [section 228e of this title] for the month of December 1974, or who would have been entitled to such an annuity for such month except for the provisions of section 5(i) of such Act [section 228e(i) of this title], and who would have been entitled to such an annuity for the month of January 1975, if this Act [enacting this subchapter] had not been enacted, shall be entitled to an annuity under section 2(d) of the Railroad Retirement Act of 1974 [section 231a(d) of this title] beginning January 1, 1975. For purposes of this section—

''(1) that portion of the survivor's annuity as is provided under section 4(f) of the Railroad Retirement Act of 1974 [section 231c(f) of this title] shall initially be in an amount equal to the amount determined under clause (i) of section 3(a)(6) of the Railroad Retirement Act of 1937 [section 228c(a)(6) of this title] for the purpose of computing the last increase in the amount of such survivor's annuity as computed under the provisions of section 5(q) of the Railroad Retirement Act of 1937 [section 228e(q) of this title]: *Provided, however*, That the amount of such annuity shall be subject to reduction in accordance with the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(k) or 402(q) of Title 42] in the same manner as any widow's insurance benefit, mother's insurance benefit, widower's insurance benefit, parent's insurance benefit, or child's insurance benefit payable under section 202 of the Social Security Act [section 402 of Title 42] and shall also be subject to reduction in accordance with the provisions of section 4(i)(2) of the Railroad Retirement Act of 1974 [section 231c(i)(2) of this title];

''(2) that portion of the survivor's annuity as is provided under section 4(g) of the Railroad Retirement Act of 1974 [section 231c(g) of this title] shall initially be in an amount equal to 30 per centum of the amount computed in accordance with the provisions of paragraph (1) of this section prior to any reductions, other than reductions on account of age, in accordance with the provisions of section 202(k) or 202(q) of the Social Security Act [section 402(k) or 402(q) of Title 42] and prior to any reductions in accordance with, the provisions of section 4(i)(2) of the Railroad Retirement Act of 1974 [section 231c(i)(2) of this title]: *Provided, however*, That, if such survivor is not entitled to an annuity amount provided under paragraph (3) of this section, such amount shall not be less than an amount which would cause (A) the total of the annuity amounts provided the survivor by the provisions of this section for the month of January 1975 to equal (B) the amount of the annuity which the survivor would have received for such month under section 5 of the Railroad Retirement Act of 1937 [section 228e of this title] (without regard to section 5(i) of that Act [section 228e(i) of this title]) if this Act [enacting this subchapter] had not been enacted; and

''(3) if the survivor is a widow or widower who was entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act [section 301 et seq. of Title 42] on December 31, 1974, or was fully insured under that Act on that date, the annuity amounts provided under paragraphs (1) and (2) of this section shall be increased by an amount determined under the provisions of 4(h)(1) of the Railroad Retirement Act of 1974 [section 231c(h)(1) of this title]: *Provided, however*, That, if the widow or widower was entitled to a monthly insurance benefit under the Social Security Act on December 31, 1974, such amount shall not be less nor more than an amount which would cause (A) the total of (i) the annuity amounts provided the widow or widower by the provisions of this section for the month of January 1975 plus (ii) the monthly insurance benefit to which such widow or widower is entitled for that month under the Social Security Act (before any deductions on account of work) to equal (B) the total of (i) the widow's or widower's annuity under the Railroad Retirement Act of 1937 [subchapter III of this chapter] (without regard to section 5(i) of that Act [section 228e(i) of this title]) plus (ii) the monthly insurance benefit under the Social Security Act (before any deductions on account of work) which such widow or widower would have received for such month if this Act [enacting this subchapter] had not been enacted.

''SEC. 208. For purposes of paragraph (1) of section 204(a), paragraph (1) of section 206, and paragraph (1) of section 207, the fact that the amount of the annuity payable to an individual, spouse, or survivor under the Railroad Retirement Act of 1937 [subchapter III of this chapter] for the month of December 1974 may not (i) in the case of an individual have been computed under the provisions of section 3(a) of such Act [section 228c(a) of this title] or that part of section 3(e) of such Act [section 228c(e) of this title] which precedes the first proviso; (ii) in the case of a spouse, have been computed under the provisions of section 2 of such Act [section 228b of this title], or (iii) in the case of a survivor, have been computed under the provisions of section 5 of such Act [section 228e of this title], shall be disregarded, and the amount determined under clause (i) of section 3(a)(6) of such Act [section 228c(a)(6) of this title] with respect to such individual, spouse, or survivor shall, for purposes of such paragraphs, be the amount which would have been determined under such clause (i) if the

annuity of such individual had been computed under the provisions of section 3(a) [section 228c(a) of this title], and that part of section 3(e) [section 228c(e) of this title] which preceded the first proviso, of such Act; the annuity of such spouse had been computed under the provisions of section 2 of such Act [section 228b of this title]; or the annuity of such survivor had been computed under the provisions of section 5 of such Act [section 228e of this title].

''SEC. 209. (a) Whenever monthly insurance benefits under section 202 of the Social Security Act [section 402 of Title 42] are increased, the amount of each annuity provided by section 202(a), section 203(a), paragraph (1) of section 204(a), paragraph (1) of section 206, and paragraphs (1) and (2) of section 207 shall be increased in the same manner, and effective the same date as other annuities of the same type payable under section 2 of the Railroad Retirement Act of 1974 [section 231a of this title] are increased.

''(b) The annuity amounts provided by section 202(b), section 203(b), paragraph (2) of section 204(a), and paragraph (2) of section 206 shall be increased by the same percentage, or percentages, and effective the same date, or dates, as other annuity amounts of the same type are increased pursuant to the provisions of section 3(g) of the Railroad Retirement Act of 1974 [section 231b(g) of this title].

''SEC. 210. The election of a joint and survivor annuity made before July 31, 1946, by an individual to whom an annuity accrues under the Railroad Retirement Act of 1937 [subchapter III of this chapter] before January 1, 1975, shall be given effect as though the provisions of law under which the election was made had continued to be operative unless such election had been revoked prior to the time the annuity of such individual began to accrue.''

§ 231a. Annuity eligibility requirements

(a) Individuals eligible for annuities; disability standards; proof of continued disability

(1) The following-described individuals, if they shall have completed ten years of service (or, for purposes of paragraphs (i), (iii), and (v), five years of service, all of which accrues after December 31, 1995) and shall have filed application for annuities, shall, subject to the conditions set forth in subsections (e), (f), and (h) of this section, be entitled to annuities in the amounts provided under section 231b of this title—

(i) individuals who have attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]);

(ii) individuals who have attained the age of sixty and have completed thirty years of service;

(iii) individuals who have attained the age of sixty-two and have completed less than thirty years of service, but the annuity of such individuals shall be reduced by 1/180 for each of the first 36 months that he or she is under retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]) when the annuity begins to accrue and by 1/240 for each additional month that he or she is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue;

(iv) individuals who have a current connection with the railroad industry, whose permanent physical or mental condition is such as to be disabling for work in their regular occupation, and who (A) have completed twenty years of service or (B) have attained the age of sixty; and

(v) individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment.

(2) For the purposes of paragraph (iv) of subdivision (1), the Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been disqualified by his employer for service in his regular occupation in accordance with the applicable standards so established; if the employee will not have been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For purposes of this subdivision and paragraph (iv) of subdivision (1), an employee's ''regular occupation'' shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary, except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation.

(3) Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph (iv) or (v) of subdivision (1) and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]). If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains retirement age (as defined in section 216(*l*) of the Social Security Act), his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled.

(4) An individual who is entitled to an annuity under paragraph (v) of subdivision (1), but who does not have at least ten years of service, shall, prior to the month in which the individual at-

tains age 62, be entitled only to an annuity amount computed under section 231b(a) of this title (without regard to section 231b(a)(2) of this title) or section 231b(f)(3) of this title. Upon attainment of age 62, such an individual may also be entitled to an annuity amount computed under section 231b(b) of this title, but such annuity amount shall be reduced for early retirement in the same manner as if the individual were entitled to an annuity under subsection (a)(1)(iii) of this section.

(b) Individuals eligible for supplemental annuities

An individual who—

(i) has attained age 60 and completed thirty years of service or attained age 65;

(ii) has completed twenty-five years of service;

(iii) is entitled to the payment of an annuity under subsection (a)(1) of this section;

(iv) had a current connection with the railroad industry at the time such annuity began to accrue; and

(v) has performed compensated service in at least one month prior to October 1, 1981;

shall, subject to the conditions set forth in subsections (e) and (h) of this section, be entitled to a supplemental annuity in the amount provided under section 231b of this title: *Provided, however*, That in cases where an individual's annuity under subsection (a)(1) of this section begins to accrue on other than the first day of the month, the amount of any supplemental annuity to which he is entitled for that month shall be reduced by one-thirtieth for each day with respect to which he is not entitled to an annuity under subsection (a)(1) of this section.

(c) Spouses eligible for annuities

(1) The spouse of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a)(1) of this section and (B) has attained the age of 60 and has completed thirty years of service or has attained the age of 62, and

(ii) such spouse (A) has attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]), or (B) has attained the age of 60 and such individual has completed thirty years of service, or (C), in the case of a wife, has in her care (individually or jointly with her husband) a child who meets the qualifications prescribed in paragraph (iii) of subsection (d)(1) of this section (without regard to the provisions of clause (B) of such paragraph),

shall, subject to the conditions set forth in subsections (e), (f), and (h) of this section, be entitled to a spouse's annuity, if he or she has filed application therefor, in the amount provided under section 231c of this title.

(2) A spouse who would be entitled to an annuity under subdivision (1) or a divorced wife who would be entitled to an annuity under subdivision (4) if he or she had attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]) may elect upon or after attaining the age of 62 to receive such annuity, but the annuity in any such case shall be reduced by 1/144 for each of the first 36 months that the spouse or divorced wife is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that the spouse or divorced wife is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue, except that the annuity of a divorced wife who was previously entitled to a spouse annuity which was reduced under this subdivision shall be reduced by the same percentage as was applicable to the spouse annuity.

(3) For the purposes of this subchapter, the term ''spouse'' shall mean the wife or husband of an annuitant under subsection (a)(1) of this section who (i) was married to such annuitant for a period of not less than one year immediately preceding the day on which the application for a spouse's annuity is filed, or in the month prior to his or her marriage to such annuitant was eligible for an annuity under paragraph (i) or (iv) of subsection (d)(1) of this section or, on the basis of disability, under paragraph (iii) thereof, or is the parent of such annuitant's son or daughter; and (ii) in the case of a husband, was receiving at least one-half of his support from his wife at the time his wife's annuity under subsection (a)(1) of this section began.

(4) The ''divorced wife'' (as defined in section 216(d) of the Social Security Act [42 U.S.C. 416(d)]) of an individual, if—

(i) such individual has attained the age 62;

(ii) such divorced wife (A) has attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)][1] and (B) is not married; and

(iii) such divorced wife would have been entitled to a benefit under section 202(b) of the Social Security Act [42 U.S.C. 402(b)] as the divorced wife of such individual if all of such individual's service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act [42 U.S.C. 301 et seq.];

shall, subject to the conditions set forth in subsections (e), (f), and (h) of this section, be entitled to a divorced wife's annuity, if she has filed an application therefor, in the amount provided under section 231c of this title.

(d) Survivors eligible for annuities

(1) The following described survivors of a deceased employee who will have completed ten years of service (or five years of service, all of which accrues after December 31, 1995) and will have had a current connection with the railroad industry at the time of his death shall, subject to the conditions set forth in subsections (g) and (h) of this section, be entitled to annuities, if they have filed application therefor, in the amounts provided under section 231c of this title—

(i) a widow (as defined in section 216(c) and (k) of the Social Security Act [42 U.S.C. 416(c), (k)]) or widower (as defined in section 216(g) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) will have attained the age of sixty or

[1] So in original. Probably should be followed by a closing parenthesis.

(B) will have attained the age of fifty but will not have attained age sixty and is under a disability which began before the end of the period prescribed in subdivision (2), and who, in the case of a widower, was receiving at least one-half of his support from the deceased employee at the time of her death or at the time her annuity under subsection (a)(1) of this section began;

(ii) a widow (as defined in section 216(c) and (k) of the Social Security Act [42 U.S.C. 416(c), (k)]) of such a deceased employee who has not remarried and who (A) is not entitled to an annuity under paragraph (i), and (B) at the time of filing an application for an annuity under this paragraph, will have in her care a child of such deceased employee, which child is entitled to an annuity under paragraph (iii) (other than an annuity payable to a child who has attained age 18 and is not under a disability);

(iii) a child (as defined in section 216(e) and (k) of the Social Security Act [42 U.S.C. 416(e), (k)]) of such a deceased employee who (A) will be less than eighteen years of age, or (B) will be less than nineteen years of age and a full-time elementary or secondary school student, or (C) will, without regard to his age, be under a disability which began before he attained age twenty-two or before the close of the eighty-fourth month following the month in which his most recent entitlement to an annuity under this paragraph terminated because he ceased to be under a disability, and who is unmarried and was dependent upon the employee at the time of the employee's death;

(iv) a parent (as defined in section 202(h)(3) of the Social Security Act [42 U.S.C. 402(h)(3)]) of such a deceased employee who (A) will have attained the age of sixty and (B) will have received at least one-half of his or her support from such deceased employee at the time of the employees'[2] death and (C) will not have remarried after the employee's death: *Provided, however*, That no parent will be entitled to an annuity under this paragraph on the basis of the deceased employee's compensation and years of service in any case where such employee died leaving a widow or widower or a child who is, or who might in the future become, entitled to an annuity under this subsection, but neither this proviso nor clause (B) or (C) of this paragraph shall operate to deny any parent an annuity to the extent and in the amount of the benefit that such parent would have received under the Social Security Act [42 U.S.C. 301 et seq.] if the service as an employee of the individual, with respect to which such parent would be eligible to receive an annuity under this subchapter except for this proviso and those clauses, were included in ''employment'' as defined in the Social Security Act; and

(v) The[3] widow (as defined in section 216(c) of the Social Security Act [42 U.S.C. 416(c)]), who is married, or has been married after the death of the employee, the surviving divorced wife (as defined in section 216(d) of the Social Security Act), and a surviving divorced mother (as defined in section 216(d) of the Social Security Act) if such widow, surviving divorced wife, or surviving divorced mother would have been entitled to a benefit under section 202(e) or 202(g) of the Social Security Act [42 U.S.C. 402(e), (g)] as the widow, surviving divorced wife, or surviving divorced mother of the employee if all of his service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act. For the purpose of this paragraph, the reference in sections 202(e)(3)[4] and 202(g)(3) of the Social Security Act to an individual entitled under section 202(f) of that Act shall include an individual entitled to an annuity under paragraph (i) and an individual entitled to an annuity under paragraph (ii), and the reference in section 202(e)(3)[4] and section 202(g)(3) of the Social Security Act to an individual entitled under section 202(d) or section 202(h) of that Act shall include an individual entitled to an annuity under paragraph (iii) or paragraph (iv), and the references in section 202(g)(3) of the Social Security Act to an individual entitled under section 202(a) or section 223(a) of that Act [42 U.S.C. 402(a), 423(a)] shall include an individual entitled to an annuity under subsection (a)(1) of this section.

(2) The period referred to in clause (B) of subdivision (1)(i) is the period (i) beginning with the latest of (A) the month of the employee's death, (B) in the case of a widow, the last month for which she was entitled to an annuity under paragraph (ii) of subdivision (1) as the widow of the deceased employee, or (C) the month in which the widow's or widower's previous entitlement to an annuity as the widow or widower of the deceased employee terminated because her or his disability had ceased and (ii) ending with the month before the month in which she or he attains age sixty, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(3) For purposes of paragraph (i) or (iii) of subdivision (1), a widow, widower, or child shall be under a disability if her or his permanent physical or mental condition is such that she or he is unable to engage in any regular employment. The provisions of subsection (a)(3) of this section as to the proof of disability shall apply with regard to determinations with respect to disability under subdivision (1).

(4) In determining for purposes of this subsection and subdivision (3) of subsection (c) of this section whether an applicant is the wife, husband, widow, widower, child, or parent of a deceased employee as claimed, the rules set forth in section 216(h) of the Social Security Act [42 U.S.C. 416(h)] shall be applied deeming, for this purpose, individuals entitled to an annuity under subsection (c) of this section to be entitled to benefits under subsection (b) or (c) of section 202 of the Social Security Act [42 U.S.C. 402] and individuals entitled to an annuity under paragraph (i) or (ii) of subsection (d)(1) of this section to be entitled to a benefit under subsection (e), (f), or (g) of section 202 of the Social Security Act. For purposes of paragraph (iii) of

[2] So in original. Probably should be ''employee's''.

[3] So in original. Probably should not be capitalized.

[4] See References in Text note below.

subdivision (1), a child shall be deemed to have been dependent upon his parent employee if the conditions set forth in section 202(d)(3), (4), or (9) of the Social Security Act are fulfilled. The provisions of paragraph (7) of section 202(d) of the Social Security Act (defining the terms ''full-time elementary or secondary school student'' and ''elementary or secondary school'') shall be applied by the Board in the administration of this subsection as if the references therein to the Secretary were references to the Board. A child who attains age nineteen at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of paragraph (7) of section 202(d) of the Social Security Act and without the application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in section 202(d)(7)(c)(i)[5] of the Social Security Act) shall be deemed (for purposes of determining his continuing or initial entitlement to an annuity under this subsection) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(e) Compensated service; rights to return

(1) No individual shall be entitled to an annuity under subsection (a)(1) of this section until he shall have ceased to render compensated service to an employer as defined in section 231(a) of this title.

(2) An annuity under subsection (a)(1) of this section shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer: *Provided, however*, That this requirement shall not apply to individuals mentioned in paragraphs (iv) and (v) of subsection (a)(1) of this section prior to attaining retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]): *Provided further*, That, notwithstanding the provisions of the preceding proviso and of clause (i) of subsection (c)(1) of this section, an annuity shall be paid to the spouse of an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the preceding proviso: *And provided further*, That, notwithstanding the provisions of the first proviso of this subdivision and of clause (iii) of subsection (b)(1) of this section, a supplemental annuity shall be paid to an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the first proviso thereof.

(3) No annuity under subsection (a)(1) of this section or supplemental annuity under subsection (b)(1) of this section shall be paid with respect to any month in which an individual in receipt of an annuity or supplemental annuity thereunder shall render compensated service to an employer. Individuals receiving annuities under subsection (a)(1) of this section shall report to the Board immediately all such compensated service.

(4) No annuity under paragraph (iv) or (v) of subsection (a)(1) of this section shall be paid to an individual with respect to any month in which the individual is under retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]) and is paid more than the monthly allowable earnings as defined in the section (after deduction of disability related work expenses) from employment or self-employment of any form: *Provided, however*, That for purposes of this subdivision, if a payment in any one calendar month is for accruals in more than one calendar month, such payment shall be deemed to have been paid in each of the months in which accrued to the extent accrued in such month. Any such individual under the retirement age (as defined in section 216(*l*) of the Social Security Act) shall report to the Board any such payment of earnings for such employment or self-employment before receipt and acceptance of an annuity for the second month following the month of such payment. A deduction shall be imposed, with respect to any such individual who fails to make such report, in the annuity or annuities otherwise due the individual, in an amount equal to the amount of the annuity for each month in which he is paid such earnings in such employment or self-employment, except that the first deduction imposed pursuant to this sentence shall in no case exceed an amount equal to the amount of the annuity otherwise due for the first month with respect to which the deduction is imposed. If pursuant to the first sentence of this subdivision an annuity was not paid to an individual with respect to one or more months in any calendar year, and it is subsequently established that the total amount of such individual's earnings during such year as determined in accordance with that sentence (but exclusive of earnings for services described in subdivision (3)) did not exceed the amount of earnings computed by totaling the monthly allowable earnings as determined under this section for each month in the year (after deduction of disability related work expenses), the annuity with respect to such month or months, and any deduction imposed by reason of the failure to report earnings for such month or months under the third sentence of this subdivision, shall then be payable. If the total amount of such individual's earnings during such year (exclusive of earnings for services as described in subdivision (3) and after deduction of disability related work expenses) is in excess of the annual allowable earnings amount, the number of months in such year with respect to which an annuity is not payable by reason of the first and third sentences shall not exceed the number of months derived by dividing the amount by which such annual earnings exceed the annual allowable earnings amount by the monthly allowable earning amount determined under this section. If the computation under the preceding sentence results in a remainder greater than or equal to one-half, the number of months for which an annuity is not payable as determined under the preceding sentence shall be increased

[5] So in original. Probably should be section ''202(d)(7)(C)(i)''.

by one. The annual allowable earnings amount shall be computed by totaling the amount of monthly allowable earnings as determined under the first sentence of this subdivision for each month in the calender[6] year. If the amount of the individual's annuity has changed during the calendar year, any payment of annuities which become payable solely by reason of the limitations in the preceding three sentences shall be made first with respect to the month or months for which the annuity is larger. For purposes of this subdivision, ''the monthly allowable earnings'' shall be $700, except that for each year after 2007, ''the monthly allowable earnings'' amount shall be the larger of the amount for the previous year or the amount calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calender[6] years before the year for which the amount is being calculated to the national average wage index for the year 2005. The amount so computed will be rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

(5) The annuity of a spouse or divorced wife under subsection (c) of this section shall, with respect to any month, be subject to the same provisions of this subsection as the individual's annuity. In addition, the annuity of a spouse under subsection (c) of this section shall not be payable for any month if the individual's annuity under subsection (a)(1) of this section is not payable for such month by reason of the provisions of this subsection.

(f) Deductions on account of work

(1) That portion of the individual's annuity as is computed under section 231b(a) of this title on the basis of (A) his compensation and years of service subsequent to December 31, 1974, and (B) his wages and self-employment income derived from employment and self-employment under the Social Security Act [42 U.S.C. 301 et seq.] and that portion of the individual's annuity as is computed under section 231b(h) of this title shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act [42 U.S.C. 403] in the same manner as if such portion of such annuity were a monthly insurance benefit under that Act: *Provided*, *however*, That the provisions of this subdivision shall be applicable to the annuity of an individual only if such individual would be fully insured under the Social Security Act on the basis of wages and self-employment income derived from employment and self-employment under that Act and on the basis of compensation derived from service as an employee after December 31, 1974, if such service as an employee had been included in the term ''employment'' as defined in that Act. Any person in receipt of an annuity subject to deduction under this subsection shall report to the Board the receipt of excess earnings as defined in paragraph (3) of section 203(f) of the Social Security Act.

(2) That portion of the spouse's or divorced wife's annuity under subsection (c) of this section which is derived from the portion of the individual's annuity subject to deductions under subdivision (1) and that portion of the spouse's or divorced wife's annuity as is computed under section 231c(e) of this title shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act [42 U.S.S. 403] in the same manner as if such portion of such spouse's or divorced wife's annuity were a monthly insurance benefit under that Act. In addition, such portion of the spouse's or divorced wife's annuity shall be subject to deductions if the individual's annuity is subject to deductions under subdivision (1) in the same manner as if such portion of such spouse's or divorced wife's annuity were a monthly insurance benefit under the Social Security Act [42 U.S.C. 301 et seq.].

(3) Deductions shall not be made pursuant to subdivision (1) from that portion of an individual's annuity as is computed under section 231b(a) of this title for any month in which the annuity of such individual is reduced pursuant to section 231b(m) of this title. This subdivision shall be disregarded in determining the applicability and amount of deductions in a spouse's annuity pursuant to subdivision (2) of this subsection.

(4) Deductions shall not be made pursuant to subdivision (2) from that portion of a spouse's annuity as is computed under section 231c(a) of this title for any month in which the annuity of such spouse is reduced due to entitlement to a benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.].

(5) If an annuity begins to accrue on other than the first day of a month, subdivisions (1) and (2) of this subsection shall not apply in the year the annuity begins to accrue if the annuitant has no earnings in excess of the monthly exempt amount in such year after the annuity beginning date.

(6)(A) Except as provided in subparagraph (B)—

(i) that portion of the annuity for any month of an individual as is computed under section 231b(b) of this title and as adjusted under section 231b(g) of this title, plus any supplemental amount for such month under section 231b(e) of this title, and that portion of the annuity for any month of a spouse as is computed under section 231c(b) of this title and as adjusted under section 231c(d) of this title, shall each be subject to a deduction of $1 for each $2 of compensation received by such individual from compensated service rendered in such month to the last person, or persons, by whom such individual was employed before the date on which the annuity of such individual under subsection (a)(1) of this section began to accrue; and

(ii) that portion of the annuity for any month of a spouse as is computed under section 231c(b) of this title and as adjusted under section 231c(d) of this title shall be subject to a deduction of $1 for each $2 of compensation received by such spouse from compensated service rendered in such month to the last person, or persons, by whom such spouse was employed before the date on which the annuity of such spouse under subsection (c)(1) of this section began to accrue.

[6] So in original. Probably should be ''calendar''.

(B) Any deductions imposed by this subdivision for any month shall not exceed 50 percent of the annuity amount for such month to which such deductions apply.

(g) Employment compensation of survivors; deductions

(1) No annuity shall be paid to a survivor under subsection (d) of this section with respect to any month in which such survivor renders service for compensation as an employee of an employer. Survivors receiving annuities under subsection (d) of this section shall report to the Board immediately all such service for compensation.

(2) Deductions, in amounts and at such time or times as the Board shall determine, shall be made from any payments to which a survivor is entitled under subsection (d) of this section until the total of such deductions equals such survivor's annuity under that subsection for any month, if for such month such survivor would be charged with excess earnings under section 203(f) of the Social Security Act [42 U.S.C. 403(f)] or, having engaged in any activity outside the United States, would be charged under such section 203(f) of the Social Security Act [42 U.S.C. 403(f)] with any excess earnings derived from such activity if it had been an activity within the United States. For purposes of this subdivision the Board shall have the authority to take such actions and to make such determinations and such suspensions of payment of benefits in the manner and to the extent that the Secretary of Health and Human Services would be authorized to take or to make under section 203(h)(3) of the Social Security Act if the survivors were receiving the annuities to which this subdivision applies under section 202 of the Social Security Act [42 U.S.C. 402]: *Provided, however*, That in determining a survivor's excess earnings for a year for the purposes of this subdivision there shall not be included his income from employment or self-employment during months beginning with the month with respect to which he ceases to be qualified for an annuity. Survivors receiving annuities under subsection (d) of this section shall report to the Board the receipt of excess earnings described in this subdivision.

(h) Military service; reductions

(1) Repealed. Pub. L. 98–76, title IV, § 414(a), Aug. 12, 1983, 97 Stat. 436.

(2) The supplemental annuity provided an individual by subsection (b) of this section shall, with respect to any month, be reduced by the amount of the supplemental pension, attributable to the employer's contribution, that such individual is entitled to receive for that month under any other supplemental pension plan: *Provided, however*, That the maximum of such reduction shall be equal to the amount of the supplemental annuity less any amount by which the supplemental pension is reduced by reason of the supplemental annuity.

(3) If a spouse or divorced wife entitled to an annuity under subsection (c) of this section or a survivor entitled to an annuity under subsection (d) of this section for any month is also entitled to annuity under subsection (a)(1) of this section for such month, the annuity under subsection (c) or (d) of this section shall be reduced, but not below zero, by an amount equal to the annuity under subsection (a)(1) of this section: *Provided, however*, That the provisions of this subdivision shall not apply if either the spouse or survivor or the individual upon whose earnings record the spouse's or survivor's annuity under subsection (c) or (d) of this section is based rendered service as an employee to an employer, or as an employee representative, prior to January 1, 1975.

(4) If an annuitant is entitled to more than one annuity under subsections (c) and (d) of this section for a month, such annuitant shall be entitled to only the larger of such annuities for such month, except that, if such annuitant so elects, he shall instead be entitled to only the smaller of such annuities for such month.

(i) Limitation; service accrued after 1995

An individual entitled to an annuity under this section who has completed five years of service, all of which accrues after 1995, but who has not completed ten years of service, and the spouse, divorced spouse, and survivors of such individual, shall not be entitled to an annuity amount provided under section 231b(a), section 231c(a), or section 231c(f) of this title unless the individual, or the individual's spouse, divorced spouse, or survivors, would be entitled to a benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.] on the basis of the individual's employment record under both this subchapter and title II of the Social Security Act.

(Aug. 29, 1935, ch. 812, § 2, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1312; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XI, § 1117, Aug. 13, 1981, 95 Stat. 628; Pub. L. 98–76, title I, §§ 104(a), (b), 106(a)–(g), title IV, §§ 409(a), 413(a), 414(a), 415, Aug. 12, 1983, 97 Stat. 416–418, 435, 436; Pub. L. 100–647, title VII, §§ 7302(a), (b), 7303(a), Nov. 10, 1988, 102 Stat. 3777, 3778; Pub. L. 107–90, title I, § 103(a), (c), (d), Dec. 21, 2001, 115 Stat. 880; Pub. L. 109–280, title X, § 1002(a), Aug. 17, 2006, 120 Stat. 1053; Pub. L. 109–478, § 2(a), Jan. 12, 2007, 120 Stat. 3573.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(4), (d)(1)(iv), (f)(1), (2), (4), and (i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Paragraph (3) of section 202(e) of the Social Security Act [42 U.S.C. 402(e)(3)], referred to in subsec. (d)(1)(v), was repealed, and paragraph (4) of section 202(e) of that Act was redesignated as paragraph (3) of section 202(e) and was further amended, by Pub. L. 98–21, title I, § 131(a)(1)–(3)(A), Apr. 20, 1983, 97 Stat. 92.

AMENDMENTS

2007—Subsec. (e)(4). Pub. L. 109–478, § 2(a)(3), substituted "If the total amount of such individual's earnings during such year (exclusive of earnings for services as described in subdivision (3) and after deduction of disability related work expenses) is in excess of the annual allowable earnings amount, the number of months in such year with respect to which an annuity is not payable by reason of the first and third sentences shall

not exceed the number of months derived by dividing the amount by which such annual earnings exceed the annual allowable earnings amount by the monthly allowable earning amount determined under this section. If the computation under the preceding sentence results in a remainder greater than or equal to one-half, the number of months for which an annuity is not payable as determined under the preceding sentence shall be increased by one. The annual allowable earnings amount shall be computed by totaling the amount of monthly allowable earnings as determined under the first sentence of this subdivision for each month in the calender year. If the amount of the individual's annuity has changed during the calendar year, any payment of annuities which become payable solely by reason of the limitations in the preceding three sentences shall be made first with respect to the month or months for which the annuity is larger. For purposes of this subdivision, 'the monthly allowable earnings' shall be $700, except that for each year after 2007, 'the monthly allowable earnings' amount shall be the larger of the amount for the previous year or the amount calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calender years before the year for which the amount is being calculated to the national average wage index for the year 2005. The amount so computed will be rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.'' for ''If the total amount of such individual's earnings during such year (exclusive of earnings for services described in subdivision (3)) is in excess of $4,800 (after deduction of disability related work expenses), the number of months in such year with respect to which an annuity is not payable by reason of such first and third sentences shall not exceed one month for each $400 of such excess, treating the last $200 or more of such excess as $400; and if the amount of the annuity has changed during such year, any payments of annuities which become payable solely by reason of the limitations contained in this sentence shall be made first with respect to the month or months for which the annuity is larger.''

Pub. L. 109–478, § 2(a)(1), (2), substituted ''the monthly allowable earnings as defined in the section'' for ''$400 in earnings'' in first sentence and ''the amount of earnings computed by totaling the monthly allowable earnings as determined under this section for each month in the year'' for ''$4,800'' in fourth sentence.

2006—Subsec. (c)(4)(i). Pub. L. 109–280, § 1002(a)(1), struck out ''(A) is entitled to an annuity under subsection (a)(1) of this section and (B)'' after ''such individual''.

Subsec. (e)(5). Pub. L. 109–280, § 1002(a)(2), struck out ''or divorced wife'' after ''In addition, the annuity of a spouse''.

2001—Subsec. (a)(1). Pub. L. 107–90, § 103(a)(1), inserted ''(or, for purposes of paragraphs (i), (iii), and (v), five years of service, all of which accrues after December 31, 1995)'' after ''ten years of service'' in introductory provisions.

Subsec. (a)(4). Pub. L. 107–90, § 103(a)(2), added par. (4).

Subsec. (d)(1). Pub. L. 107–90, § 103(c), inserted ''(or five years of service, all of which accrues after December 31, 1995)'' after ''ten years of service'' in introductory provisions.

Subsec. (i). Pub. L. 107–90, § 103(d), added subsec. (i).

1988—Subsec. (e)(1). Pub. L. 100–647, § 7302(a)(1), struck out ''any person, whether or not'' after ''compensated service to'' and ''(but with the right to engage in other employment to the extent not prohibited by subdivision (3) or (4) of this subsection or by subsection (f) of this section). As used in this subsection, the term 'compensated service' shall not include any service as an elected public official of the United States, a State, or any political subdivision of a State'' after ''section 231(a) of this title''.

Subsec. (e)(2). Pub. L. 100–647, § 7302(a)(2), struck out ''and of the person, or persons, by whom he was last employed'' after ''service of an employer''.

Subsec. (e)(3). Pub. L. 100–647, § 7302(a)(3), struck out ''or to the last person, or persons, by whom he was employed prior to the date on which the annuity under subsection (a)(1) of this section began to accrue'' after ''service to an employer''.

Subsec. (e)(4). Pub. L. 100–647, § 7303(a), substituted ''$400 in earnings (after deduction of disability related work expenses)'' for ''$200 in earnings'', ''$4,800 (after deduction of disability related work expenses)'' for ''$2,400'' in two places, ''each $400'' for ''each $200'', ''$200'' for ''$100'', and ''as $400'' for ''as $200''.

Subsec. (f)(6). Pub. L. 100–647, § 7302(b), added par. (6).

1983—Subsec. (a)(1)(i). Pub. L. 98–76, § 106(a)(1), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''the age of sixty-five''.

Subsec. (a)(1)(iii). Pub. L. 98–76, § 106(a)(2), substituted ''reduced by 1/180 for each of the first 36 months that he or she is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that he or she is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue'' for ''reduced by 1/180 for each calendar month that he or she is under age sixty-five when the annuity begins to accrue''.

Subsec. (a)(3). Pub. L. 98–76, § 106(b), which directed the substitution of ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''the age of 65'' and ''the age of sixty-five years'' was executed by substituting that phrase for ''the age of sixty-five'' and ''the age of sixty-five years''.

Subsec. (c)(1)(ii). Pub. L. 98–76, § 106(c), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''the age of 65''.

Subsec. (c)(2). Pub. L. 98–76, § 106(d), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''the age of 65'' and ''reduced by 1/144 for each of the first 36 months that the spouse or divorced wife is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that the spouse or divorced wife is under retirement age (as defined in section 216(*l*) of the Social Security Act) when the annuity begins to accrue'' for ''reduced by 1/144 for each calendar month that the spouse or divorced wife is under age 65 when the annuity begins to accrue''.

Pub. L. 98–76, § 409(a), inserted '', except that the annuity of a divorced wife who was previously entitled to a spouse annuity which was reduced under this subdivision shall be reduced by the same percentage as was applicable to the spouse annuity'' before the period.

Subsec. (c)(3). Pub. L. 98–76, § 415, struck out '', if, as of the day on which the application for a spouse's annuity is filed, such wife or husband and such annuitant were members of the same household, or such wife or husband was receiving regular contributions from such annuitant toward her or his support, or such annuitant has been ordered by any court to contribute to the support of such wife or husband'' after ''annuitant's son or daughter''.

Subsec. (c)(4)(ii)(A). Pub. L. 98–76, § 106(e), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act'' for ''the age of 65''.

Subsec. (d)(1)(iii)(B). Pub. L. 98–76, § 104(a), substituted ''nineteen years of age and a full-time elementary or secondary school student'' for ''twenty-two years of age and a full-time student at an educational institution''.

Subsec. (d)(1)(iv). Pub. L. 98–76, § 413(a), inserted '', but neither this proviso nor clause (B) or (C) of this paragraph shall operate to deny any parent an annuity to the extent and in the amount of the benefit that such parent would have received under the Social Security Act if the service as an employee of the individual, with respect to which such parent would be eligible to receive an annuity under this subchapter except for this proviso and those clauses, were included in 'employment' as defined in the Social Security Act''.

Subsec. (d)(4). Pub. L. 98–76, § 104(b), substituted ''full-time elementary or secondary school student'' for

''full-time student'' and ''elementary or secondary school'' for ''educational institution'', in two places, ''nineteen'' for ''twenty-two'', and ''diploma or equivalent certificate from a secondary school (as defined in section 202(d)(7)(c)(1) of the Social Security Act)'' for ''degree from a four-year college or university''.

Subsec. (e)(2). Pub. L. 98–76, § 106(f), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''age sixty-five''.

Subsec. (e)(4). Pub. L. 98–76, § 106(g), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''age sixty-five'' and ''age of sixty-five''.

Subsec. (h)(1). Pub. L. 98–76, § 414(a), struck out par. (1) relating to a reduction of annuities of individuals whose military service credited under section 231b(i)(2) of this title was used as a basis or partial basis for a pension, disability compensation, or any other gratuitous benefits payable on a periodic basis under any other Act.

1981—Subsec. (b). Pub. L. 97–35, § 1117(a), struck out subdiv. (1) designation, substituted ''conditions set forth in subsections (e)'' for ''conditions set forth in subdivision (2) of this section and subsections (e)'', added par. (v), and struck out subdivs. (2) and (3), which provided for supplementary annuity for the period after an individual renders service as an employee for compensation after his supplemental annuity closing date with two provisos, and that such provisions shall not supersede the provisions of any agreement reached through collective bargaining providing for mandatory retirement at an age less than the applicable supplemental annuity closing date.

Subsec. (c)(2), (4). Pub. L. 97–35, § 1117(b), substituted ''subdivision (1) or a divorced wife who would be entitled to an annuity under subdivision (4) if he or'' for ''subdivision (1) if he or'', ''by 1/144 for each calendar month that the spouse or divorced wife is'' for ''by 1/180 for each calendar month that the spouse is'' in subdiv. (2), and added subdiv. (4).

Subsec. (d)(1)(v). Pub. L. 97–35, § 1117(c), added par. (v).

Subsec. (e)(5). Pub. L. 97–35, § 1117(d), substituted ''spouse or divorced wife'' for ''spouse'' in two places.

Subsec. (f)(2). Pub. L. 97–35, § 1117(e)(1), substituted ''spouse's or divorced wife's annuity'' for ''spouse's annuity'' in five places.

Subsec. (f)(3) to (5). Pub. L. 97–35, § 1117(e)(2), added subdivs. (3) to (5).

Subsec. (g)(2). Pub. L. 97–35, § 1117(f), substituted ''such survivor would be charged with'' for ''such survivor is under the age of seventy-two and is charged with''.

Subsec. (h). Pub. L. 97–35, § 1117(g), substituted ''the spouse or divorced wife of such individual'' for ''the spouse of such individual'' in subdiv. (1), and ''If a spouse or divorced wife entitled'' for ''If a spouse entitled'' in subdiv. (3).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (g)(2), pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 109–478, § 2(b), Jan. 12, 2007, 120 Stat. 3574, provided that: ''The amendments made by this section [amending this section] take effect January 1, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title X, § 1002(b), Aug. 17, 2006, 120 Stat. 1053, provided that: ''The amendments made by this section [amending this section] shall take effect 1 year after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7302(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to annuities payable under the Railroad Retirement Act of 1974 [this subchapter] for months beginning after the date of enactment of this Act [Nov. 10, 1988].''

Section 7303(b) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply with respect to months in calendar years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 104(d) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section and section 231d of this title] shall be effective with respect to annuities accruing for months after the month in which this Act is enacted [August, 1983] except in the case of a child who has attained the age of eighteen in or before the month in which this Act is enacted and is entitled to an annuity under section 2(d) of the Railroad Retirement Act of 1974 [subsec. (d) of this section] for the month in which this Act is enacted or, if earlier, for the month of April 1983.''

Section 106(k) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section and sections 231c and 231d of this title] shall be effective on the date of the enactment of this Act [Aug. 12, 1983], except that such amendment shall not apply to annuity amounts provided under sections 3(b) and 4(b) of the Railroad Retirement Act of 1974 or to increases in such annuity amounts provided under sections 3(g) and 4(d) of such Act if the individual upon whose earning record such annuity amounts are based rendered service as an employee to an employer, or as an employee representative, before the date of the enactment of this Act.''

Section 409(b) of Pub. L. 98–76 provided that: ''The amendment made by this section [amending this section] shall be effective with respect to divorced wife annuities awarded on and after the date of enactment [Aug. 12, 1983].''

Section 413(b) of Pub. L. 98–76 provided that: ''The amendment made by this section [amending this section] shall apply with respect to annuities that first begin to accrue with respect to any month beginning after the date of the enactment of this Act [Aug. 12, 1983].''

Section 414(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall apply with respect to months beginning after the date of the enactment of this Act [Aug. 12, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1117(a) of Pub. L. 97–35 effective Oct. 1, 1981, and applicable with respect to individuals whose supplemental annuity closing date under subsec. (b) of this section did not occur before Oct. 1, 1981, amendment by section 1117(e)(2), (f) of Pub. L. 97–35 effective Jan. 1, 1982, and amendment by other provisions of section 1117 of Pub. L. 97–35 effective Oct. 1, 1981, and applicable with respect to annuities awarded on or after Oct. 1, 1981, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by Secretary of the Treasury to each individual who, for month of March 1975, was entitled to a monthly annuity or pension payment under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of Title 42, The Public Health and Welfare.

§ 231b. Computation of annuities

(a) Amount

(1) The annuity of an individual under section 231a(a)(1) of this title shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the old-age insurance benefit or disability insurance benefit to which such individual would have been entitled under the Social Security Act [42 U.S.C. 301 et seq.] if all of his or her service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act.

(2) For purposes of this subsection, individuals entitled to an annuity under section 231a(a)(1)(ii) of this title shall, except for the purposes of recomputations in accordance with section 215(f) of the Social Security Act [42 U.S.C. 415(f)], be deemed to have attained retirement age (as defined by section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]). For purposes of this subsection, individuals entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title shall be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act [42 U.S.C. 423].

(3) If an individual entitled to an annuity under section 231a(a)(1)(i) or (iii) of this title on the basis of less than ten years of service is entitled to a benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act [42 U.S.C. 402(a), (b), (c)] which began to accrue before the annuity under section 231a(a)(1)(i) or (iii) of this title, the annuity amount provided such individual under this subsection, shall be computed as though the annuity under this subchapter began to accrue on the later of (A) the date on which the benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act began, or (B) the date on which the individual first met the conditions for entitlement to an age reduced annuity under this subchapter other than the conditions set forth in sections 231a(e)(1) and 231a(e)(2) of this title and the requirement that an application be filed.

(b) Increased annuities under subsection (a)

(1) The amount of the annuity of an individual provided under subsection (a) of this section shall be increased by an amount equal to seven-tenths of 1 per centum of the product which is obtained by multiplying such individual's ''years of service'' by such individual's ''average monthly compensation'' as determined under this subsection. The annuity amount payable to the individual under this subsection shall be reduced by 25 per centum of the annuity amount computed for such individual under subsection (h)(1) or (h)(2), and subsection (h)(5), of this section without regard to section 231f(c)(1) of this title. An individual's ''average monthly compensation'' for purposes of this subsection shall be the quotient obtained by dividing by 60 such individual's total compensation for the 60 months, consecutive or otherwise, during which such individual received that individual's highest monthly compensation, except that no part of any month's compensation in excess of the maximum amount creditable for any individual for such month under subsection (j) of this section shall be recognized. In determining the months of compensation to be used for purposes of this subsection, the total compensation reported for the individual under section 231h of this title or credited to such individual under subsection (j) of this section for a year divided by the number of months of service credited to such individual under subsection (i) of this section with respect to such year shall be considered the monthly compensation of the individual for each month of service in any year for which records of the Board do not show the amount of compensation paid to the individual on a monthly basis. If the ''average monthly compensation'' computed under this subsection is not a multiple of $1, it shall be rounded to the next lower multiple of $1.

(2) For purposes of subdivision (1) of this subsection, in determining ''average monthly compensation'' for an individual who has not engaged in employment for an employer in the 60-month period preceding the month in which such individual's annuity began to accrue, and whose major employment during such 60-month period was for a United States department or agency named in section 231(*o*) of this title, the amount of compensation used with respect to each month used in making such determination shall be the product of—

(i) the compensation credited to such individual for such month under paragraph (1) of this subsection; and

(ii) the quotient obtained by dividing—

(I) the average of total wages (as determined under section 215(b)(3)(A)(ii)(I) of the Social Security Act [42 U.S.C. 415(b)(3)(A)(ii)(I)]) for the second calendar year preceding the earliest of the year of the individual's death or the year in which an annuity begins to accrue to such individual (disregarding an annuity based on disability which is terminated because such individual has recovered from such disability if such individual engages in any regular employment after such termination); by

(II) the average of total wages (as determined under section 215(b)(3)(A)(ii)(II) of the Social Security Act [42 U.S.C. 415(b)(3)(A)(ii)(II)]) for the calendar year during which such month occurred, unless such month occurred prior to calendar year 1951, in which case, the average of total wages so determined for 1951.

In no event shall ''average monthly compensation'' determined for an individual under this subdivision exceed the maximum ''average monthly compensation'' which can be determined under subdivision (1) of this subsection for any person retiring January 1 of the year in which such individual's annuity began to accrue.

(c), (d) Repealed. Pub. L. 97–35, title XI, § 1118(b), Aug. 13, 1981, 95 Stat. 631

(e) Supplemental annuities

The supplemental annuity of an individual under section 231a(b) of this title shall be $23 plus an additional amount of $4 for each year of

service that the individual has in excess of 25 years, but in no case shall the supplemental annuity exceed $43.

(f) Reductions in annuities

(1) If, in the case of an individual whose annuity under section 231a(a)(1) of this title began to accrue prior to January 1, 1983, the annuity (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act [42 U.S.C. 301 et seq.] and disregarding any amount provided by subsection (h) of this section) plus the supplemental annuity to which such individual is entitled for any month under this subchapter, together with the annuity, if any, of the spouse of such individual (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act and disregarding any amount provided by section 231c(e) of this title), before any reductions under the provisions of section 231a(f) of this title is less than the total amount which would have been payable to such individual and his spouse for such month, on the basis of the individual's compensation and years of service, under the provisions of the Railroad Retirement Act of 1937 as in effect on December 31, 1974 [45 U.S.C. 228a et seq.], disregarding, for purposes of the computations under such Railroad Retirement Act of 1937 compensation for any month after December 31, 1974, in excess of one-twelfth of the maximum annual taxable ''wages'' (as defined in section 3121 of the Internal Revenue Code of 1986 [26 U.S.C. 3121]) for the calendar year 1974, the annuity of such individual and the annuity of such spouse, if any, shall be increased proportionately so as to equal such total amount. For the purpose of computing amounts under this subdivision, the Board shall have the authority to approximate the effect of the reductions prescribed by sections 3(a)(2) and 3(a)(3) of the Railroad Retirement Act of 1937 [45 U.S.C. 228c(a)(2), (a)(3)]. For purposes of computing amounts payable under the Railroad Retirement Act of 1937, any increases in the amounts determined under the first proviso of section 3(e) of such Act which would have become effective after December 31, 1974, shall be disregarded.

(2) If for any month in which an annuity accrues and is payable under this subchapter the annuity to which an individual is entitled under this subchapter (or would have been entitled except for a reduction pursuant to a joint and survivor election), together with the annuity, if any, of the spouse and divorced wife of such individual, is less than the total amount, or the additional amount, which would have been payable to all persons for such month under the Social Security Act [42 U.S.C. 301 et seq.] if such individual's service as an employee after December 31, 1936, were included in the term ''employment'' as defined in that Act, the annuities of the individual and spouse shall be increased proportionately to such total amount, or such additional amount: *Provided*, *however*, That if an annuity accrues to an individual or a spouse for a part of a month, the amount payable for such part of a month under this subdivision shall be one-thirtieth of the amount payable under this subdivision for an entire month, multiplied by the number of days in such part of a month. For purposes of this subdivision, (i) persons not entitled to an annuity under section 231a of this title shall not be included in the computation under this subdivision except a spouse who could qualify for an annuity under section 231a(c) of this title if the individual from whom the spouse's annuity under this subchapter would derive had attained age 60 or 62, as the case may be, and such individual's children who meet the definition as such contained in section 216(e) of the Social Security Act [42 U.S.C. 416(e)]; (ii) after an annuity has been certified for payment and this subdivision was inapplicable after allowing for any waiting period under section 223(c)(2) of the Social Security Act [42 U.S.C. 423(c)(2)], and after having considered the inclusion of all persons who were then eligible for inclusion in the computation under this subdivision, or was then applicable but later became inapplicable, any recertification in such annuity under this subdivision shall not take into account persons not entitled to an annuity under section 231a of this title except a spouse who could qualify for an annuity under section 231a(c) of this title when she attains age 60 or 62, as the case may be, if the individual from whom the spouse's annuity would derive had attained age 60 or 62, as the case may be, and who was married to such individual at the time he applied for his annuity; and (iii) in computing the amount to be paid under this subdivision the only benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] which shall be considered shall be those to which the persons included in the computation are entitled.

(g) Increased annuities under subsection (b)

(1) Effective with the date of any increase after January 31, 1984, in monthly insurance benefits under the Social Security Act [42 U.S.C. 301 et seq.] which occurs, or which would have occurred had there not been a general benefit increase under that Act, pursuant to the automatic cost-of-living provisions of section 215(i) of that Act [42 U.S.C. 415(i)], that portion of the annuity of an individual which is computed under subsection (b) of this section shall, if such individual's annuity under section 231a(a)(1) of this title began to accrue on or before the effective date of a particular increase under this subdivision, be increased by 32.5 per centum of the percentage increase in the index which is used, or which would have been used had there not been a general benefit increase under the Social Security Act, in increasing benefits under the Social Security Act pursuant to the automatic cost-of-living provisions of section 215(i) of that Act. Any increase under this subsection shall not be deferred and shall be reflected in all payments made to annuitants after such increase under this subsection becomes effective.

(2) The first and, if necessary, the following time or times after January 1, 1983, that monthly insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] are increased, that portion of the annuity of an individual which is computed under subsection (b) of this section as increased under subdivision (1) of this subsection shall, if such individual's annuity under section 231a(a)(1) of this title began to ac-

crue in or before the year in which such first increase under the Social Security Act [42 U.S.C. 301 et seq.] became effective, be reduced by the dollar amount by which that portion of the annuity provided such individual under subsection (a) of this section was increased, after any reduction under subsection (m) of this section, as a result of such increase or increases under the Social Security Act until the total dollar amount of such reduction or reductions equals 5 per centum of the annuity amount provided such individual under subsection (a) of this section, as reduced under subsection (m) of this section, prior to such first increase. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(h) Increased annuities under subsections (a) and (b)

(1) The amount of the annuity provided under subsections (a) and (b) of this section of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 231a(a)(1) of this title began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] on December 31, 1974, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term ''employment'' as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term ''employment'' as defined in that Act.

(2) The amount of the annuity provided under subsections (a) and (b) of this section to an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] as of December 31 of the calendar year prior to 1975 in which he last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the amount by which (C) the sum of (i) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, if his service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term ''employment'' as defined in that Act and if he had no wages or self-employment income under that Act other than wages derived from such service as an employee, and (ii) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this subchapter, exceeds (D) the primary insurance amount to which such individual would have been entitled, upon the attainment of age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which he last performed service as an employee under this subchapter and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term ''employment'' as defined in that Act.

(3) The amount of the annuity provided under subsections (a) and (b) of this section of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 231a(a)(1) of this title began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) will have completed ten years of service prior to January 1, 1975, and is the wife, husband, widow, or widower of a person who will have been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] on December 31, 1974, shall be increased by an amount equal to the smaller of (C) the wife's, husband's, widow's, or widower's insurance benefit to which such individual would have been entitled, upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such person's wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, or (D) the primary insurance amount to which such individual would have been entitled upon attaining age 65

(or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such individual's wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term ''employment'' as defined in that Act.

(4) The amount of the annuity provided under subsections (a) and (b) of this section of an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (3) of this subsection, but (B) will have completed ten years of service prior to January 1, 1975, and is the wife, husband, widow, or widower of a person who will have been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the smaller of (C) the wife's, husband's, widow's, or widower's insurance benefit to which such individual would have been entitled, upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such person's wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last performed service as an employee under this subchapter or (D) the primary insurance amount to which such individual would have been entitled upon attaining age 65 (or, if later, for January 1975), under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of such individual's wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last performed service as an employee under this subchapter and on the basis of compensation derived from service as an employee after December 31, 1936, and prior to January 1, 1975, if such service as an employee had been included in the term ''employment'' as defined in that Act.

(5) The amount computed under subdivision (1), (2), (3), or (4) of this subsection shall be increased by the same percentage, or percentages, as benefits under the Social Security Act [42 U.S.C. 301 et seq.] are increased, or would have been increased had there been no general benefit increases under the Social Security Act, pursuant to the automatic cost-of-living provisions of section 215(i) of that Act [42 U.S.C. 415(i)] during the period from January 1, 1975, to the earlier of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue or January 1, 1982.

(6) No amount shall be payable to an individual under subdivision (3) or (4) of this subsection unless the entitlement of such individual to such amount had been determined prior to August 13, 1981.

(i) Years of service

(1) The ''years of service'' of an individual shall include all his service subsequent to December 31, 1936.

(2) The ''years of service'' of an individual shall also include his voluntary or involuntary military service, within or without the United States, during any war service period: *Provided, however*, That such military service shall be included only if, prior to the beginning of his military service and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable under this subchapter, or lost time as an employee for which he received remuneration, or was serving as an employee representative: *Provided further*, That such military service shall be included only subject to and in accordance with the provisions of subdivisions (1) and (3) of this subsection in the same manner as though military service were service rendered as an employee: *And provided further*, That such military service rendered after December 1956 shall not be included with respect to any month if (A) any benefits are payable for that month under the Social Security Act [42 U.S.C. 301 et seq.] on the basis of such individual's wages and self-employment income, (B) such military service was included in the computation of such benefits, and (C) the inclusion of such military service in the computation of such benefits resulted (for that month) in benefits not otherwise payable or in an increase in the benefits otherwise payable: *And provided further*, That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

(3) The ''years of service'' of an individual who was an employee on August 29, 1935, shall, if the total number of his ''years of service'' as determined under subdivisions (1) and (2) is less than thirty, also include his service prior to January 1, 1937, but not so as to make his total years of service exceed thirty: *Provided, however*, That with respect to any such individual who rendered service to any employer subsequent to December 31, 1936, and who on August 29, 1935, was not an employee of an employer conducting the principal part of its business in the United States, no greater proportion of his service rendered prior to January 1, 1937, shall be included in his ''years of service'' than the proportion which his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this subchapter) for service subsequent to December 31, 1936, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this subchapter) for service rendered anywhere to an employer subsequent to December 31, 1936. Where the ''years of service'' include only part of the service prior to January 1, 1937, the part included shall be taken in reverse order beginning with the last calendar month of such service.

(4) Where for any calendar year after 1984 an individual has performed service for compensation in less than twelve months of the calendar year but has received compensation in excess of an amount determined by multiplying the number of months in the year in which such individual performed service for compensation by an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1986 [26 U.S.C. 3121], the individual shall be deemed to have rendered service for compensation in that number of months in the calendar year, but not to exceed twelve, which is equal to the quotient of the amount of such individual's compensation for the calendar year divided by an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1986, with any remainder produced by this computation increasing the quotient by one, but an individual shall not be deemed under this subdivision to have rendered service for compensation in any month in which such individual was neither in an employment relation to one or more employers nor an employee representative.

(j) Average monthly compensation

The ''average monthly compensation'' shall be computed in the manner specified in subsection (b) of this section, except (1) that with respect to service prior to January 1, 1937, the monthly compensation shall be the average compensation paid to an employee with respect to calendar months included in his years of service in the years 1924–1931, and (2) the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the forms of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940 through August 1941: *Provided, however*, That where service in the period 1924 through 1931 in the one case, or in the period September 1940 through August 1941 in the other case, is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determing[1] the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month's compensation in excess of $300 for any month before July 1, 1954, or in excess of $350 for any month after June 30, 1954, and before June 1, 1959, or in excess of $400 for any month after May 31, 1959, and before November 1, 1963, or in excess of $450 for any month after October 31, 1963, and before October 1, 1965, or in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1986 [26 U.S.C. 3121], whichever is greater, for any month after September 30, 1965, shall be recognized. If for any calendar year after 1984 an employee has received compensation of less than one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1986 in one or more months of the calendar year, the total compensation paid such employee in the calendar year (without regard to the limitation on the amount of compensation provided in the preceding sentence) shall be deemed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in the service of one or more employers for compensation or will have performed service for compensation as an employee representative, but this sentence shall not operate to increase the employee's compensation for any month above an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1986. If the employee earned compensation in service after June 30, 1937, and after the last day of the calendar year in which he attained age sixty-five, such compensation and service shall be disregarded in computing the average monthly compensation if the result of taking such compensation into account in such computation would be to diminish his annuity. Where an employee claims credit for months of service rendered within two years prior to his retirement from the service of an employer, with respect to which the employer's return pursuant to section 231h of this title has not been entered on the records of the Board before the employee's annuity could otherwise be certified for payment, the Board may, in its discretion (subject to subsequent adjustment at the request of the employee) include such months in the computation of the annuity without further verification and may consider the compensation for such months to be the average of the compensation for months in the last period for which the employer has filed a return of the compensation of such employee and such return has been entered on the records of the Board.

(k) Employee representatives

The annuity of an individual who shall have been an employee representative shall be determined in the same manner and with the same effect as if the employee organization by which he shall have been employed were an employer.

(*l*) Reductions for increased annuities

(1) Except as provided in subdivision (2) of this subsection, if an annuity awarded under section 231a(a)(1)(iii) of this title or under section 231a(c)(2) of this title is increased or decreased either by a change in the law or by a recomputation, the reduction on account of age in the amount of such increase or decrease shall be computed as though such increased or decreased annuity amount had been in effect for and after the month in which the annuitant first became entitled to such annuity under section 231a(a)(1)(iii) or section 231a(c)(2) of this title.

(2) The reduction required under section 231a(a)(1)(iii) or section 231a(c)(2) of this title may be applied separately to each of the annu-

[1] So in original. Probably should be ''determining''.

ity amounts computed under subsections (a), (b), and (h) of this section and subsections (a), (b), and (e) of section 231c of this title. For this purpose, in any case in which an annuity amount was computed for an individual under the provisions of this subchapter or of Public Law 93–445 prior to October 1, 1981, an annuity amount computed under subsections (a), (b), (c), (d) and (h) of this section, subsection (a), (b), or (e) of section 231c of this title, and section 204 or section 206 of Public Law 93–445 shall be reduced by its proportionate share of the reduction on account of age. For purposes of the preceding sentence, annuity amounts computed for an individual under subsections (b), (c), and (d) of this section prior to October 1981 shall be considered as one annuity amount.

(m) Reductions due to monthly social security payments

The annuity of any individual under subsection (a) of this section for any month shall, after any reduction pursuant to paragraph (iii) of section 231a(a)(1) of this title, be reduced, but not below zero, by the amount of any monthly benefit (before any deductions on account of work) payable to that individual for that month under title II of the Social Security Act [42 U.S.C. 401 et seq.].

(Aug. 29, 1935, ch. 812, § 3, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1319; amended Pub. L. 95–216, title III, § 358(a), Dec. 20, 1977, 91 Stat. 1556; Pub. L. 96–582, § 1, Dec. 23, 1980, 94 Stat. 3374; Pub. L. 97–35, title XI, § 1118, Aug. 13, 1981, 95 Stat. 630; Pub. L. 98–76, title I, § 101(a), 102(a), 107(a), (b), title IV, §§ 404(1), (2), 405(a), Aug. 12, 1983, 97 Stat. 411, 413, 418, 434, 435; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 107–90, title I, §§ 102(a), (c), 103(b), 104(a)(1), (2)(A), Dec. 21, 2001, 115 Stat. 879, 880, 882.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (f), (g), (h)(1) to (5), (i)(2), and (m), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1937, referred to in subsec. (f)(2), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, which is classified principally to subchapter III (§ 228a et seq.) of this chapter. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to this subchapter. For complete classification of these Acts to the Code, see Tables.

Section 3 of the Railroad Retirement Act of 1937, referred to in subsec. (f)(2), which was classified to section 228c of this title, has been omitted from the Code.

Sections 204 and 206 of Public Law 93–445 (approved Oct. 16, 1974, 88 Stat. 1352, 1354), referred to in subsec. (*l*)(2), are set out as part of the Transitional Provisions note under section 231 of this title.

AMENDMENTS

2001—Subsec. (a)(2). Pub. L. 107–90, § 102(a), inserted after par. designation "For purposes of this subsection, individuals entitled to an annuity under section 231a(a)(1)(ii) of this title shall, except for the purposes of recomputations in accordance with section 215(f) of the Social Security Act, be deemed to have attained retirement age (as defined by section 216(*l*) of the Social Security Act)."

Subsec. (a)(3). Pub. L. 107–90, § 103(b), added par. (3).

Pub. L. 107–90, § 102(c), struck out par. (3) which read as follows: "In lieu of an annuity amount provided under subdivision (1), the annuity of an individual entitled to an annuity under paragraph (ii) of section 231a(a)(1) of this title which begins to accrue before the individual attains age 62 shall be in an amount equal to—

"(i) for each month prior to the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act as of the date on which such individual's annuity begins to accrue if such individual had attained age 62 on the first day of the month in which his or her annuity begins to accrue and if all of such individual's service as an employee after December 31, 1936, had been included in the term 'employment' as defined in that Act, using for purposes of this computation the number of benefit computation years applicable to a person born in the year in which such individual was born; and

"(ii) for months beginning with the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act if all of such individual's service as an employee after December 31, 1936, had been included in the term 'employment' as defined in that Act."

Subsec. (f). Pub. L. 107–90, § 104(a)(1), (2)(A), redesignated pars. (2) and (3) as (1) and (2), respectively, struck out ", without regard to the provisions of subdivision (1) of this subsection," before "proportionately so as to equal" in first sentence of par. (1), and struck out former par. (1) which read as follows: "If the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section would, before any reductions on account of age, before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act, and disregarding any increases in such total amount which become effective after the date on which such individual's annuity under section 231a(a)(1) of this title begins to accrue, exceed an amount equal to the sum of (A) 100 per centum of his 'final average monthly compensation' up to an amount equal to 50 per centum of one-twelfth of the maximum annual taxable 'wages' (as defined in section 3121 of the Internal Revenue Code of 1986) for the calendar year in which such individual's annuity under section 231a(a)(1) of this title begins to accrue, plus (B) 80 per centum of so much of his 'final average monthly compensation' as exceeds 50 per centum of one-twelfth of the maximum annual taxable 'wages' (as defined in section 3121 of the Internal Revenue Code of 1986) for the calendar year in which such individual's annuity under section 231a(a)(1) of this title begins to accrue, the supplemental annuity of such individual first, and then, if necessary, the annuity amount of such individual as computed under subsection (b) of this section, shall be reduced until such total amount of such individual's annuity and supplemental annuity equals such sum or until such supplemental annuity and such annuity amount computed under subsection (b) of this section are reduced to zero, whichever occurs first: *Provided, however*, That the provisions of this subdivision shall not operate to reduce the total amount of an individual's annuity and supplemental annuity computed under the preceding subsections of this section below $1,200. For purposes of this subdivision, the 'final average monthly compensa-

tion' of an individual shall except as provided in the following sentence be determined by dividing the total compensation received by such individual in the two calendar years, consecutive or otherwise, in which he was credited with the highest total compensation during the ten-year period ending with December 31 of the year in which such individual's annuity under section 231a(a)(1) of this title begins to accrue by 24. If the individual's 'average monthly compensation' is determined under subdivision (2) of subsection (b) of this section, the 'final average monthly compensation' for such individual shall be the average of the compensation for the 24 months in which the compensation determined for the purpose of subdivision (2) of subsection (b) of this section is the highest. For purposes of this subdivision, the term 'compensation' shall include 'compensation' as defined in section 231(h) of this title, 'wages' as defined in section 209 of the Social Security Act, 'self-employment income' as defined in section 211(b) of the Social Security Act, and wages deemed to have been paid under section 217 or 229 of the Social Security Act on account of military service: *Provided, however*, That in no case shall the compensation with respect to any calendar month exceed the limitation on the compensation for such month prescribed in subsection (j) of this section. Wages and self-employment income included as compensation for purposes of this subdivision shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the calendar quarter in which credited, in the case of wages paid before 1978, or in equal proportions with respect to all months in the calendar year in which credited, in the case of self-employment income and in the case of wages paid after 1977.''

1986—Subsecs. (f)(1), (2), (i)(4), (j). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing.

1983—Subsec. (a)(2). Pub. L. 98–76, § 101(a)(1), amended par. (2) generally, substituting provisions that for purposes of this subsection, individuals entitled to an annuity under section 231a(a)(1)(iv) or (v) of this title shall be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act, for provisions that for purposes of this subsection, individuals entitled to an annuity under paragraph (ii) of section 231a(a)(1) of this title would except for purposes of recomputations in accordance with the provisions of section 215(f) of the Social Security Act, be deemed to have attained age 65, and individuals entitled to an annuity under paragraph (iv) or (v) of such section 231a(a)(1) of this title would be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act.

Subsec. (a)(3). Pub. L. 98–76, § 101(a)(2), added par. (3).

Subsec. (f)(1). Pub. L. 98–76, § 404(1), inserted ''except as provided in the following sentence'' in sentence relating to the determination of the ''final average monthly compensation'' of an individual.

Pub. L. 98–76, § 404(2), inserted ''If the individual's 'average monthly compensation' is determined under subdivision (2) of subsection (b) of this section, the 'final average monthly compensation' for such individual shall be the average of the compensation for the 24 months in which the compensation determined for the purpose of subdivision (2) of subsection (b) of this section is the highest.''

Subsec. (f)(3). Pub. L. 98–76, § 405(a), in first sentence, inserted ''and divorced wife'' after ''of the spouse'', and substituted ''the annuities of the individual and spouse'' for ''such annuity or annuities''.

Subsec. (g). Pub. L. 98–76, § 102(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''Effective with the month of June for any year after 1981, that portion of the annuity of an individual which is computed under subsection (b) of this section shall, if such individual's annuity under section 231a(a)(1) of this title began to accrue on or before June 1 of such year, be increased by 32.5 per centum of the percentage increase, if any (rounded to the nearest one-tenth of 1 per centum), obtained by comparing (A) the unadjusted Consumer Price Index for the calendar quarter ending March 31 of such year with (B) the higher of (i) such index for the calendar quarter ending March 31 of the year immediately preceding such year or (ii) such index for the calendar quarter ending March 31 of any preceding year after 1980. The unadjusted Consumer Price Index for any calendar quarter shall be the arithmetical mean of such index for the three months in such quarter.''

Subsec. (i)(4). Pub. L. 98–76, § 107(a), added par. (4).

Subsec. (j). Pub. L. 98–76, § 107(b), inserted provision that if for any calendar year after 1984 an employee has received compensation of less than one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1954 in one or more months of the calendar year, the total compensation paid such employee in the calendar year (without regard to the limitation on the amount of compensation provided in the preceding sentence) shall be deemed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in the service of one or more employers for compensation or will have performed service for compensation as an employee representative, but this sentence shall not operate to increase the employee's compensation for any month above an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1954.

1981—Subsec. (b). Pub. L. 97–35, § 1118(a), substituted new criteria for computation of increase in annuity of an individual provided under subsec. (a) of this section.

Subsec. (c). Pub. L. 97–35, § 1118(b), repealed subsec. (c) which provided for amount of increase of annuity of an individual entitled to an annuity under section 231a(a)(1) of this title and who rendered service as an employee to an employer, or as an employee representative subsequent to Dec. 31, 1974.

Subsec. (d). Pub. L. 97–35, § 1118(b), repealed subsec. (d) which prescribed a formula for increase in amount of annuity of an individual provided for in other provisions of this section.

Subsec. (f)(1). Pub. L. 97–35, § 1118(c)(2), substituted ''such individual's annuity under section 231a(a)(1) of this title begins to accrue, exceed an amount equal to the sum of (A)'' for ''such begins to accrue, exceed an amount equal to the sum of individual's annuity under section 231a(a)(1) of this title (A)''.

Pub. L. 97–35, § 1118(c)(1), substituted ''subsection (b) of this section'' for ''subsections (b), (c), and (d) of this section'' in two places.

Subsec. (g). Pub. L. 97–35, § 1118(d), substituted new formula for increase of portion of annuity of an individual computed under subsec. (b) of this section for formula for increase of portions of annuity of an individual computed under subsecs. (b) and (d) of this section, and revised effective dates for such increases.

Subsec. (h)(1) to (4). Pub. L. 97–35, § 1118(e)(1), substituted ''subsections (a) and (b) of this section'' for ''subsections (a) through (d) of this section'' in subdivs. (1) to (4).

Subsec. (h)(5). Pub. L. 97–35, § 1118(e)(2), substituted ''January 1, 1975, to the earlier of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue or January 1, 1982'' for ''January 1, 1975, to the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue''.

Subsec. (h)(6). Pub. L. 97–35, § 1118(e)(3), added subdiv. (6).

Subsec. (j). Pub. L. 97–35, § 1118(f), substituted definition of average monthly compensation by reference to computation in manner specified in subsec. (b) of this section, for definition by reference to average compensation paid to an employee with respect to calendar months included in his years of service, and struck out provision rounding to next lower multiple of $1 if average monthly compensation is not a multiple of $1.

Subsec. (*l*). Pub. L. 97–35, § 1118(g), designated existing provisions as subdiv. (1), substituted provisions that except as provided in subdiv. (2) of this subsection, if an

annuity awarded under section 231a(a)(1)(iii) or under section 231a(c)(2) of this title is increased or decreased either by a change in law or by a recomputation, the reduction on account of age in the amount of such increase or decrease shall be computed as though such increased or decreased annuity amount had been in effect for and after month in which annuitant first became entitled to such annuity under section 231a(a)(1)(iii) or section 231a(c)(2) of this title, for provisions that in cases where an annuity awarded under section 231a(a)(1)(iii) or under section 231a(c)(2) of this title is increased either by a change in law or by a recomputation, the reduction for the increase in the annuity shall be determined separately and period with respect to which the reduction applies shall be determined as if such increase were a separate annuity payable for and after first month for which such increase is effective, and added subdiv. (2).

Subsec. (m). Pub. L. 97–35, § 1118(h)(2), inserted ''(before any deductions on account of work)'' after ''monthly benefit''.

Pub. L. 97–35, § 1118(h)(1), substituted ''shall, after any reduction pursuant to paragraph (iii) of section 231a(a)(1) of this title, be reduced'' for ''shall be reduced''.

1980—Subsec. (g). Pub. L. 96–582 designated existing provisions as subdiv. (1) and added subdiv. (2).

1977—Subsec. (f)(1). Pub. L. 95–216 substituted ''Wages and self-employment income included as compensation for purposes of this subdivision shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the calendar quarter in which credited, in the case of wages paid before 1978, or in equal proportions with respect to all months in the calendar year in which credited, in the case of self-employment income and in the case of wages paid after 1977'' for ''Wages and self-employment income included as compensation for purposes of this subdivision shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the calendar quarter in which credited in the case of wages, or in equal proportions with respect to all months in the calendar year in which credited, in the case of self-employment income''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 102 of Pub. L. 107–90 applicable to annuities that begin to accrue on or after Jan. 1, 2002, with exception for amount of the annuity provided for a spouse under section 231c(a) of this title, see section 102(d) of Pub. L. 107–90, set out as a note under section 231c of this title.

Amendment by section 103(b) of Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

Pub. L. 107–90, title I, § 104(c), Dec. 21, 2001, 115 Stat. 882, provided that: ''The amendments made by this section [amending this section and sections 231c and 231f of this title] shall take effect on January 1, 2002, and shall apply to annuity amounts accruing for months after December 2001.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 101(c) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending sections 231b and 231c of this title] shall become effective on July 1, 1984, and shall apply only with respect to awards in cases where the individual's annuity under section 2(a)(1) of the Railroad Retirement Act of 1974 [45 U.S.C. 231a(a)(1)] began to accrue on or after that date and the individual had not completed thirty years of service and attained age 60 prior to that date. In the case of an individual who has completed thirty years of service and has attained age 60 before January 1, 1986, the amount of the reduction on account of age in the annuity amount provided to such individual under section 3(a)(3) of the Railroad Retirement Act of 1974 [subsec. (a)(3) of this section] and the amount of the reduction on account of age in the annuity amount provided to the spouse of such individual under subdivision (3) of section 4(a) of the Railroad Retirement Act of 1974 [45 U.S.C. 231c(a)(3)] shall be only one-half of the amount by which such annuity would be reduced on account of age except for the provisions of this sentence.''

Section 102(d) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending sections 231b and 231c of this title] shall be effective on the date of the enactment of this Act [Aug. 12, 1983]. For purposes of the amendments made by subsection (a) of this section [amending this section], annuity portions computed under subsections (b) and (d) of section 3 of the Railroad Retirement Act of 1974 [subsecs. (b) and (d) of this section] as in effect before October 1, 1981, shall be treated as having been computed under subsection (b) of such section as in effect after that date.''

Section 107(c) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall become effective on January 1, 1985.''

Section 404(c) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall be effective October 1, 1983, and shall apply with respect to annuities awarded on or after that date.''

Section 405(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall be effective October 1, 1981.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1118(a), (d) of Pub. L. 97–35 effective on the later of Oct. 1, 1981, and the date, after July 1, 1981, on which there is an increase in the rate of any tax imposed under chapter 22 of Title 26, Internal Revenue Code, and applicable only with respect to annuities awarded on or after such date, amendment by section 1118(b), (g) of Pub. L. 97–35 effective Oct. 1, 1981, amendment by section 1118(c)(2) of Pub. L. 97–35 effective Jan. 1, 1975, amendment by section 1118(e)(3) of Pub. L. 97–35 effective Aug. 31, 1981, amendment by section 1118(h)(2) of Pub. L. 97–35 effective Jan. 1, 1982, and amendment by other provisions of section 1118 of Pub. L. 97–35 effective Oct. 1, 1981 and applicable only with respect to annuities awarded on or after Oct. 1, 1981, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 3 of Pub. L. 96–582 provided that: ''The provisions of this Act [amending this section] shall take effect on the date of the enactment of this Act [Dec. 23, 1980].''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 358(b) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall be effective January 1, 1978.''

§ 231c. Computation of spouse and survivor annuities

(a) Amount of spouses' annuities; age

(1) The annuity of a spouse or divorced wife of an individual under section 231a(c) of this title shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse or divorced wife would have been entitled under the Social Security Act [42 U.S.C. 301 et seq.] if such individual's service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act.

(2) For purposes of this subsection, a spouse entitled to an annuity under section

231a(c)(1)(ii)(B) of this title shall be deemed to have attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)][1].

(3) If a spouse entitled to an annuity under section 231a(c)(1)(ii)(A), section 231a(c)(1)(ii)(C), or section 231a(c)(2) of this title or a divorced spouse entitled to an annuity under section 231a(c)(4) of this title on the basis of the employment record of an employee who will have completed less than 10 years of service is entitled to a benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act [42 U.S.C. 402(a), (b), (c)] which began to accrue before the annuity under section 231a(c)(1)(ii)(A), section 231a(c)(1)(ii)(C), section 231a(c)(2), or section 231a(c)(4) of this title, the annuity amount provided under this subsection shall be computed as though the annuity under this subchapter began to accrue on the later of (A) the date on which the benefit under section 202(a), section 202(b), or section 202(c) of the Social Security Act began or (B) the first date on which the annuitant met the conditions for entitlement to an age reduced annuity under this subchapter other than the conditions set forth in sections 231a(e)(1) and 231a(e)(2) of this title and the requirement that an application be filed.

(b) Increases in spouses' annuities in accordance with section 231b(b), (c), (d) of this title

The amount of the annuity of a spouse of an individual provided under subsection (a) of this section shall be increased by an amount equal to 45 per centum of that portion of the individual's annuity as is computed under subsection (b) of section 231b of this title: *Provided, however*, That if the spouse is entitled to an annuity amount provided by subsection (e)(1) or (e)(2) of this section, the amount of such spouse's annuity provided by the preceding provisions of this subsection shall be reduced by the amount by which the amount computed in accordance with the provisions of clause (C) of subsection (e)(1) or (e)(2) of this section was increased by the Social Security Amendments of 1965, 1967, and 1969, disregarding (A) the amount of any such increase resulting from the Social Security Amendments of 1967 equal to, or less than, the excess of $5 over 5.8 per centum of the lesser of (i) the amount computed under clause (C) of subsection (e)(1) or (e)(2) of this section before any increases derived from legislation enacted after the Social Security Amendments of 1967 or (ii) the amount of the spouse's annuity to which such spouse would have been entitled under section 2(e) of the Railroad Retirement Act of 1937 [45 U.S.C. 228b(e)], without regard to section 3(a)(2) of that Act [45 U.S.C. 228c(a)(2)] or to increases derived from legislation enacted after 1968 and before any reduction on account of age, on the basis of the individual's compensation and years of service prior to January 1, 1975, and (B) the amount of any such increase resulting from the Social Security Amendments of 1969 equal to, or less than, $5: *Provided further*, That if the spouse is entitled to an annuity under section 231a(a)(1) of this title, the amount of the annuity of such spouse under this subsection shall,[2] be increased by an amount equal to the amount by which the amount of the annuity of such spouse provided under subsection (a) of this section was reduced by reason of the provisions of subsection (i)(2) of this section (disregarding, for this purpose, any increase in such reduction which becomes effective after the later of the date such spouse's annuity under section 231a(c) of this title began to accrue or the date such spouse's annuity under section 231a(a)(1) of this title began to accrue). The Board shall have the authority to approximate the amount of any reduction prescribed by the first proviso of this subsection.

(c) Repealed. Pub. L. 107–90, title I, § 104(b), Dec. 21, 2001, 115 Stat. 882

(d) Increases in spouses' annuities in accordance with section 231b(g) of this title

(1) That portion of the annuity of the spouse of an individual as is determined under subsection (b) and (c) of this section shall be increased by the same percentage, or percentages, as the individual's annuity is, or has been, increased pursuant to the provisions of section 231b(g)(1) of this title.

(2) That portion of the annuity of the spouse of an individual as is determined under subsection (b) of this section prior to any determination under subsection (c) of this subsection[3] shall, if the annuity of such spouse is not subject to reduction under subdivision (3) of this subsection, be reduced by an amount equal to 50 per centum of the dollar amount by which the annuity of the individual was reduced under section 231b(g)(2) of this title. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(3) The first and, if necessary, the following time or times after January 1, 1983, that monthly insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] are increased, that portion of the annuity of the spouse of an individual as is determined under subsections (b), (c), and (d)(1) of this section shall, if such spouse's annuity under section 231a(c) of this title began to accrue in or before the year in which such first increase under the Social Security Act [42 U.S.C. 301 et seq.] became effective, be reduced by the dollar amount by which that portion of the annuity provided such spouse under subsection (a) of this section was increased, after any reduction under subsection (i) of this section, as a result of such increase or increases under the Social Security Act until the total dollar amount of such reduction or reductions equals 5 per centum of the annuity amount provided such spouse under subsection (a) of this section, as reduced under subsection (i) of this section, prior to such first increase. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(e) Increases in particular spouses' annuities

(1) The amount of the annuity of the spouse of an individual determined under subsections (a)

[1] So in original. Probably should be followed by a closing parenthesis.

[2] So in original. The comma probably should not appear.

[3] So in original. Probably should be "section".

and (b) of this section, if (A) such individual will have (i) rendered service as an employee to an employer, or as an employee representative, during the calendar year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 231a(a)(1) of this title began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975, and (B) such individual will have completed ten years of service prior to January 1, 1975, and such spouse will have been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] on December 31, 1974, shall be increased by an amount equal to the smaller of (C) the primary insurance amount to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of her or his wages and self-employment income derived from employment and self-employment under that Act prior to January 1, 1975, or (D) the wife's or husband's insurance benefit to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, if such individual's service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term ''employment'' as defined in that Act, if such individual had no wages or self-employment income under the Act other than wages derived from such service as an employee, and if such spouse were entitled to no other benefit under that Act: *Provided, however*, That the increase under the provisions of this subdivision shall not be less than 50 per centum of the portion of the annuity, if any, of such individual determined under the provisions of section 231b(h)(1) of this title prior to any increases under the provisions of section 231b(h)(5) of this title.

(2) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) such individual will have completed ten years of service prior to January 1, 1975, and such spouse will have been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee, shall be increased by an amount equal to the smaller of (C) the primary insurance amount to which such spouse would have been entitled, upon attaining age 65,under the provisions of the Social Security Act as in effect on December 31, 1974, on the basis of his or her wages and self-employment income derived from employment and self-employment under that Act as of December 31 of the calendar year prior to 1975 in which such individual last rendered service as an employee or (D) the wife's or husband's insurance benefit to which such spouse would have been entitled, upon attaining age 65, under the provisions of the Social Security Act as in effect on December 31, 1974, if such individual's service as an employee after December 31, 1936, and prior to January 1, 1975, were included in the term ''employment'' as defined in that Act, if such individual had no wages or self-employment income under that Act other than wages derived from such service as an employee, and if such spouse were entitled to no other benefit under that Act: *Provided, however*, That the increase under the provisions of this subdivision shall not be less than 50 per centum of the portion of the annuity, if any, of such individual determined under the provisions of section 231b(h)(2) of this title prior to any increases under the provisions of section 231b(h)(5) of this title.

(3) The amount of the annuity of the spouse of an individual determined under subsections (a) and (b) of this section, if (A) such individual is entitled to an amount determined under the provisions of section 231b(h)(1) or 231b(h)(2) of this title and (B) such spouse is not entitled to an amount determined under the provisions of subdivision (1) or (2) of this subsection, shall be increased by an amount equal to 50 per centum of the portion of the annuity of such individual determined under the provisions of section 231b(h)(1) or 231b(h)(2) of this title prior to any increases under the provisions of section 231b(h)(5) of this title.

(4) The amount determined under the provisions of subdivision (1), (2), or (3) of this subsection shall be increased by the same percentage or percentages, as wife's and husband's insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] are increased, or would have been increased had there been no general benefit increases under the Social Security Act [42 U.S.C. 301 et seq.], pursuant to the automatic cost-of-living provisions of section 215(i) of that Act [42 U.S.C. 415(i)], during the period from January 1, 1975, to the earlier of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue or January 1, 1982.

(5) No amount shall be payable to a person under subdivision (1), (2), or (3) of this subsection unless the entitlement of such person to such amount had been determined prior to August 13, 1981.

(f) Amount of survivors' annuities; age; entitlement

(1) The annuity of a survivor of a deceased employee under section 231a(d) of this title shall be in an amount equal to the amount (before any deductions on account of work) of the widow's insurance benefit, widower's insurance benefit, mother's insurance benefit, parent's insurance benefit, or child's insurance benefit, whichever is applicable, to which he or she would have been entitled under the Social Security Act [42 U.S.C. 301 et seq.] if such deceased employee's service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act. In the case of a widow or widower who is entitled to an annuity under section 231a(d) of this title solely on the basis of railroad service which was performed prior to January 1, 1937, the amount provided under this section with respect to any month shall not be less than the first amount appearing in column IV of the table appearing in section 215(a) of the Social Security Act [42 U.S.C. 415(a)] as in effect on December 31, 1974, after reduction in accord-

ance with the provisions of section 202(k) and 202(q) of that Act [42 U.S.C. 402(k), (q)] in the same manner as would be applicable to a widow's insurance benefit or widower's insurance benefit payable under section 202(e) or 202(f) of that Act.

(2) For purposes of this subsection—

(i) a widow or widower or a parent who is entitled to an annuity based on age under section 231a(d)(1) of this title and who has not attained age 62 shall be deemed to be age 62: *Provided, however*, That the provisions of this paragraph shall not apply in the case of a widow or widower who was entitled to an annuity under section 231a(d)(1) of this title on the basis of disability for the month before the month in which he or she attained age 60,

(ii) a widow or widower or a child who is entitled to an annuity under section 231a(d)(1) of this title on the basis of disability shall be deemed to be entitled to a widow's insurance benefit, a widower's insurance benefit, or a child's insurance benefit under the Social Security Act [42 U.S.C. 301 et seq.] on the basis of disability, and

(iii) The[4] provisions of paragraphs (i) and (ii) of this subdivision shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entitled to such annuity on the basis of the provisions of section 231a(d)(1)(v) of this title.

(3) The annuity amount provided to a widow or widower under last sentence of subdivision (1) shall be increased by the same percentage or percentages as insurance benefits payable under section 202 of the Social Security Act [42 U.S.C. 402] are increased after the date on which such annuity begins to accrue.

(g) Increases in survivor's annuities in accordance with subsection (f)

(1) The amount of the annuity provided under subsection (f)(1) of this section (other than the last sentence thereof) for a survivor of a deceased individual shall be increased by an amount equal to the appropriate one of the following percentages of that portion of the annuity computed under section 231b(b) of this title, before any reduction on account of age and without regard to any reduction under section 231b(g)(2) of this title, to which such deceased individual would have been entitled for the month such survivor's annuity under section 231a(d) of this title began to accrue if such individual were living (deeming for this purpose that if such individual died before becoming entitled to an annuity under section 231a(a)(1) of this title, such individual became entitled to an annuity under subdivision (i) of such section 231a(a)(1) of this title in the month in which such individual died):

(i) In the case of a widow or widower, the increase shall be equal to 50 per centum of such portion of the deceased individual's annuity, but the amount of the annuity so determined shall be subject to reduction on account of age in the same manner as is applicable to the annuity amount determined for the widow or widower under subsection (f) of this section and shall be subject to increase as provided in subdivision (4) of this subsection.

(ii) In the case of a parent, the increase shall be equal to 35 per centum of such portion of the deceased individual's annuity.

(iii) In the case of a child, the increase shall be equal to 15 per centum of such portion of the deceased individual's annuity.

(2) Whenever the total amount of the increases based on the deceased individual's portion of the annuity under section 231b(b) of this title as determined under subdivision (1) of this subsection for all survivors of a deceased employee is—

(i) less than an amount equal to 35 per centum of such portion of the deceased individual's annuity, the total increase shall, before any deductions under section 231a(g) of this title, be increased proportionately until the total increase is equal to 35 per centum of such portion of the deceased individual's annuity; or

(ii) more than an amount equal to 80 per centum of such portion of the deceased individual's annuity, the total increase shall, before any deductions under section 231a(g) of this title and before any reduction on account of age, be reduced proportionately until the total increase is equal to 80 per centum of such portion of the deceased individual's annuity.

(3) An annuity determined under this subsection for a month prior to the month in which application is filed, shall be reduced to any extent that may be necessary so that it will not render erroneous any annuity which, before the filing of such application, the Board has certified for payment for such prior month.

(4) If a widow or widower of a deceased employee is entitled to an annuity under section 231a(a)(1) of this title and if either such widow or widower or such deceased employee will have completed 10 years of service prior to January 1, 1975, the amount of the annuity of such widow or widower under subdivisions (1) through (3) of this subsection shall be increased by an amount equal to the amount, if any, by which (A) the widow's or widower's insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(a)] as in effect on December 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act [45 U.S.C. 228c(e)] on the basis of the deceased employee's remuneration and service prior to January 1, 1975, increased by the same percentage, or percentages, as widow's and widower's insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] are increased during the period from January 1, 1975, to the later of the date on which such widow's or widower's annuity under section 231a(a)(1) of this title began to accrue or the date on which such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue, exceeds (B) the total of the annuity amounts to which such widow or widower was entitled (after any reductions pursuant to subsection (i)(2) of this section but before any deductions on account of work) under the preceding provisions of this subsection, sub-

[4] So in original. Probably should not be capitalized.

section (f) of this section, and the amount determined under subsection (h) of this section, before the proviso, as of the later of the date on which such widow's or widower's annuity under section 231a(a)(1) of this title began to accrue or the date on which such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue. If a widow or widower of a deceased employee is not entitled to an annuity under section 231a(a)(1) of this title or to an old-age insurance benefit or a disability insurance benefit under the Social Security Act [42 U.S.C. 301 et seq.], the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause the total of the annuity amounts to which such widow or widower is entitled (before any deductions on account of work) under this subsection and subsection (f)(1) of this section to equal the total of the annuity amounts to which such widow or widower was entitled (or would have been entitled except for the provisions of sections 231a(e) and 231a(f) of this title) as a spouse under subsections (a), (b), and (e) of this section (after any reduction on account of age) in the month preceding the employee's death. If a widow or widower of a deceased employee is entitled to an annuity under section 231a(a)(1) of this title or to an old-age insurance benefit or a disability insurance benefit under the Social Security Act, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause (A) the total of the annuity amounts to which such widow or widower is entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act or subsection (i)(2) of this section but before any deductions on account of work) under this subsection and subsection (f) of this section to equal (B)(i) the total of the annuity amounts, if any, to which such widow or widower was entitled (or would have been entitled except for the provisions of sections 231a(e) and 231a(f) of this title) as a spouse under subsections (a), (b), and (e) of this section (after any reduction on account of age) in the month preceding the employee's death less (ii), if such widow or widower is entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act but was not entitled to such a benefit in the month preceding the employee's death, the amount by which the annuity amount payable under subsection (a) of this section to such widow or widower as a spouse in the month preceding the employee's death would have been reduced by reason of section 202(k) or 202(q) of the Social Security Act if such widow or widower had been entitled to an old-age insurance benefit or a disability insurance benefit under the Social Security Act in the month preceding the employee's death in an amount equal to the amount of such benefit at the time such benefit first began to accrue to such widow or widower.

(5) This subsection shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entitled to such annuity on the basis of the provisions of section 231a(d)(1)(v) of this title.

(6) That portion of the annuity of a survivor of an individual determined under subdivisions (1) and (2) of this subsection shall be increased whenever, and by the same percentage or percentages as, the annuity of the individual would have been increased pursuant to section 231b(g)(1) of this title if such individual were still living.

(7) The first and, if necessary, the following time or times after January 1, 1983, that monthly insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] are increased, that portion of the annuity of a survivor of a deceased individual as is determined under subdivisions (1) and (2) of this subsection, or under this subsection as in effect before amendment by section 1119(g) of Public Law 97–35, shall, if such survivor's annuity under section 231a(d) of this title began to accrue before the effective date of such first increase under the Social Security Act [42 U.S.C. 301 et seq.], be reduced by the dollar amount by which that portion of the annuity provided such survivor under subsection (f) of this section was increased, after any reduction under subsection (i) of this section, as a result of such increase or increases under the Social Security Act until the total dollar amount of such reduction or reductions equals 5 per centum of the annuity amount provided such survivor under subsection (f) of this section, as reduced under subsection (i) of this section, prior to such first increase. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(8) That portion of the annuity of a survivor of a deceased individual as is determined under subdivisions (1) and (2) of this subsection shall, if the annuity of such survivor is not subject to reduction under subdivision (7) of this subsection, be reduced by an amount equal to the dollar amount by which the annuity of the deceased individual was reduced under section 231b(g)(2) of this title or would have been reduced under such section 231b(g)(2) of this title if such deceased individual had been living at the time such survivor's annuity under section 231a(d) of this title began to accrue (deeming for this purpose, if such individual died before becoming entitled to an annuity under section 231a(a)(1) of this title, that such individual became entitled to an annuity under paragraph (i) of such section 231a(a)(1) of this title in the month in which such individual died). In a case where the survivor of a deceased individual is not entitled to a monthly insurance benefit under the Social Security Act [42 U.S.C. 301 et seq.], the reduction provided by the preceding sentence of this subdivision shall be equal to the dollar amount by which the annuity of the deceased individual would have been reduced under section 231b(g)(2) of this title if the annuity of such deceased individual had not been subject to reduction under section 231b(m) of this title. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(9) That portion of the annuity of a survivor of a deceased individual as is determined under this subsection as in effect before amendment by section 1119(g) of Public Law 97–35 shall, if the annuity of such survivor is not subject to reduction under subdivision (7) of this subsection, be reduced by an amount equal to the dollar

amount by which the annuity of the deceased individual was reduced under section 231b(g)(2) of this title or, if such survivor is not entitled to a monthly insurance benefit under the Social Security Act [42 U.S.C. 301 et seq.], would have been reduced under such section 231b(g)(2) of this title if the annuity of such deceased individual had not been subject to reduction under section 231b(m) of this title. In no case shall the reduction by reason of this paragraph operate to reduce such portion to an amount less than $10.

(10)(i) If for any month the unreduced annuity provided under this section for a widow or widower is less than the widow's or widower's initial minimum amount computed pursuant to paragraph (ii) of this subdivision, the unreduced annuity shall be increased to that initial minimum amount. For the purposes of this subdivision, the unreduced annuity is the annuity without regard to any deduction on account of work, without regard to any reduction for entitlement to an annuity under section 231a(a)(1) of this title, without regard to any reduction for entitlement to a benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.], and without regard to any reduction for entitlement to a public service pension pursuant to section 202(e)(7), 202(f)(2), or 202(g)(4) of the Social Security Act.[5]

(ii) For the purposes of this subdivision, the widow or widower's initial minimum amount is the amount of the unreduced annuity computed at the time an annuity is awarded to that widow or widower, except that—

(A) in subsection (g)(1)(i) of this section ''100 per centum'' shall be substituted for ''50 per centum''; and

(B) in subsection (g)(2)(ii) of this section ''130 per centum'' shall be substituted for ''80 per centum'' both places it appears.

(iii) If a widow or widower who was previously entitled to a widow's or widower's annuity under section 231a(d)(1)(ii) of this title becomes entitled to a widow's or widower's annuity under section 231a(d)(1)(i) of this title, a new initial minimum amount shall be computed at the time of award of the widow's or widower's annuity under section 231a(d)(1)(i) of this title.

(h) Increases in particular widows' and widowers' annuities

(1) The amount of the annuity of the widow or widower of a deceased employee determined under subsections (f) and (g) of this section, if such deceased employee will have completed ten years of service prior to January 1, 1975, and such widow or widower will have been permanently insured under the Social Security Act [42 U.S.C. 301 et seq.] of[6] December 31, 1974, shall be increased by an amount equal to the amount, if any, by which (A) the widow's or widower's insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(a)] as in effect on December 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act [45 U.S.C. 228c(e)]), on the basis of the deceased employee's remuneration and service prior to January 1, 1975, increased by the same percentage, or percentages, as widow's and widower's insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] are increased during the period from January 1, 1975, to January 1, 1982 or, if earlier, to the later of the date on which such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue or the date beginning the first month for which such widow or widower is entitled to an old age insurance benefit or disability insurance benefit under the Social Security Act, exceeds (B) the total of the annuity amounts to which such widow or widower was entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act and subsection (i)(2) of this section but before any deductions on account of work) under subsections (f) and (g) of this section as to the later of the date on which such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue or the date beginning the first month for which such widow or widower is entitled to an old-age insurance benefit or disability insurance benefit under the Social Security Act: *Provided, however*, That, if a widow or widower was entitled (or would have been entitled except for the provisions of section 231a(e) or 231a(f) of this title) to an annuity amount under subdivision (1) or (2) of subsection (e) of this section in the month preceding the employee's death, the amount of the annuity to which such widow or widower is entitled under this subsection shall not be less than an amount which would cause (A) the total of the annuity amounts to which such widow or widower is entitled (after any reductions pursuant to section 202(k) or 202(q) of the Social Security Act but before any deductions on account of work) under subsections (f) and (g) of this section and the preceding provisions of this subsection as of the date such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue to equal (B) the total of the annuity amounts to which such widow or widower was entitled (or would have been entitled except for the provisions of section 231a(e) or 231a(f) of this title) as a spouse under subsections (a), (b), and (e) of this section (after any reductions on account of age) in the month preceding the employee's death.

(2) Subdivision (1) of this subsection shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entitled to such annuity on the basis of the provisions of section 231a(d)(1)(v) of this title. No amount shall be payable to a person under subdivision (1) of this subsection unless the entitlement of such person to such amount had been determined prior to August 13, 1981.

(i) Reductions in survivors' annuities

(1) The annuity of any spouse or divorced wife under subsection (a) of this section for any month shall, after a reduction pursuant to section 231a(c)(2) of this title be reduced, but not below zero, by the amount of any insurance benefit (before any deduction on account of work) payable to such spouse or divorced wife for that month under title II of the Social Security Act [42 U.S.C. 401 et seq.].

[5] See References in Text note below.

[6] So in original. Probably should be ''on''.

(2) If a spouse or divorced wife entitled to an annuity under section 231a(c) of this title or a survivor entitled to an annuity under section 231a(d) of this title for any month is also entitled to an annuity under section 231a(a)(1) of this title for such month, the annuity amount of such spouse or divorced wife determined under subsection (a) of this section or of such survivor under subsection (f) of this section shall, after any reduction pursuant to subdivision (1) of this subsection, be reduced by the amount of the annuity of such spouse or divorced wife or such survivor determined under section 231b(a) of this title.

(3) The annuity of any survivor under subsection (f) of this section shall be reduced, but not below zero, by the amount of any insurance benefit (before any deduction on account of work) payable to such survivor under title II of the Social Security Act [42 U.S.C. 401 et seq.], unless in computing the amount under subsection (f) of this section a reduction was made for such insurance benefit pursuant to section 202(k) of the Social Security Act [42 U.S.C. 402(k)].

(Aug. 29, 1935, ch. 812, § 4, as restated June 24, 1937, ch. 382, pt. I; 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1327; amended Pub. L. 94–547, § 2(a), (b), Oct. 18, 1976, 90 Stat. 2524; Pub. L. 97–35, title XI, § 1119, Aug. 13, 1981, 95 Stat. 632; Pub. L. 98–76, title I, §§ 101(b), 102(b), (c), 106(h), title IV, §§ 406(a), 407(a), Aug. 12, 1983, 97 Stat. 411, 413, 414, 418, 435; Pub. L. 107–90, title I, §§ 101(a), 102(b), (c), 103(e), 104(b), Dec. 21, 2001, 115 Stat. 878, 879, 881, 882.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (d)(3), (e)(1), (2), (4), (f)(1), (2)(ii), (g)(4), (7) to (10), (h)(1), and (i)(1), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. Sections 202(e)(7), 202(f)(2), and 202(g)(4) of the Act probably mean subsecs. (e)(7), (f)(2), and (g)(4) of section 202 of the Act as classified to subsecs. (e)(7), (f)(2), and (g)(4) of section 402 of Title 42, respectively, prior to repeal by Pub. L. 108–203, title IV, § 418(b)(3)(B), (4)(A)(i), (5)(B), Mar. 2, 2004, 118 Stat. 532, 533. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Social Security Amendments of 1965, referred to in subsec. (b), is Pub. L. 89–97, July 30, 1965, 79 Stat. 286, as amended. For complete classification of this Act to the Code, see Short Title of 1965 Amendment note set out under section 1305 of Title 42 and Tables.

The Social Security Amendments of 1967, referred to in subsec. (b), is Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, as amended. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1305 of Title 42 and Tables.

The Social Security Amendments of 1969, referred to in subsec. (b), is title X of Pub. L. 91–172, Dec. 30, 1969, 83 Stat. 737, as amended, which amended sections 401, 402, 403, 415, 427, and 428 of Title 42, and enacted provisions set out as notes under sections 401, 402, 403, 415, and 427 of Title 42. For complete classification of this Act to the Code, see Short Title of 1969 Amendment note set out under section 1305 of Title 42 and Tables.

Sections 2, 3, and 5 of the Railroad Retirement Act of 1937, referred to in subsecs. (b), (g)(4), and (h)(1), which were classified to sections 228b, 228c, and 228e of this title, have been omitted from the Code.

Section 1119(g) of Public Law 97–35, referred to in subsec. (g)(7), (9), amended subsec. (g) of this section generally. See 1981 Amendment note below.

AMENDMENTS

2001—Subsec. (a)(2). Pub. L. 107–90, § 102(b), substituted "a spouse entitled to an annuity under section 231a(c)(1)(ii)(B) of this title" for "if an individual is entitled to an annuity under paragraph (ii) of section 231a(a)(1) of this title which did not begin to accrue before such individual attained age 62, the spouse of such individual entitled to annuity under clause (B) of paragraph (ii) of section 231a(c)(1) of this title".

Subsec. (a)(3). Pub. L. 107–90, § 103(e), added par. (3).

Pub. L. 107–90, § 102(c), struck out par. (3) which read as follows: "In the case of an individual entitled to an annuity under section 231a(a)(1)(ii) of this title which began to accrue before such individual attained age 62, the annuity of the spouse of such individual under section 231a(c) of this title shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to—

"(i) for each month prior to the first month throughout which both the individual and the spouse are age 62, 50 per centum of that portion of the individual's annuity as is, or was prior to such individual's attaining age 62, computed under section 231b(a)(3)(i) of this title, reduced to the same extent such amount would be reduced under section 202(b)(4) of the Social Security Act (in the case of a wife) or under section 202(c)(2) of the Social Security Act (in the case of a husband) as if such amount were a wife's insurance benefit or a husband's insurance benefit, respectively, under such Act; and

"(ii) for months beginning with the first month throughout which both the individual and the spouse are age 62, the amount (after any reduction on account of age based on the spouse's age at the time the amount under this paragraph first becomes payable but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term 'employment' as defined in that Act."

Subsec. (a)(4). Pub. L. 107–90, § 102(c), struck out par. (4) which read as follows: "In the case of an individual entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title, the annuity of the spouse of such individual entitled to an annuity under section 231a(c)(1)(ii)(B) of this title shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to the amount (after any reduction on account of age but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term 'employment' as defined in that Act. For purposes of this subdivision, spouses who have not attained age 62 shall be deemed to have attained age 62."

Subsec. (c). Pub. L. 107–90, § 104(b), struck out subsec. (c) which read as follows: "If (A) the total amount of the annuity of a spouse of an individual as computed under the preceding subsections of this section as of the date on which the annuity of such individual under section 231a(a)(1) of this title began to accrue (before any reduction due to such spouse's entitlement to a monthly insurance benefit under the Social Security Act) plus (B) the total amount of the annuity and supplemental annuity of the individual (before any reduction due to such individual's entitlement to a monthly insurance benefit under the Social Security Act) subject to the provisions of section 231b(f)(1) of this title would, before any reductions in the amounts specified in clauses (A) and (B) on account of age and disregarding any increases in such amounts which become effective after the date on which the individual's annuity

under section 231a(a)(1) of this title began to accrue, exceed the amount determined under clauses (A) and (B) of section 231b(f)(1) of this title, the portion of the annuity of such spouse determined under subsection (b) of this section as of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue shall be reduced until the sum of the amounts specified in clauses (A) and (B) of this subsection equals the amount determined under clauses (A) and (B) of section 231b(f)(1) of this title or until such amount under subsection (b) of this section is reduced to zero, whichever occurs first. If, after such amount under subsection (b) of this section is reduced to zero, the sum of the remaining amounts specified in clauses (A) and (B) of this subsection still exceeds the amount determined under clauses (A) and (B) of section 231b(f)(1) of this title, the supplemental annuity of the individual first, and then, if necessary, the annuity amount of the individual computed under subsections (b), (c), and (d) of section 231b of this title as of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue, shall be reduced until the amounts specified in clauses (A) and (B) of this subsection equals the amount determined under clauses (A) and (B) of section 231b(f)(1) of this title or until such supplemental annuity and such annuity amount are reduced to zero, whichever occurs first. Notwithstanding the preceding provisions of this subsection, the provisions of this subsection shall not operate to reduce the total of the amounts specified in clauses (A) and (B) of this subsection below $1,200.''

Subsec. (g)(10). Pub. L. 107–90, § 101(a), added par. (10).

1983—Subsec. (a)(2). Pub. L. 98–76, § 106(h), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act'' for ''age 65''.

Pub. L. 98–76, § 101(b)(1), substituted ''if an individual is entitled to an annuity under paragraph (ii) of section 231a(a)(1) of this title which did not begin to accrue before such individual attained age 62, the spouse of such individual'' for ''spouses''.

Subsec. (a)(3), (4). Pub. L. 98–76, § 101(b)(2), added pars. (3) and (4).

Subsec. (d). Pub. L. 98–76, § 102(b), designated existing provisions as par. (1), substituted ''231b(g)(1)'' for ''231b(g)'', and added pars. (2) and (3).

Subsec. (g)(1). Pub. L. 98–76, § 102(c)(1), inserted ''and without regard to any reduction under section 231b(g)(2) of this title''.

Subsec. (g)(4). Pub. L. 98–76, § 406(a), substituted ''subsections (a), (b), and (e)'' for ''subsections (a), (b), and (e)(3)''.

Subsec. (g)(6). Pub. L. 98–76, § 102(c)(2), substituted ''231b(g)(1)'' for ''231b(g)''.

Subsec. (g)(7) to (9). Pub. L. 98–76, § 102(c)(3), added pars. (7) to (9).

Subsec. (i)(3). Pub. L. 98–76, § 407(a), added par. (3).

1981—Subsec. (a)(1). Pub. L. 97–35, § 1119(a), substituted ''spouse or divorced wife'' for ''spouse'' in two places.

Subsec. (b). Pub. L. 97–35, § 1119(b)(1), substituted ''subsection (b)'' for ''subsections (b), (c) and (d)''.

Pub. L. 97–35, § 1119(b)(2), substituted ''45 per centum'' for ''50 per centum''.

Pub. L. 97–35, § 1119(b)(3), struck out third proviso which provided that if the total of (A) the amount of the spouse's annuity provided under subsec. (a) of this section (before any reduction due to such spouse's entitlement to a wife's or husband's insurance benefit under the Social Security Act), or, in the case of a spouse entitled to an annuity under section 231a(a)(1) of this title or to an old-age insurance benefit or a disability insurance benefit under section 202 or 223 of the Social Security Act, the amount to which such spouse would be entitled under subsec. (a) of this section if she or he were not entitled to an annuity under section 231a(a)(1) of this title or to an old-age insurance benefit or a disability insurance benefit under section 202 or 223 of the Social Security Act, plus (B) the amount of her or his annuity under this subsection would, with respect to any month, before any reductions on account of age, exceed 110 per centum of an amount equal to the maximum amount which could be paid to any one, with respect to such month, as a wife's insurance benefit under section 202(h) of the Social Security Act, the amount of the annuity of such spouse under this subsection shall be reduced until the total of such annuity amounts equals 110 per centum of such amount.

Pub. L. 97–35, § 1119(b)(4), struck out reference to third proviso in second proviso.

Pub. L. 97–35, § 1119(b)(5), inserted ''(disregarding, for this purpose, any increase in such reduction which becomes effective after the later of the date such spouse's annuity under section 231a(c) of this title began to accrue or the date such spouse's annuity under section 231a(a)(1) of this title began to accrue)''.

Subsec. (c). Pub. L. 97–35, § 1119(c), substituted ''spouse's entitlement to a monthly insurance benefit'' for ''spouse's entitlement to a wife's or husband's insurance benefit''.

Subsec. (e)(4). Pub. L. 97–35, § 1119(d)(1), substituted ''to the earlier of the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue or January 1, 1982'' for ''to the date on which the individual's annuity under section 231a(a)(1) of this title began to accrue''.

Subsec. (e)(5). Pub. L. 97–35, § 1119(d)(2), added subdiv. (5).

Subsec. (f)(1). Pub. L. 97–35, § 1119(e)(1), inserted provision that in the case of a widow or widower who is entitled to an annuity under section 231a(d) of this title solely on the basis of railroad service which was performed prior to Jan. 1, 1937, the amount provided under this section with respect to any month shall not be less than the first amount appearing in column IV of the table appearing in section 215(a) of the Social Security Act as in effect on December 31, 1974, after reduction in accordance with the provisions of section 202(k) and 202(q) of that Act in the same manner as would be applicable to a widow's insurance benefit or widower's insurance benefit payable under section 202(e) or 202(f) of that Act.

Subsec. (f)(2)(iii). Pub. L. 97–35, § 1119(f), added par. (iii).

Subsec. (f)(3). Pub. L. 97–35, § 1119(e)(2), added subdiv. (3).

Subsec. (g). Pub. L. 97–35, § 1119(g), revised windfall component in computation of survivor annuity benefits and substituted provisions fixing windfall component equal to 50 per centum of employee's windfall component which would be payable to employee if he were living, 15 per centum for children, parents 35 per centum, with family minimum of 35 per centum and family maximum of 80 per centum, for provisions fixing such component equal to 30 per centum of the social security level widow's or widower's annuity which would be payable to such survivor if railroad service were covered by the Social Security Act, and clarified that divorced wives, remarried widows, and surviving divorced mothers do not receive a windfall amount.

Subsec. (h). Pub. L. 97–35, § 1119(h)(1), (4), designated existing provisions as subdiv. (1) and added subdiv. (2).

Subsec. (h)(1). Pub. L. 97–35, § 1119(h)(2), substituted ''during the period from January 1, 1975, to January 1, 1982 or, if earlier, to'' for ''during the period from January 1, 1975''.

Pub. L. 97–35, § 1119(h)(3), substituted ''pursuant to section 202(k) or 202(q) of the Social Security Act and subsection (i)(2) of this section'' for ''pursuant to section 202(k) or 202(q) of the Social Security Act''.

Subsec. (i)(1). Pub. L. 97–35, § 1119(i)(1), substituted ''spouse or divorced wife'' for ''spouse'' in two places.

Pub. L. 97–35, § 1119(i)(2), inserted '', after a reduction pursuant to section 231a(c)(2) of this title'' after ''for any month shall''.

Pub. L. 97–35, § 1119(i)(3), struck out ''wife's or husband's'' before ''insurance benefit''.

Pub. L. 97–35, § 1119(i)(4), inserted ''(before any deduction on account of work)'' after ''insurance benefit''.

Subsec. (i)(2). Pub. L. 97–35, § 1119(i)(1), substituted ''spouse or divorced wife'' for ''spouse'' in three places.

1976—Subsec. (g). Pub. L. 94–547, § 2(a), inserted references to spouses under subsection (e)(3) of this section in two places and inserted proviso that if a widow or widower of a deceased employee is entitled to an annuity under section 231a(a)(1) of this title and if either such widow or widower of such deceased employee completed ten years of service prior to Jan. 1, 1975, the amount of the annuity of such widow or widower under the preceding provisions of this subsection would be increased by an amount equal to the amount, if any, by which (A) the widow's or widower's insurance annuity to which such widow or widower would have been entitled, upon attaining age 65, under section 5(a) of the Railroad Retirement Act of 1937 as in effect on Dec. 31, 1974 (without regard to the proviso of that section or the first proviso of section 3(e) of that Act), on the basis of the deceased employee's remuneration and service prior to Jan. 1, 1975, increased by the same percentage, or percentages, as widow's and widower's insurance benefits under section 202 of the Social Security Act are increased during the period from Jan. 1, 1975, to the later of the date on which such widow's or widower's annuity under section 231a(a)(1) of this title began to accrue or the date on which such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue, exceeds (B) the total of the annuity amounts to which the widow or widower was entitled (after any reductions pursuant to subsection (i)(2) of this section but before any deductions on account of work) under subsec. (f) of the section and the preceding provisions of this subsection as of the later of the date on which such widow's or widower's annuity under section 231a(a)(1) of this title began to accrue or the date on which such widow's or widower's annuity under section 231a(d)(1) of this title began to accrue.

Subsec. (h). Pub. L. 94–547, § 2(b), revised the benefit formula by providing that the additional benefit amount for the widows and widowers in question be equal to the difference between (A) the amount of the widow's or widower's insurance annuity which would have been payable under the 1937 Act railroad retirement formula on the basis of the deceased employee's remuneration and service prior to 1975, with this amount being increased by the percentages of benefit increases occurring during the period from Jan. 1, 1975, to the date on which the widow's or widower's survivor annuity or social security benefit, whichever is awarded latest, begins, and (B) the total amount of the two survivor annuity components payable to the widow or widower under this subchapter, after reduction due to the receipt of a social security benefit, as of the time the widow's or widower's survivor annuity or social security benefit, whichever is awarded latest, begins, with a proviso to assure that, where the widow or widower had been receiving a ''windfall'' dual benefit as a spouse under this subchapter, the total annuity amounts, including dual benefit amounts, payable to that widow or widower will not be less than the annuity amounts, again including dual benefit amounts, which the widow or widower received as a spouse in the month preceding the employee's death.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–90, title I, § 101(b), Dec. 21, 2001, 115 Stat. 879, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall take effect on the first day of the first month that begins more than 30 days after enactment [Dec. 21, 2001], and shall apply to annuity amounts accruing for months after the effective date in the case of annuities awarded—

''(A) on or after that date; and

''(B) before that date, but only if the annuity amount under section 4(g) of the Railroad Retirement Act of 1974 (45 U.S.C. 231c(g)) was computed under such section, as amended by the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35; 95 Stat. 357).

''(2) SPECIAL RULE FOR ANNUITIES AWARDED BEFORE THE EFFECTIVE DATE.—In applying the amendment made by this section to annuities awarded before the effective date, the calculation of the initial minimum amount under new section 4(g)(10)(ii) of the Railroad Retirement Act of 1974 (45 U.S.C. 231c(g)(10)(ii)), as added by subsection (a), shall be made as of the date of the award of the widow's or widower's annuity.''

Pub. L. 107–90, title I, § 102(d), Dec. 21, 2001, 115 Stat. 879, provided that:

''(1) GENERALLY.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 231b of this title] shall apply to annuities that begin to accrue on or after January 1, 2002.

''(2) EXCEPTION.—The amount of the annuity provided for a spouse under section 4(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231c(a)) shall be computed under section 4(a)(3) of such Act, as in effect on December 31, 2001, if the annuity amount provided under section 3(a) of such Act (45 U.S.C. 231b(a)) for the individual on whose employment record the spouse annuity is based was computed under section 3(a)(3) of such Act, as in effect on December 31, 2001.''

Amendment by section 103(e) of Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

Amendment by section 104(b) of Pub. L. 107–90 effective Jan. 1, 2002, and applicable to annuity amounts accruing for months after Dec. 2001, see section 104(c) of Pub. L. 107–90, set out as a note under section 231b of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(b) of Pub. L. 98–76 effective July 1, 1984, and applicable only with respect to awards in certain specified cases, see section 101(c) of Pub. L. 98–76, set out as a note under section 231b of this title.

Amendment by section 102(b), (c) of Pub. L. 98–76 effective Aug. 12, 1983, see section 102(d) of Pub. L. 98–76, set out as a note under section 231b of this title.

Amendment by section 106(h) of Pub. L. 98–76 effective Aug. 12, 1983, except such amendment inapplicable to certain annuity amounts, see section 106(k) of Pub. L. 98–76, set out as a note under section 231a of this title.

Section 406(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall be effective October 1, 1981.''

Section 407(b) of Pub. L. 98–76 provided that: ''The amendment made by this section [amending this section] shall be effective with respect to annuities awarded on and after the date of enactment [Aug. 12, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1119(b)(5), (c), (h)(3), (i)(3) of Pub. L. 97–35 effective Jan. 1, 1975, amendment by section 1119(b)(1) of Pub. L. 97–35 not to apply with respect to annuities awarded before Oct. 1, 1981, amendment by section 1119(d)(2), (h)(1), (4) of Pub. L. 97–35 effective Aug. 13, 1981, amendment by section 1119(i)(4) of Pub. L. 97–35 effective Jan. 1, 1982, and amendment by other provisions of section 1119 of Pub. L. 97–35 effective Oct. 1, 1981, and applicable only with respect to annuities awarded on or after Oct. 1, 1981, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(c) of Pub. L. 94–547 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to annuities accruing for months after the month in which this Act is enacted [October, 1976]: *Provided, however*, That the amendments made by subsection (b) of this section [amending this section] shall not operate to decrease any annuity amounts awarded under section 4(h) of the Railroad Retirement Act of 1974 [subsec. (h) of this section] prior to the date on which these amendments become effective.''

§ 231d. Annuity beginning and ending dates

(a) Annuities under section 231a of this title

Subject to the limitations set forth below, an annuity under section 231a of this title shall begin with the month in which eligibility therefor was otherwise acquired, but—

(i) not earlier than the date specified in the application therefor;

(ii) in the case of an applicant otherwise entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title or under section 231a(d)(1)(i) of this title on the basis of disability, not earlier than the later of (A) the first day of the sixth month following the onset date of the disability for which such annuity is awarded or (B) the first day of the twelfth month before the month in which the application therefor was filed;

(iii) in the case of an applicant otherwise entitled to an annuity under section 231a(a)(1), 231a(c), or 231a(d) of this title where paragraph (ii) does not apply, not earlier than the latest of (A) the first day of the sixth month before the month in which the application therefor was filed, (B) the first day of the month in which the application therefor was filed if the effect of beginning such annuity in an earlier month would result in a greater age reduction in the annuity, unless beginning the annuity in the earlier month would enable an annuity under section 231a(c) of this title which is not subject to an age reduction to be payable in such earlier month, (C) in the case of an applicant otherwise entitled to an annuity under section 231a(a)(1) or 231a(c) of this title, the date following the last day of compensated service of the applicant, or (D) in the case of an applicant otherwise entitled to an annuity under section 231a(a)(1) or 231a(c) of this title, the first day of the first month throughout which the applicant meets the age requirement for the annuity applied for;

(iv) in the case of an applicant otherwise entitled to an annuity under section 231a(c)(4) or (d)(1)(v) of this title, not earlier than the month an annuity would begin to accrue to such individual under such section if section 202(j)(1) and section 202(j)(4) of the Social Security Act [42 U.S.C. 402(j)(1), (4)] were applicable to this subchapter.[1]

(v) an annuity amount provided by section 231b(h)(1) or 231b(h)(2) of this title shall not be paid to an individual otherwise eligible therefor for any month before the month such individual would be entitled, upon filing an application therefor, to an old-age insurance benefit or a disability insurance benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.] and an annuity amount provided by section 231b(h)(3) or section 231b(h)(4) of this title shall not be paid to an individual otherwise eligible therefor for any month before the month such individual would be entitled, upon filing an application therefore,[2] to an insurance benefit as a wife, husband, widow, or widower under title II of the Social Security Act;

(vi) an annuity amount provided by section 231c(e)(1) or 231c(e)(2) of this title shall not be paid to a spouse otherwise eligible therefor for any month prior to the month such spouse would be entitled, upon filing an application therefor, to an old-age or disability insurance benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.]; and

(vii) an annuity amount provided by section 231c(e)(3) of this title shall not be paid to a spouse otherwise eligible therefor for any month prior to the month such spouse would be entitled, upon filing an application therefor, to a wife's or husband's insurance benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.].

For the purpose of determining annuity amounts provided under sections 231b(a), 231c(a), and 231c(f) of this title, the provisions with respect to the beginning dates of annuities set forth in this subsection shall be deemed to govern the beginning dates of monthly benefits provided under the Social Security Act [42 U.S.C. 301 et seq.].

(b) Applications for payment

An application for any payment under this subchapter shall be made and filed in such manner and form as the Board may prescribe. An application filed with the Board for an employee annuity, spouse annuity, or divorced spouse annuity on the basis of the employment record of an employee who will have completed less than ten years of service shall be deemed to be an application for any benefit to which such applicant may be entitled under this subchapter or section 202(a), section 202(b), or section 202(c) of the Social Security Act [42 U.S.C. 402(a), (b), (c)]. An application filed with the Board for an annuity on the basis of the employment record of an employee who will have completed ten years of service shall, unless the applicant specified otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this subchapter or title II of the Social Security Act [42 U.S.C. 401 et seq.]. An individual who was entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title for the month preceding the month in which he attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]), shall be deemed to have filed an application for an annuity under paragraph (i) of section 231a(a)(1) of this title on the date on which he attained retirement age (as defined in section 216(*l*) of the Social Security Act), and a widow or widower who was entitled to an annuity under section 231a(d)(1) of this title on the basis of disability for the month preceding the month in which she or he attained age 60, shall be deemed to have filed an application for an annuity under such section 231a(d)(1) of this title on the basis of age on the date on which she or he attained age 60.

(c) Individual's entitlement

(1) An individual's entitlement to an annuity under paragraph (i), (ii), or (iii) of section 231a(a)(1) of this title or to a supplemental annuity under section 231a(b) of this title shall end with the month preceding the month in which he dies.

(2) An individual's entitlement to an annuity under paragraph (iv) or (v) of section 231a(a)(1)

[1] So in original. The period probably should be a semicolon.

[2] So in original. Probably should be ''therefor,''.

of this title shall end on (A) the last day of the second month following the month in which he ceases to be disabled as provided for purposes of such paragraphs, (B) the last day of the month preceding the month in which he attains retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)]) or (C) the last day of the month preceding the month in which he dies, whichever first occurs.

(3) The entitlement of a spouse of an individual to an annuity under section 231a(c) of this title shall end on the last day of the month preceding the month in which (A) the spouse or the individual dies, (B) the spouse and the individual are absolutely divorced, or (C) in the case of a wife who does not satisfy the requirements of clause (ii)(A) or (ii)(B) of section 231a(c)(1) of this title (other than a wife who is receiving such annuity by reason of an election under section 231a(c)(2) of this title), such wife no longer has in her care a child described in clause (ii)(C) of section 231a(c)(1) of this title, whichever first occurs. The entitlement of the divorced wife of an individual to an annuity under section 231a(c) of this title shall end on the last day of the month preceding the month in which (A) the divorced wife or the individual dies or (B) the divorced wife remarries.

(4) The entitlement of a widow or widower of a deceased employee to an annuity under paragraph (i) of section 231a(d)(1) of this title on the basis of age shall end on (A) the last day of the month preceding the month in which she or he dies or (B) the last day of the month preceding the month in which she or he remarries after the employee's death, whichever first occurs.

(5) The entitlement of a widow or widower of a deceased employee to an annuity under paragraph (i) of section 231a(d)(1) of this title on the basis of disability shall end on (A) the last day of the month preceding the month in which she or he dies, (B) the last day of the month preceding the month in which she or he remarries after the employee's death, (C) the last day of the second month following the month in which she or he ceases to be disabled as provided for purposes of such paragraph, or (D) the last day of the month preceding the month in which she or he attains age 60, whichever first occurs.

(6) The entitlement of a widow of a deceased employee to an annuity under paragraph (ii) of section 231a(d)(1) of this title shall end on (A) the last day of the month preceding the month in which she dies, (B) the last day of the month preceding the month in which she remarries after the employee's death, or (C) the last day of the month preceding the month in which she no longer has in her care a child described in clause (B) of such paragraph (ii) whichever first occurs.

(7) The entitlement of a child of a deceased employee to an annuity under paragraph (iii) of section 231a(d)(1) of this title shall end on (A) the last day of the month preceding the month in which he or she dies, (B) the last day of the month preceding the month in which he or she marries, (C) the last day of the month preceding the month in which he or she attains age 18 and does not meet the qualifications set forth in clause (B) or (C) of such paragraph (iii), (D) the last day of the month preceding (i) the month during no part of which he or she is a full-time elementary or secondary school student or (ii) the month in which he or she attains age 19, and does not meet the qualifications set forth in clause (A) or (C) of such paragraph (iii), or (E) the last day of the second month following the month in which he or she ceases to be disabled for purposes of such paragraph (iii) and does not meet the qualifications set forth in clause (A) or (B) of such paragraph (iii), whichever first occurs. A child whose entitlement to an annuity under paragraph (iii) of section 231a(d)(1) of this title terminated by reason of clause (E) of this subdivision because he or she ceased to be disabled and who again becomes disabled as provided in clause (C) of such paragraph (iii), may become reentitled to an annuity on the basis of such disability upon his or her application for such reentitlement. A child whose entitlement to an annuity under paragraph (iii) of section 231a(d)(1) of this title terminated with the month preceding the month in which he or she attained age 18, or with a subsequent month, may again become entitled to such an annuity (providing no event to disqualify the child has occurred) beginning with the first month thereafter in which he or she meets the qualifications set forth in clause (B) or (C) of such paragraph (iii), if he or she has filed an application for such reentitlement.

(8) The entitlement of a parent of a deceased employee to an annuity under paragraph (iv) of section 231a(d)(1) of this title shall end on the last day of the month preceding the month in which (A) such parent dies or (B) such parent remarries after the employee's death, whichever first occurs.

(9) No annuity shall accrue with respect to the calendar month in which an annuitant dies. In cases where an individual entitled to an annuity under this subchapter disappears, no annuity shall accrue to that individual with respect to any month until and unless such individual is shown, by evidence satisfactory to the Board, to have continued in life throughout such month, but—

(A) where an annuity would accrue for such month under section 231a(a)(1) of this title to an individual who had a current connection with the railroad industry at the time of such individual's disappearance, and under section 231a(c) of this title to such individual's spouse, had such individual been shown to be alive during such month, such individual shall be deemed, for the purposes of benefits under section 231a(d) of this title, to have died in the month in which such individual disappeared, and where an annuity would accrue for such month under section 231a(a)(1) of this title to an individual who did not have a current connection with the railroad industry at the time of such individual's disappearance, and under section 231a(c) of this title to such individual's spouse, had such individual been shown to be alive during such month, such individual shall be deemed, for purposes of benefits payable under section 231a(c) of this title, to be alive during such month unless the death of such individual has been established or the annuity of the spouse of such individual is otherwise terminated under subsection (c)(3) of this section, and

(B) if such individual is later determined to have been alive during any of such months, recovery of any benefits paid on the basis of such individual's compensation under section 231a(d) of this title for the months in which such individual was not known to be alive, minus the total of the amounts that would have been paid as a spouse's annuity during such months (treating the application for a widow's or widower's annuity as an application for spouse's annuity), shall be made in accordance with section 231*l* of this title.

For purposes of the payment of benefits under this subchapter, the death of an individual shall be presumed based on such individual's unexplained absence of not less than seven years, except that whenever the death of an individual is so established, such individual shall be deemed to have died in the month in which such individual disappeared.

(d) Annuities to surviving former spouses under section 231b(b) of this title

Notwithstanding any other provision of law, the payment of any portion of an annuity computed under section 231b(b) of this title to a surviving former spouse in accordance with a court decree of divorce, annulment, or legal separation or the terms of any court-approved property settlement incident to any such court decree shall not be terminated upon the death of the individual who performed the service with respect to which such annuity is so computed unless such termination is otherwise required by the terms of such court decree.

(Aug. 29, 1935, ch. 812, § 5, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1332; amended Pub. L. 97–35, title XI, § 1120, Aug. 13, 1981, 95 Stat. 636; Pub. L. 98–76, title I, §§ 103(a), 104(c), 106(i), (j), Aug. 12, 1983, 97 Stat. 415, 416, 418; Pub. L. 107–90, title I, § 103(f), Dec. 21, 2001, 115 Stat. 881; Pub. L. 109–280, title X, § 1003(a), Aug. 17, 2006, 120 Stat. 1053.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–280 added subsec. (d).

2001—Subsec. (b). Pub. L. 107–90 inserted second and third sentences and struck out former second sentence which read as follows: ''An application filed with the Board for an annuity under this subchapter shall, unless the applicant specifies otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under this subchapter or title II of the Social Security Act.''

1983—Subsec. (a). Pub. L. 98–76, § 103(a)(1), substituted ''Subject to the limitations set forth below, an annuity'' for ''An annuity'' in provisions preceding cl. (i).

Pub. L. 98–76, § 103(a)(3), inserted provision following cl. (vii) that for purpose of determining annuity amounts provided under sections 231b(a), 231c(a), and 231c(f) of this title, provisions with respect to beginning dates of annuities set forth in this subsection shall be deemed to govern beginning dates of monthly benefits provided under Social Security Act.

Subsec. (a)(ii). Pub. L. 98–76, § 103(a)(2), amended cl. (ii) generally, substituting ''in the case of an applicant otherwise entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title or under section 231a(d)(1)(i) of this title on the basis of disability, not earlier than the later of (A) the first day of the sixth month following the onset date of the disability for which such annuity is awarded or (B) the first day of the twelfth month before the month in which the application therefor was filed'' for ''not earlier than the first day of the twelfth month before the month in which the application therefor was filed''.

Subsec. (a)(iii). Pub. L. 98–76, § 103(a)(2), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''in the case of an applicant otherwise eligible for an annuity under section 231a(a)(1) or 231a(c) of this title not earlier than the date following the last day of compensated service of the applicant; and''.

Subsec. (b). Pub. L. 98–76, § 106(i), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''the age of 65'' and ''age 65''.

Subsec. (c)(2). Pub. L. 98–76, § 106(j), substituted ''retirement age (as defined in section 216(*l*) of the Social Security Act)'' for ''age 65''.

Subsec. (c)(7)(D)(i). Pub. L. 98–76, § 104(c)(1), substituted ''full-time elementary or secondary school student'' for ''full-time student''.

Subsec. (c)(7)(D)(ii). Pub. L. 98–76, § 104(c)(2), substituted ''19'' for ''22''.

1981—Subsec. (a)(iv) to (vii). Pub. L. 97–35, § 1120(a), added pars. (iv) to (vii).

Subsec. (b). Pub. L. 97–35, § 1120(b), substituted ''title II of the Social Security Act'' for ''the Social Security Act''.

Subsec. (c)(3). Pub. L. 97–35, § 1120(c), inserted provision that entitlement of the divorced wife of an individual to an annuity under section 231a(c) shall end on the last day of the month preceding the month in which (A) the divorced wife or the individual dies or (B) the divorced wife remarries.

Subsec. (c)(9). Pub. L. 97–35, § 1120(d), added subdiv. (9).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title X, § 1003(b), Aug. 17, 2006, 120 Stat. 1053, provided that: ''The amendment made by this section [amending this section] shall take effect 1 year after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 103(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall become effective on the first day of the first month beginning after the date of the enactment of this Act [Aug. 12, 1983], and shall apply only with respect to annuities awarded on the basis of applications filed on or after that day.''

Amendment by section 104(c) of Pub. L. 98–76 effective with respect to annuities accruing for months after Aug. 1983, with certain exceptions, see section 104(d) of Pub. L. 98–76, set out as a note under section 231a of this title.

Amendment by section 106(i), (j) of Pub. L. 98–76 effective Aug. 12, 1983, except such amendment inapplicable to certain annuity amounts, see section 106(k) of Pub. L. 98–76, set out as a note under section 231a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1120(a), (d) of Pub. L. 97–35 effective Jan. 1, 1975, amendment by section 1120(b) of

Pub. L. 97–35 effective Oct. 1, 1981, and amendment by other provisions of section 1120 of Pub. L. 97–35 effective Oct. 1, 1981, and applicable only with respect to annuities awarded on or after Oct. 1, 1981, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

§ 231e. Lump sum payments

(a) Eligible annuities; applications; reversion; determination of status of recipient

(1) Annuities under section 231a(a)(1) of this title and supplemental annuities under section 231a(b) of this title which will have become due an individual but will not have been paid at the time of such individual's death shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and to have been living with such individual at the time of such individual's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of such individual, and to the extent that he or they will not have been reimbursed under subsection (b) of this section for having paid such expenses. If there be no person or persons so entitled, or if the total of such annuities exceeds the amount payable under this subdivision to such person or persons, such total, or the remainder thereof, as the case may be, shall be paid to the children, grandchildren, parents, or brothers and sisters of the deceased individual in the same manner as if such annuities were a lump sum payable under subsection (c)(1) of this section.

(2) Annuities under section 231a(d) of this title which will have become due a survivor of an employee but will not have been paid at the time of such survivor's death shall be payable to the person, if any, who is determined by the Board to be such employee's widow or widower and to have been living with such employee at the time of the employee's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to the children, grandchildren, parents, or brothers and sisters of the deceased employee in the same manner as if such unpaid annuities were a lump sum payable under subsection (c)(1) of this section.

(3) Annuities under section 231a(c) of this title which will have become due a spouse or divorced wife of an individual but which will not have been paid at the time of such spouse's or divorced wife's death shall be payable to the individual from whose employment such annuities derived and who will not have died before receiving payment of such annuities. If there be no such individual, such annuities shall be paid as provided in the last two sentences of subdivision (1) of this subsection as if such annuities were annuities due to an individual but unpaid at the time of such individual's death.

(4) Applications for accrued and unpaid annuities provided for in the preceding subdivisions of this subsection shall be filed prior to the expiration of two years after the death of the person to whom such annuities were originally due.

(5) If there is no person to whom all or any part of the payments described in subdivision (1), (2), or (3) can be made, such payment or part thereof shall escheat to the credit of the Railroad Retirement Account.

(6) For the purposes of this subsection and subsection (c) of this section, a widow or widower of an individual shall be deemed to have been living with the individual at the time of the individual's death if the applicable conditions set forth in section 216(h)(2) or (3) of the Social Security Act [42 U.S.C. 416(h)(2) or (3)], as in effect before 1957, are fulfilled.

(7) In determining for purposes of this subsection and subsections (c) and (d) of this section whether an applicant is the widow, widower, child, or parent of an employee as claimed, the rules set forth in section 216(h) of the Social Security Act [42 U.S.C. 416(h)] shall be applied. In determining for purposes of this subsection and subsections (c) and (d) of this section whether an applicant is the grandchild, brother, or sister of an employee as claimed, the Board shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such employee was domiciled at the time of his death, or if such employee was not so domiciled in any State by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking personal property as a grandchild, brother, or sister shall be deemed such.

(b) Payments in accordance with Railroad Retirement Act of 1937 and Social Security Act

(1) Upon the death of an individual who will have completed ten years of service prior to January 1, 1975, and will have had a current connection with the railroad industry at the time of his death, a lump-sum payment shall be made in accordance with the provisions of section 5(f)(1) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(f)(1)] as in effect on December 31, 1974, in an amount, if any, which would have been payable under such section on the basis of (A) the individual's compensation after December 31, 1936, and prior to January 1, 1975, and (B) the individual's wages (as defined in section 209 of the Social Security Act [42 U.S.C. 409]) prior to January 1, 1975. Any lump sum payable under this subdivision shall be in an amount computed as if the individual had died on January 1, 1975. No lump sum shall be payable under this subdivision if the employee died leaving a surviving divorced wife who would on proper application therefore be entitled to receive an annuity under section 231a(d) of this title for the month in which the employee's death occurred.

(2) Upon the death of an individual who will not have completed ten years of service prior to January 1, 1975, but who (i) will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) at the time of his death, (ii) will have had a current connection with the railroad industry at the time of his death, and (iii) will have died leaving no widow, surviving divorced wife, widower, child, or parent who would on proper application therefor be entitled to receive an annuity under section 231a(d) of this title for the month in which such death occurred, a lump-sum death payment shall be made in accordance

with the provisions of section 202(i) of the Social Security Act [42 U.S.C. 402(i)] in an amount equal to the amount which would have been payable under such section 202(i) if such individual's service as an employee after December 31, 1936, were included in the term ''employment'' as defined in that Act. If a lump sum would be payable to a widow or widower under this subdivision except for the fact that a survivor will have been entitled to receive an annuity for the month in which the individual will have died, but within one year after the individual's death there will not have accrued to survivors of the individual, by reason of his death, annuities which, after all deductions pursuant to section 231a(g) and 231a(h) of this title, are equal to such lump sum, a payment equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions shall then nevertheless be made under this subdivision to the widow or widower to whom a lump sum would have been payable under this subdivision except for the fact that a monthly benefit under section 231a(d) of this title was payable for the month in which the individual died, if such widow or widower will not have died before receiving payment of such lump sum.

(c) Payments in the absence of further benefits

(1) Whenever it shall appear, with respect to the death of an employee, that no benefits, or no further benefits (other than benefits payable to a widow, widower, or parent under either this subchapter or the Social Security Act [42 U.S.C. 301 et seq.] upon attaining the age of eligibility therefor at a future date) will be payable under this subchapter or under the Social Security Act, a lump sum in an amount computed under subdivision (2) of this subsection shall be paid to such person or persons as the deceased employee may have designated by a writing filed with the Board prior to his or her death, or if there be no designation, to the following person (or, if more than one, in equal shares to the persons) whose relationship to the deceased employee will have been determined by the Board and who will not have died before receiving payment of the lump sum provided for in this subdivision—

(i) the widow or widower of the deceased employee who was living with such employee at the time of such employee's death; or

(ii) if there be no such widow or widower, to any child or children of such employee; or

(iii) if there be no such widow, widower, or child, to any grandchild or grandchildren of such employee; or

(iv) if there be no such widow, widower, child, or grandchild, to any parent or parents of such employee; or

(v) if there be no such widow, widower, child, grandchild, or parent, to any brother or sister of such employee; or

(vi) if there be no such widow, widower, child, grandchild, parent, brother, or sister, to the estate of such employee:

Provided, however, That if the employee is survived by a widow, widower, or parent who may upon attaining the age of eligibility be entitled to benefits under this subchapter or under the Social Security Act, such lump sum shall not be paid unless such widow, widower, or parent makes and files with the Board an irrevocable election, in such form as the Board may prescribe, to have such lump sum be paid in lieu of all benefits to which such widow, widower, or parent might otherwise become entitled under this subchapter on the basis of the deceased employee's compensation and years of service or under the Social Security Act on the basis of the deceased employee's wages from (A) employment with an employer as defined in section 231(a) of this title or (B) service as an employee representative as defined in section 231(c) of this title. Any election made and filed by a widow, widower, or parent pursuant to this subdivision shall be legally effective according to its terms. After a lump sum with respect to the death of an employee is paid pursuant to an election filed with the Board under the provisions of this subsection, no further benefits shall be paid (other than to a survivor in the circumstances described in paragraph (3)) under this subchapter or the Social Security Act on the basis of such employee's compensation and service under this subchapter, except that nothing in this subchapter or the Social Security Act shall operate to deprive a widow, widower, or parent making such election of any insurance benefit under title II of the Social Security Act [42 U.S.C. 401 et seq.] to which such individual would have been entitled if the employee had not rendered service as an employee under this subchapter.

(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to (A) the sum of 4 per centum of the deceased employee's compensation paid after December 31, 1936, and prior to January 1, 1947, plus 7 per centum of such employee's compensation paid after December 31, 1946, and before January 1, 1959, plus 7½ per centum of such employee's compensation paid after December 31, 1958, and before January 1, 1962, plus 8 per centum of such employee's compensation paid after December 31, 1961, and before January 1, 1966, plus an amount equal to the total of all employee taxes payable by such employee after December 31, 1965, and before January 1, 1975, under the provisions of section 3201 of the Railroad Retirement Tax Act [26 U.S.C. 3201] (excluding, for this purpose, the amount of the employee tax attributable to that portion of the tax rate derived from section 3101(b) of the Internal Revenue Code of 1986 [26 U.S.C. 3101(b)]), plus one-half of 1 per centum of the compensation on which such taxes were payable, deeming the compensation attributable to creditable military service after June 30, 1963, and before January 1, 1975, to be taxable compensation, and one-half of the taxes payable by an employee representative under section 3211 of the Railroad Retirement Tax Act [26 U.S.C. 3211] to be employee taxes under section 3201 of such Act, minus (B) the sum of all benefits paid to such employee, and to others deriving from such employee, during his or her life, or to others by reason of his or her death, under this subchapter, the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.], or the Social Security Act [42 U.S.C. 301 et seq.] (excluding, for this purpose, payments to providers of services under section 231f(d) of this title or section 21 of the Railroad Retirement Act of 1937 [45 U.S.C. 228s–2], any supplemental annuity pay-

ments made to the employee under section 231a(b) of this title or section 3(j) of the Railroad Retirement Act of 1937 [45 U.S.C. 228c(j)], any amounts by which that portion of the annuities provided the employee under section 231b(a) of this title or his spouse or divorced wife under section 231c(a) of this title were increased by reason of the employee's wages and self-employment income derived from employment and self-employment under the Social Security Act, that portion of the annuities provided the employee under section 231b(h) of this title or his spouse under section 231c(e) of this title, and so much of the benefits paid to the employee and to others deriving from him or her under the Social Security Act during his or her lifetime as would have been payable under that Act if such employee had not rendered service as an employee as defined in section 231(b) of this title). In computing compensation for purposes of this subdivision there shall be excluded compensation in excess of $300 for any month before July 1, 1954; compensation in excess of $350 for any month after June 30, 1954, and before June 1, 1959; compensation in excess of $400 for any month after May 31, 1959, and before November 1, 1963; compensation in excess of $450 for any month after October 31, 1963, and before October 1, 1965; and compensation in excess of (i) $450 or (ii) an amount equal to one-twelfth of the current maximum annual taxable ''wages'' as defined in section 3121 of the Internal Revenue Code of 1986 [26 U.S.C. 3121], whichever is greater, for any month after September 30, 1965.

(3) Notwithstanding the last sentence of paragraph (1), benefits shall be paid to a survivor who—

(A) is a divorced wife; and

(B) through administrative error received benefits otherwise precluded by the making of a lump sum payment under this section to a widow;

if that divorced wife makes an election to repay to the Board the lump sum payment. The Board may withhold up to 10 percent of each benefit amount paid after October 21, 1998, toward such reimbursement. The Board may waive such repayment to the extent the Board determines it would cause an unjust financial hardship for the beneficiary.

(d) Payments to recipients ineligible for certain other annuities

(1) Every individual who will have completed ten years of service at the time of his retirement or death, but does not meet the qualifications for an annuity amount determined under the provisions of section 231b(h)(1) or 231b(h)(2) of this title, shall, at the time his annuity under section 231a(a)(1) of this title begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 231a(a)(1) of this title, or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to the sum of (A) 1.5 per centum of so much of such individual's combined earnings for any calendar year after 1950 and before 1954 as is in excess of $3,600, plus (B) 2 per centum of so much of such individual's combined earnings for any calendar year after 1953 and before 1957 as is in excess of $4,200, plus (C) 2.25 per centum of so much of such individual's combined earnings for any calendar year after 1956 and before 1959 as is in excess of $4,200, plus (D) 2.5 per centum of so much of such individual's combined earnings for the calendar year 1959 as is in excess of $4,800, plus (E) 3 per centum of so much of such individual's combined earnings for each of the calendar years 1960 and 1961 as is in excess of $4,800, plus (F) 3.125 per centum of so much of such individual's combined earnings for the calendar year 1962 as is in excess of $4,800, plus (G) 3.625 per centum of so much of such individual's combined earnings for any calendar year after 1962 and before 1966 as is in excess of $5,400, plus (H) 4.2 per centum of so much of such individual's combined earnings for the calendar year 1966 as is in excess of $6,600, plus (I) 4.4 per centum of so much of such individual's combined earnings for the calendar year 1967 as is in excess of $6,600, plus (J) 3.8 per centum of so much of such individual's combined earnings for the calendar year 1968 as is in excess of $7,800, plus (K) 4.2 per centum of so much of such individual's combined earnings for each of the calendar years 1969 and 1970 as is in excess of $7,800, plus (L) 4.6 per centum of so much of such individual's combined earnings for the calendar year 1971 as is in excess of $7,800, plus (M) 4.6 per centum of so much of such individual's combined earnings for the calendar year 1972 as is in excess of $9,000, plus (N) 4.85 per centum of so much of such individual's combined earnings for the calendar year 1973 as is in excess of $10,800, plus (O) 4.95 per centum of so much of such individual's combined earnings for the calendar year 1974 as is in excess of $13,200. For purposes of this subsection, the term ''combined earnings'' shall include ''compensation'' as defined in section 1(h) of the Railroad Retirement Act of 1937 [45 U.S.C. 228a(h)], ''wages'' as defined in section 209 of the Social Security Act [42 U.S.C. 409], and ''self-employment'' income as defined in section 211(b) of the Social Security Act [42 U.S.C. 411(b)].

(e) Additional lump sum payment in certain cases

(1) Every individual who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) at the time of his retirement or death, who will have received compensation in the nature of separation or severance pay on or after January 1, 1985, and who would have been credited with additional months of service pursuant to section 231b(i)(4) of this title except for the fact that such individual was not in an employment rela-

tion to one or more employers nor an employee representative in such months, shall, at the time his annuity under section 231a(a)(1) of this title begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If the full amount of a lump sum under this subsection cannot be determined at the time an individual's annuity under section 231a(a)(1) of this title begins to accrue, such lump sum shall be payable at such time thereafter as such amount can be determined. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 231a(a)(1) of this title, or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

(2) The lump sum provided under subdivision (*l*)[1] of this subsection shall be in an amount equal to the product of (A) the compensation attributable to the additional months of service which would have been credited to the individual due to the receipt of payments in the nature of separation or severance pay pursuant to section 231b(i)(4) of this title if such individual had remained in an employment relation to one or more employers or had continued to be an employee representative and (B) the rate of tax, or rates of tax, imposed on the compensation described in clause (A) of this subdivision by section 3201(b) of the Internal Revenue Code of 1986 [26 U.S.C. 3201(b)].

(Aug. 29, 1935, ch. 812, § 6, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1334; amended Pub. L. 97–35, title XI, § 1121, Aug. 13, 1981, 95 Stat. 637; Pub. L. 98–76, title IV, § 408, Aug. 12, 1983, 97 Stat. 435; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VII, § 7301, Nov. 10, 1988, 102 Stat. 3776; Pub. L. 105–277, div. A, § 101(f) [title VII, § 709(a)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–391; Pub. L. 107–90, title I, § 103(i)(1), (4), Dec. 21, 2001, 115 Stat. 882.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1937, referred to in subsec. (c)(2), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, which was classified principally to subchapter III (§ 228a et seq.) of this chapter. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to this subchapter. For complete classification of these Acts to the Code, see Tables.

Sections 1, 3, 5, and 21 of the Railroad Retirement Act of 1937, referred to in subsecs. (b)(1), (c)(2), and (d)(2), which were classified to sections 228a, 228c, 228e, and 228s–2 of this title, have been omitted from the Code.

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107–90, § 103(i)(4), inserted "(or five or more years of service, all of which accrues after December 31, 1995)" after "but who (i) will have completed ten years of service".

Subsec. (e)(1). Pub. L. 107–90, § 103(i)(1), inserted "(or five or more years of service, all of which accrues after December 31, 1995)" after "ten years of service".

1998—Subsec. (c)(1). Pub. L. 105–277, § 101(f) [title VII, § 709(a)(1)], inserted "(other than to a survivor in the circumstances described in paragraph (3))" after "no further benefits shall be paid" in last sentence.

Subsec. (c)(3). Pub. L. 105–277, § 101(f) [title VII, § 709(a)(2)], added par. (3).

1988—Subsec. (e). Pub. L. 100–647 added subsec. (e).

1986—Subsec. (c)(2). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing.

1983—Subsec. (b)(1). Pub. L. 98–76 inserted provision that no lump sum shall be payable under this subdivision if employee died leaving a surviving divorced wife who would on proper application therefore be entitled to receive an annuity under section 231a(d) of this title for month in which employee's death occurred.

1981—Subsec. (a)(3). Pub L. 97–35, § 1121(a), substituted "spouse or divorced wife of an individual but which will not have been paid at the time of such spouse's or divorced wife's death" for "spouse of an individual but which will not have been paid at the time of such spouse's death".

Subsec. (b)(2)(iii). Pub. L. 97–35, § 1121(b), substituted "widow, surviving divorced wife," for "widow,".

Subsec. (c)(1). Pub. L. 97–35, § 1121(c)(1), inserted provision that after a lump sum with respect to the death of an employee is paid pursuant to an election filed with the Board under the provisions of this subsection, no further benefits shall be paid under this subchapter or the Social Security Act on the basis of such employee's compensation and service under this subchapter, except that nothing in this subchapter or the Social Security Act shall operate to deprive a widow, widower, or parent making such election of any insurance benefit under title II of the Social Security Act to which such individual would have been entitled if the employee had not rendered service as an employee under this subchapter.

Subsec. (c)(2). Pub. L. 97–35, § 1121(c)(3), substituted "spouse or divorced wife" for "spouse".

Pub. L. 97–35, § 1121(c)(2), substituted "any supplemental annuity payments made to the employee under section 231a(b) of this title or section 3(j) of the Railroad Retirement Act of 1937, any amounts" for "any amounts".

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, § 101(f) [title VII, § 709(b)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–391, provided that: "The amendment made by this section [amending this section] shall apply with respect to any benefits paid before the date of enactment of this Act [Oct. 21, 1998] as well as to benefits payable on or after the date of the enactment of this Act."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1121(c)(1), (2) of Pub. L. 97–35 effective Jan 1, 1975, and amendment by other provi-

[1] So in original. Probably should be subdivision "(1)".

sions of section 1121 of Pub. L. 97–35, effective Oct. 1, 1981, and applicable only with respect to annuities awarded on or after Oct. 1, 1981, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

§ 231f. Railroad Retirement Board

(a) Administration

This subchapter shall be administered by the Railroad Retirement Board established by the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] as an independent agency in the executive branch of the Government and composed of three members appointed by the President, by and with the advice and consent of the Senate. Each member shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of the term and any member holding office pursuant to appointment under the Railroad Retirement Act of 1937 when this subchapter becomes effective shall hold office until the term for which he was appointed under such Railroad Retirement Act of 1937 expires. One member shall be appointed from recommendations made by representatives of the employees and one member shall be appointed from recommendations made by representatives of employers as defined in paragraph (i) of section 231(a)(1) of this title, in both cases as the President shall direct, so as to provide representation on the Board satisfactory to the largest number, respectively, of employees and employers concerned. One member, who shall be the chairman of the Board, shall be appointed without recommendation by either employers or employees and shall not be in the employment of or be pecuniarily or otherwise interested in any employer or organization of employees. Vacancies in the Board shall not impair the powers or affect the duties of the Board or of the remaining members of the Board, of whom a majority of those in office shall constitute a quorum for the transaction of business. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

(b) Powers and duties

(1) The Board shall have and exercise all the duties and powers necessary to administer this subchapter. The Board shall take such steps as may be necessary to enforce such subchapter and make awards and certify payments. Decisions by the Board upon issues of law and fact relating to annuities or death benefits shall not be subject to review by any other administrative or accounting officer, agent, or employee of the United States.

(2) In the case of—

(A) an individual who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) creditable under this subchapter,

(B) the wife or divorced wife or husband of such an individual,

(C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 231a of this title, and

(D) any other person entitled to benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry at the time of his death);

the Board shall provide for the payment on behalf of the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund of monthly benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] which are certified by the Secretary to it for payment under the provisions of title II of the Social Security Act.

(3) If the Board finds that an applicant is entitled to an annuity or death benefit under the provisions of this subchapter then the Board shall make an award fixing the amount of the annuity or benefit, as the case may be, and shall certify the payment thereof as hereinafter provided; otherwise the application shall be denied. For purposes of this section, the Board shall have and exercise such of the powers, duties and remedies provided in subsections (a), (b), (d), and (n) of section 12 of the Railroad Unemployment Insurance Act [45 U.S.C. 362] as are not inconsistent with the express provisions of this subchapter. The Board is authorized to delegate to any member, officer, or employee of the Board any of the powers conferred upon the Board by this subchapter, excluding only the power to prescribe rules and regulations, including the power to make decisions on applications for annuities or other benefits: *Provided, however*, That any person aggrieved by a decision on his application for an annuity or other benefit shall have the right to appeal to the Board. Notice of a decision of the Board, or of an employee thereof, shall be communicated to the applicant in writing within thirty days after such decision shall have been made.

(4)(A) The Secretary of the Treasury shall serve as the disbursing agent for benefits payable under this subchapter, under such rules and regulations as the Secretary may in the Secretary's discretion prescribe.

(B) The Board shall from time to time certify—

(i) to the Secretary of the Treasury the amounts required to be transferred from the Social Security Equivalent Benefit Account and the Dual Benefits Payments Account to the disbursing agent to make payments of benefits and the Secretary of the Treasury shall transfer those amounts;

(ii) to the Board of Trustees of the National Railroad Retirement Investment Trust the amounts required to be transferred from the National Railroad Retirement Investment Trust to the disbursing agent to make payments of benefits and the Board of Trustees shall transfer those amounts; and

(iii) to the disbursing agent the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which the payment should be made.

(5) The Board shall establish and promulgate rules and regulations to provide for the adjust-

ment of all controversial matters arising in the administration of this subchapter. All rules, regulations, or decisions of the Board shall require the approval of at least two members, and they shall be entered upon the records of the Board, which shall be a public record.

(6) The Board shall gather, keep, compile, and publish in convenient form such records and data as may be necessary to assure proper administration of this subchapter, including subdivision (2) of this subsection. The Board shall have power to require all employers and employees and any officer, board, commission, or other agency of the United States to furnish such information and records as shall be necessary for the administration of this subchapter, including subdivision (2) of this subsection. The several district courts of the United States shall have jurisdiction upon suit by the Board to compel obedience to any order of the Board issued pursuant to this section. The orders, writs, and processes of the United States District Court for the District of Columbia in such suits may run and be served anywhere in the United States. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. The Board shall make an annual report to the President of the United States to be submitted to Congress.

(7) Notwithstanding any other provision of law, the Secretary of Health and Human Services shall furnish the Board certified reports of wages, self-employment income, and periods of service and of other records in his possession, or which he may secure, pertinent to the administration of this subchapter, the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.],,[1] the Milwaukee Railroad Restructuring Act [45 U.S.C. 901 et seq.], and the Rock Island Railroad Transition and Employee Assistance Act [45 U.S.C. 1001 et seq.]..[1] The Board shall furnish the Secretary of Health and Human Services certified reports of records of compensation and periods of service reported to it pursuant to section 231h of this title, of determinations under section 231a of this title, and of other records in its possession, or which it may secure, pertinent to subsection (c) of this section or to the administration of the Social Security Act [42 U.S.C. 301 et seq.] as affected by section 231q of this title. Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided*, *however*, That if the Board or the Secretary of Health and Human Services receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence such recertification of such report shall be made as, in the judgment of the Board or the Secretary of Health and Human Services, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be treated in the same manner and be subject to the same conditions as an original certification.

(8) Any department or agency of the United States maintaining records of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the number of months of military service which such department or agency finds the individual to have had during any period or periods with respect to which the Board's request is made, the date and manner of entry into such military service, and the conditions under which such service was continued. Any department or agency of the United States which is authorized to make awards of pensions, disability compensation, or any other gratuitous benefits or allowances payable, on the periodic basis or otherwise, under any other Act of Congress on the basis of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the calendar months for all or part of which any such pension, compensation, benefit, or allowance is payable to, or with respect to, the individual, the amounts of any such pension, compensation, benefit, or allowance, and the military service on which such pension, compensation, benefit, or allowance is based. Any certification made pursuant to the provisions of this subdivision shall be conclusive on the Board: *Provided*, *however*, That if evidence inconsistent with any such certification is submitted, and the claim is in the course of adjudication or is otherwise open for such evidence, the Board shall refer such evidence to the department or agency which made the original certification and such department or agency shall make such recertification as in its judgment the evidence warrants. Such recertification, and any subsequent recertification, shall be conclusive, made in the same manner, and subject to the same conditions as an original certification.

(9) The Board shall maintain such offices, provide such equipment, furnishings, supplies, services, and facilities, and employ such individuals and provide for their compensation and expenses as may be necessary for the proper discharge of its functions. All positions to which such individuals are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed or excepted therefrom. In the employment of such individuals under the civil service laws and rules the Board shall give preference over all others to individuals who have had experience in railroad service, if, in the judgment of the Board, they possess the qualifications necessary for the proper discharge of the duties of the positions to which they are to be appointed. For purposes of its administration of this subchapter or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.], or both, the Board may place, without regard to the numerical limitations contained in section 5108(c)(9)[2] of title 5, four positions in grade GS–16 of the General Schedule established by that Act, four positions in grade GS–17 of such schedule, and one position in grade GS–18 of such schedule.

(c) Sources of payments; adjustments

(1) Benefit payments determined by the Board to be payable under this subchapter shall be made by the disbursing agent under subsection (b)(4) of this section from money transferred to

[1] So in original.

[2] See References in Text note below.

it from the National Railroad Retirement Investment Trust or the Social Security Equivalent Benefit Account, as the case may be, except that payments of annuity amounts made under sections 231b(h), 231c(e), and 231c(h) of this title and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445 shall be made by the disbursing agent under subsection (b)(4) of this section from money transferred to it from the Dual Benefits Payments Account. In any fiscal year, the total amounts paid under such sections shall not exceed the total sums appropriated to the Dual Benefits Payments Account for that fiscal year. The Board shall prescribe regulations for allocation of annuity amounts which would without regard to such regulations be payable under sections 231b(h), 231c(e), and 231c(h) of this title and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445 so that the sums appropriated to the Dual Benefits Payments Account for a fiscal year so far as practicable, are expended in equal monthly installments throughout such fiscal year, and are distributed so that recipients are paid annuity amounts which bear the same ratio to the annuity amounts such recipients would have received but for such regulations as the ratio of the total sums appropriated to pay such annuity amounts bear to the total sums necessary to pay such annuity amounts without regard to such regulations. Notwithstanding any other provision of law, the entitlement of an individual to an annuity amount under section 231b(h), 231c(e), or 231c(h) of this title or section 204(a)(3), 204(a)(4), 206(3), or 207(3) of Public Law 93–445 for any month in which the amount payable to such individual is allocated under the regulations prescribed by the Board under this subsection shall not exceed the amount so allocated for that month to such individual.

(2) At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board and the Secretary of Health and Human Services shall determine the amounts, if any, which if added to or subtracted from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would place each such Trust Fund in the same position in which it would have been if (A) service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in the Social Security Act [42 U.S.C. 301 et seq.] and in the Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.] and (B) this subchapter had not been enacted. Such determination with respect to each such Trust Fund shall be made no later than June 15 following the close of the fiscal year. If, pursuant to any such determination, any amount is to be added to any such Trust Fund, the Board shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from the Railroad Retirement Account to such Trust Fund. If, pursuant to any such determination, any amount is to be subtracted from any such Trust Fund, the Secretary of Health and Human Services shall, within ten days after the determination, certify such amount to the Secretary of the Treasury for transfer from such Trust Fund to the Railroad Retirement Account. Any amounts so certified shall further include interest (at the rate determined in subdivision (3) for the fiscal year under consideration) payable from the close of such fiscal year until the date of certification. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement Account from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, or the Federal Hospital Insurance Trust Fund or to any such Trust Fund from the Railroad Retirement Account, as the case may be, such amounts as, from time to time, may be determined by the Board and the Secretary of Health and Human Services pursuant to the provisions of this subdivision and certified by the Board or the Secretary of Health and Human Services for transfer from any such Trust Fund or from the Railroad Retirement Account.

(3) For purposes of subdivision (2), for any fiscal year, the rate of interest to be used shall be equal to the average rate of interest, computed as of May 31 preceding the close of such fiscal year, borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) After the end of each month beginning with the month of October 1983, the Board shall determine the net amount, if any, which if added to or subtracted from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund would, with respect to such month, place those Trust Funds, taken as a whole, in the same position in which they would have been if (A) service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in the Social Security Act [42 U.S.C. 301 et seq.] and in the Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.], and (B) this subchapter had not been enacted. If for any month the net amount so determined would be subtracted from those Trust Funds, the Board shall, within ten days after the end of such month, report such amount to the Secretary of the Treasury for transfer from the general fund to the Railroad Retirement Account. Any amount so reported shall further include interest (at an annual rate equal to the rate of interest borne by a special obligation issued to the Railroad Retirement Account in the month in which the transfer is made to the Account) payable from the close of the month for which the transfer is made until the date of transfer. The Secretary of the Treasury is authorized and directed to transfer to the Railroad Retirement Account from the general fund such amounts as, from time to time, may be determined by the Board pursuant to the provisions of this subdivision and reported by the Board for transfer. For such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued after August 12, 1983, under section 3102 of title 31, and the purpose for which securities may be issued under section

3102 of title 31 are extended to include such purpose. Each such transfer shall be made by the Secretary of the Treasury within five days after a report of the amount to be transferred is received. Not later than December 31 following the close of each fiscal year beginning with the fiscal year ending September 30, 1984, the Board shall certify to the Secretary of the Treasury the total of all amounts transferred pursuant to the provisions of this subdivision for months in such fiscal year. Within ten days after a transfer, or transfers, pursuant to subdivision (2) for a particular fiscal year, the Board shall request the Secretary of the Treasury to retransfer from the Railroad Retirement Account to the general fund an amount equal to (A) the total of all amounts, exclusive of interest, transferred to such Account pursuant to the provisions of this subdivision for months in such fiscal year, plus (B) interest (at the rate determined in subdivision (3) for such fiscal year) payable with respect to each amount transferred for a month during such fiscal year from the close of the month for which the transfer of the amount was made until the date of retransfer of such amount. The Secretary of the Treasury is authorized and directed to retransfer from the Railroad Retirement Account to the general fund such amounts as, from time to time, may be determined by the Board pursuant to the provisions of the preceding sentence of this subdivision and reported by the Board for retransfer.

(d) Hospital insurance benefits; certified beneficiaries; disability insurance benefits; services in Canada; exchange of information

(1) The Board shall, for purposes of this subsection, have the same authority to determine the rights of individuals described in subdivision (2) to have payments made on their behalf for hospital insurance benefits consisting of inpatient hospital services, posthospital extended care services, home health services, hospice care, and outpatient hospital diagnostic services (all hereinafter referred to as ''services'') under section 226 [42 U.S.C. 426], and parts A and E of title XVIII [42 U.S.C. 1395c et seq., 1395x et seq.], of the Social Security Act as the Secretary of Health and Human Services has under such section and such parts with respect to individuals to whom such sections and such parts apply. For purposes of section 231g of this title, a determination with respect to the rights of an individual under this subsection shall, except in the case of a provider of services, be considered to be a decision with respect to an annuity.

(2) Except as otherwise provided in this subsection, every person who—

(i) has attained age 65 and (A) is entitled to an annuity under this subchapter or (B) would be entitled to such an annuity had he ceased compensated service and, in the case of a spouse or divorced wife, had such spouse's husband or wife ceased compensated service or (C) bears a relationship to an employee which, by reason of section 231b(f)(2) of this title, has been, or would be, taken into account in calculating the amount of the annuity of such employee; or

(ii) has not attained age 65 and (A) has been entitled to an annuity under section 231a of this title, or under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] and section 231a of this title, or could have been includible in the computation of an annuity under section 231b(f)(2) of this title, for not less than 24 months and (B) could have been entitled for 24 calendar months, and could currently be entitled, to monthly insurance benefits under section 223 of the Social Security Act [42 U.S.C. 423] or under section 202 of that Act [42 U.S.C. 402] on the basis of disability if service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act and if an application for disability benefits had been filed,

shall be certified to the Secretary of Health and Human Services as a qualified railroad retirement beneficiary under section 226 of the Social Security Act [42 U.S.C. 426].

(3) If an individual entitled to an annuity under paragraph (iv) or (v) of section 231a(a)(1) of this title would have been insured for disability insurance benefits as determined under section 223(c)(1) of the Social Security Act [42 U.S.C. 423(c)(1)] at the time such annuity began, he shall be deemed, solely for purposes of paragraph (ii) of subdivision (2), to be entitled to a disability insurance benefit under section 223 of the Social Security Act for each month, and beginning with the first month, in which he would meet the requirements for entitlement to such a benefit, other than the requirement of being insured for disability insurance benefits, if service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in the Social Security Act [42 U.S.C. 301 et seq.] and if an application for disability benefits had been filed.

(4) The rights of individuals described in subdivision (2) of this subsection to have payment made on their behalf for the services referred to in subdivision (1) but provided in Canada shall be the same as those of individuals to whom section 226 [42 U.S.C. 426] and part A of title XVIII [42 U.S.C. 1395c et seq.] of the Social Security Act apply, and this subdivision shall be administered by the Board as if the provisions of section 226 and part A of title XVIII of the Social Security Act were applicable, as if references to the Secretary of Health and Human Services were to the Board, as if references to the Federal Hospital Insurance Trust Fund were to the Railroad Retirement Account, as if references to the United States or a State included Canada or a subdivision thereof, and as if the provisions of sections 1862(a)(4), 1863, 1864, 1868, 1869, 1874(b), and 1875 [42 U.S.C. 1395y(a)(4), 1395z, 1395aa, 1395ee, 1395ff, 1395kk(b), 1395*ll*] were not included in such title. The payments for services herein provided for in Canada shall be made from the Railroad Retirement Account (in accordance with, and subject to, the conditions applicable under subsection (b) of this section, in making payment of other benefits) to the hospital, extended care facility, or home health agency providing such services in Canada to individuals to whom subdivision (2) of this subsection applies, but only to the extent that the amount of payments for services otherwise hereunder provided for an individual exceeds the amount payable for like services provided pursuant to the law in ef-

fect in the place in Canada where such services are furnished. For the purposes of section 231i of this title, any overpayment under this subdivision shall be treated as if it were an overpayment of an annuity.

(5) The Board and the Secretary of Health and Human Services shall furnish each other with such information, records, and documents as may be considered necessary to the administration of this subsection or section 226 [42 U.S.C. 426], and part A of title XVIII [42 U.S.C. 1395c et seq.], of the Social Security Act.

(e) Acceptance of gifts and bequests

The Board is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Railroad Retirement Account, to the Railroad Retirement Supplemental Account, or to the Railroad Unemployment Insurance Account, or to the Board, or any member, officer, or employee thereof, for the benefit of such accounts or any activity financed through such accounts. Any such gift accepted pursuant to the authority granted in this subsection shall be deposited in the specific account designated by the donor or, if the donor has made no such specific designation, in the Railroad Retirement Account.

(f) Congressional copies of documents submitted or transmitted to President or Office of Management and Budget

Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(Aug. 29, 1935, ch. 812, §7, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1338; amended Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96–101, §10(h), Nov. 4, 1979, 93 Stat. 742; Pub. L. 96–254, title I, §106(f), May 30, 1980, 94 Stat. 402, as amended Pub. L. 96–448, title VII, §701(b)(1), Oct. 14, 1980, 94 Stat. 1960; Pub. L. 96–265, title I, §103(a)(4), June 9, 1980, 94 Stat. 444; Pub. L. 96–499, title IX, §930(r), Dec. 5, 1980, 94 Stat. 2633; Pub. L. 97–35, title XI, §1122, Aug. 13, 1981, 95 Stat. 638; Pub. L. 97–248, title I, §122(a)(2), Sept. 3, 1982, 96 Stat. 356; Pub. L. 98–76, title III, §301(a), title IV, §416, Aug. 12, 1983, 97 Stat. 430, 436; Pub. L. 98–369, div. B, title III, §2349(b)(2), July 18, 1984, 98 Stat. 1097; Pub. L. 105–33, title IV, §4002(f)(1), Aug. 5, 1997, 111 Stat. 329; Pub. L. 107–90, title I, §§103(i)(2), 104(a)(2)(B), 106(a), 107(e), (f), Dec. 21, 2001, 115 Stat. 882, 887, 889; Pub. L. 108–173, title I, §101(e)(1), Dec. 8, 2003, 117 Stat. 2150; Pub. L. 109–305, §2, Oct. 6, 2006, 120 Stat. 1719.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1937, referred to in subsecs. (a) and (d)(2)(ii), is act Aug. 29, 1935, ch. 812, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, which was classified principally to subchapter III (§228a et seq.) of this chapter. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to this subchapter. For complete classification of these Acts to the Code, see Tables.

The Social Security Act, referred to in subsecs. (b)(2), (7), (c)(2), (4), and (d)(1), (3) to (5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42. Parts A and E of title XVIII of the Social Security Act are classified generally to Parts A (§1395c et seq.) and E (1395x et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(7), (9), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

The Milwaukee Railroad Restructuring Act, referred to in subsec. (b)(7), is Pub. L. 96–101, Nov. 4, 1979, 93 Stat. 736, which is classified principally to chapter 18 (§901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

The Rock Island Railroad Transition and Employee Assistance Act, referred to in subsec. (b)(7), is title I of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, which is classified principally to chapter 19 (§1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The civil service laws, referred to in subsec. (b)(9), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

Section 5108(c)(9) of title 5, referred to in subsec. (b)(9), was repealed by Pub. L. 95–454, §414(a)(1)(A), Oct. 13, 1978, 92 Stat. 1177.

Sections 204, 206, and 207 of Pub. L. 93–445, referred to in subsec. (c)(1), are set out as part of a Transitional Provisions note under section 231 of this title.

The Federal Insurance Contributions Act, referred to in subsec. (c)(2), (4), is act Aug. 16, 1954, ch. 736, §§3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, which is classified generally to chapter 21 (§3101 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3128 of Title 26 and Tables.

CODIFICATION

As originally enacted, the third sentence of subsec. (b)(6) of this section contained words ''and the District Court of the United States for the District of Columbia'' after ''the several district courts of the United States''. The words ''and the District Court of the United States for the District of Columbia'' have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that ''There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district'' and section 88 of the Title 28 which states that ''the District of Columbia constitutes one judicial district''.

In the fourth sentence of subsec. (b)(6) of this section, ''United States District Court for the District of Columbia'' substituted for ''District Court of the United States for the District of Columbia'' in conformity with

similar changes made throughout the Code pursuant to section 32(b) of act June 25, 1948, ch. 646, as amended by act May 24, 1949, ch. 139, § 127, 63 Stat. 107, which provided for such substitution to be made in all laws of the United States in force on September 1, 1948. See note captioned ''Circuit Court of Appeals:'' ''Senior Circuit Judge,'' Etc. Defined, set out under section 451 of Title 28, Judiciary and Judicial Procedure.

In subsec. (b)(9), ''section 5108(c)(9) of title 5'' substituted for ''section 505 of the Classification Act of 1949, as amended'', on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Section 505 of the Classification Act of 1949 had enacted section 1105 of former Title 5, Executive Departments and Government Officers and Employees.

August 12, 1983, referred to in subsec. (c)(4), was in the original ''the date of enactment of this Act'' which was translated as meaning the date of enactment of Pub. L. 98–76, which enacted subsec. (c)(4) of this section, to reflect the probable intent of Congress.

AMENDMENTS

2006—Subsec. (b)(4)(A). Pub. L. 109–305 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The Railroad Retirement Board, after consultation with the Board of Trustees of the National Railroad Retirement Investment Trust and the Secretary of the Treasury, shall enter into an arrangement with a nongovernmental financial institution to serve as disbursing agent for benefits payable under this subchapter who shall disburse consolidated benefits under this subchapter to each recipient. Pending the taking effect of that arrangement, benefits shall be paid as under the law in effect prior to December 21, 2001.''

2003—Subsec. (d)(1). Pub. L. 108–173 substituted ''parts A and E'' for ''parts A and D''.

2001—Subsec. (b)(2)(A). Pub. L. 107–90, § 103(i)(2), inserted ''(or five or more years of service, all of which accrues after December 31, 1995)'' after ''ten years of service''.

Subsec. (b)(4). Pub. L. 107–90, § 107(e), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Board shall from time to time certify to the Secretary of the Treasury the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which it should be made, and the Secretary of the Treasury through the Fiscal Service of the Treasury Department, and prior to audit by the General Accounting Office, shall make payment in accordance with the certification by the Board.''

Subsec. (c)(1). Pub. L. 107–90, § 107(f), substituted ''by the disbursing agent under subsection (b)(4) of this section from money transferred to it from the National Railroad Retirement Investment Trust or the Social Security Equivalent Benefit Account, as the case may be'' for ''from the Railroad Retirement Account'' and inserted ''by the disbursing agent under subsection (b)(4) of this section from money transferred to it'' after ''Public Law 93–445 shall be made''.

Pub. L. 107–90, § 106(a), struck out ''payments of supplemental annuities under section 231a(b) of this title shall be made from the Railroad Retirement Supplemental Account, and'' before ''payments of annuity amounts made under sections 231b(h),''.

Subsec. (d)(2)(i), (ii). Pub. L. 107–90, § 104(a)(2)(B), substituted ''section 231b(f)(2)'' for ''section 231b(f)(3)''.

1997—Subsec. (d)(1). Pub. L. 105–33 substituted ''parts A and D of title XVIII'' for ''parts A and C of title XVIII''.

1984—Subsec. (d)(4). Pub. L. 98–369 struck out ''1867,'' after ''1864,''.

1983—Subsec. (c)(4). Pub. L. 98–76, § 301(a), added par. (4).

Subsec. (f). Pub. L. 98–76, § 416, added subsec. (f).

1982—Subsec. (d)(1). Pub. L. 97–248 inserted ''hospice care,'' after ''home health services,''.

1981—Subsec. (b)(2)(B). Pub. L. 97–35, § 1122(a)(1), substituted ''wife or divorced wife'' for ''wife''.

Subsec. (b)(7). Pub. L. 97–35, § 1122(a)(2), inserted reference to the Railroad Unemployment Insurance Act.

Subsec. (c)(1). Pub. L. 97–35, § 1122(c), inserted provisions relating to payment of annuity amounts from the Dual Benefits Payments Account, authorization of Board to prescribe regulations for allocation of annuity amounts, and maximum limits on entitlement of an individual to an annuity amount.

Subsec. (d)(2)(i)(C). Pub. L. 97–35, § 1122(b)(2), added cl. (C).

Pub. L. 97–35, § 1122(b)(1), substituted ''spouse or divorced wife'' for ''spouse''.

1980—Subsec. (b)(7). Pub. L. 96–254, as amended by Pub. L. 96–448, inserted reference to the Rock Island Railroad Transition and Employee Assistance Act.

Subsec. (d)(1). Pub. L. 96–499 substituted ''home health services'' for ''posthospital home health services''.

Subsec. (d)(2)(ii). Pub. L. 96–265 substituted ''24 months'' and ''24 calendar months'' for ''24 consecutive months'' and ''24 consecutive calendar months'', respectively.

1979—Subsec. (b)(7). Pub. L. 96–101 substituted ''Notwithstanding any other provision of law, the Secretary'' for ''The Secretary'' and inserted ''and the Milwaukee Railroad Restructuring Act'' after ''administration of this subchapter''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsecs. (b)(7), (c)(2), and (d)(4) and (5) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 103(i) of Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

Amendment by section 104(a) of Pub. L. 107–90 effective Jan. 1, 2002, and applicable to annuity amounts accruing for months after Dec. 2001, see section 104(c) of Pub. L. 107–90, set out as a note under section 231b of this title.

Amendment by section 106(a) of Pub. L. 107–90 effective Jan. 1, 2002, see section 106(e)(1) of Pub. L. 107–90, set out as a note under section 231n of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, see section 2349(c) of Pub. L. 98–369, set out as a note under section 907a of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 301(c)(1) of Pub. L. 98–76 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be effective on October 1, 1983.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1)(A) of Pub. L. 97–248, as amended, set out as a note under section 1395c of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 1122(a)(2), (b)(1), (c) of Pub. L. 97–35 effective Oct. 1, 1981, and amendment by other provisions of section 1122 of Pub. L. 97–35 effective Oct. 1, 1981, and applicable only with respect to annuities awarded on or after Oct. 1, 1981, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section

930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

Amendment by Pub. L. 96–265 applicable with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after first day of sixth month which begins after June 9, 1980, see section 103(c) of Pub. L. 96–265, set out as a note under section 426 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section 602(e) of Pub. L. 93–445 provided that: ''The provisions of section 7(e) of the Railroad Retirement Act of 1974 [subsec. (e) of this section] shall be effective on the enactment date of this Act [Oct. 16, 1974] and shall apply with respect to all gifts and bequests covered thereunder, regardless of the date on which such gifts or bequests were made.''

REPEALS

Section 106(f) of Pub. L. 96–254, cited as a credit to this section, was omitted in the complete revision of section 106 of Pub. L. 96–254 by Pub. L. 97–468, title II, § 231, Jan. 14, 1983, 96 Stat. 2543.

TRANSFER OF FUNCTIONS

''Fiscal Service'' substituted for ''Division of Disbursements'' in subsec. (b)(4) on authority of section 1(a)(1) of 1940 Reorg. Plan No. III, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees, which consolidated such division into Fiscal Service of Treasury Department. See section 306 of Title 31, Money and Finance.

LIMITATION ON THE OFFICE OF INSPECTOR GENERAL

Pub. L. 110–161, div. G, title IV, Dec. 26, 2007, 121 Stat. 2206, provided in part: ''That funds made available under the heading in this Act [the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, Pub. L. 110–161, div. G, see Tables for classification], or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, may be used for any audit, investigation, or review of the Medicare Program.''

Pub. L. 105–277, div. A, § 101(f) [title IV], Oct. 21, 1998, 112 Stat. 2681–337, 2681–381, provided in part: ''That none of the funds made available under this heading in this Act [probably means the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1999, Pub. L. 105–277, div. A, § 101(f), Oct. 21, 1998, 112 Stat. 2681–337, see Tables for classification], or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, may be used for any audit, investigation, or review of the Medicare Program.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105–78, title IV, Nov. 13, 1997, 111 Stat. 1512.

Pub. L. 104–208, div. A, title I, § 101(e) [title IV], Sept. 30, 1996, 110 Stat. 3009–233, 3009–268.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

DELEGATION OF REPORTING AUTHORITY

Memorandum of President of the United States, Feb. 9, 2005, 70 F.R. 7631, provided:

Memorandum for the Chairman of the Railroad Retirement Board

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority conferred upon the President by section 7(b)(6) of the Railroad Retirement Act [of 1974, 45 U.S.C. 231f(b)(6)] and section 12(l) of the Railroad Unemployment Insurance Act [45 U.S.C. 362(*l*)] to provide the specified report to the Congress.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 231f–1. Annual actuarial report

As part of the annual report required under section 231u(a) of this title, the Railroad Retirement Board shall submit to the Congress a report on the actuarial status of the railroad retirement system under various economic and employment assumptions. Such report shall include any recommendation for financing changes which might be advisable, including—

(1) any adjustment the Railroad Retirement Board recommends regarding the rates of taxes imposed by sections 3201(b), 3211(a)(2), and 3221(b) of the Internal Revenue Code of 1986 [26 U.S.C. 3201(b), 3211(a)(2), 3221(b)], and

(2) if there are sufficient reserves in the Railroad Retirement Account, whether—

(A) the rates of such taxes should be reduced, or

(B) any part of the tax imposed by section 3221(b) of such Code should be diverted to the Railroad Unemployment Insurance Account to aid in the repayment of its debt to the Railroad Retirement Account.

(Pub. L. 98–76, title V, § 502, Aug. 12, 1983, 97 Stat. 440; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–66, title II, § 2221(a), Dec. 21, 1995, 109 Stat. 733.)

CODIFICATION

Section was enacted as part of the Railroad Retirement Solvency Act of 1983, and not as part of the Railroad Retirement Act of 1974 which comprises this subchapter.

AMENDMENTS

1995—Pub. L. 104–66 which directed the amendment of this section by substituting ''As part of the annual report required under section 231u(a) of this title'' for ''On or before July 1, 1985, and each calendar year thereafter'', was executed by making the substitution for ''On or before July 1 of 1985, and of each calendar year thereafter'', to reflect the probable intent of Congress.

1986—Par. (1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

§ 231g. Court jurisdiction

Decisions of the Board determining the rights or liabilities of any person under this subchapter shall be subject to judicial review in the same manner, subject to the same limitations, and all provisions of law shall apply in the same manner as though the decision were a determination of corresponding rights or liabilities under the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] except that the time within which proceedings for the review of a de-

cision with respect to an annuity, supplemental annuity, or lump-sum benefit may be commenced shall be one year after the decision will have been entered upon the records of the Board and communicated to the claimant.

(Aug. 29, 1935, ch. 812, § 8, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1343.)

REFERENCES IN TEXT

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

§ 231h. Returns of compensation; conclusiveness

Employers shall file with the Board, in such manner and form and at such times as the Board by rules and regulations may prescribe, returns of compensation of employees, and, if the Board shall so require, shall furnish employees with statements of their compensation as reported to the Board. The Board's record of the compensation so returned shall be conclusive as to the amount of compensation paid to an employee during each period covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to have been paid to an employee during a particular period shall be taken as conclusive that no compensation was paid to such employee during that period, unless the error in the amount of compensation returned in the one case, or the failure to make return of the compensation in the other case, is called to the attention of the Board within four years after the day on which return of the compensation was required to be made.

(Aug. 29, 1935, ch. 812, § 9, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1343.)

§ 231i. Erroneous payments

(a) Recovery

If the Board finds that at any time more than the correct amount of annuities or other benefits has been paid to any individual under this subchapter, or payment has been made to an individual not entitled thereto, recovery by adjustment in subsequent payments to which such individual, or any other individual on the basis of the same compensation, wages, or self-employment income, is entitled under this subchapter, or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] may, except as otherwise provided in this section, be made under regulations prescribed by the Board. If the individual to whom more than the correct amount has been paid dies before recovery is completed, recovery may be made by setoff or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this subchapter, or the Railroad Unemployment Insurance Act, to the estate of such individual or to any person on the basis of the compensation, wages, or self-employment income of such individual. The Board shall have the authority to recover from any payment which would be made to an individual by the Board under section 231f(b)(2) of this title the amount of annuity payments made to such individual which are erroneous because of such individual's entitlement to monthly insurance benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.].

(b) Adjustments

Adjustments under this section may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of annuities or other benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case, recovery shall be deemed to have been completed upon such recertification.

(c) Decision not to recover

There shall be no recovery in any case in which more than the correct amount of annuities or other benefits has been paid under this subchapter to an individual or payment has been made to an individual not entitled thereto who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of this subchapter or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] or would be against equity or good conscience.

(d) Liability of officers

No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under subsection (c) of this section or has been begun but cannot be completed under subsection (a) of this section.

(Aug. 29, 1935, ch. 812, § 10, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1344; amended Pub. L. 97–35, title XI, § 1123, Aug. 13, 1981, 95 Stat. 638.)

REFERENCES IN TEXT

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

The Social Security Act, referred to in subsec. (a), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35 inserted provisions authorizing Board to recover from any payment which would be made to an individual by Board under section 231f(b)(2) of this title amount of annuity payments made to such individual which are erroneous because of such individual's entitlement to monthly insurance benefits under title II of the Social Security Act.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Jan. 1, 1975, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

§ 231j. Waiver of annuities

Any person awarded an annuity under this subchapter may decline to accept all or any part of such annuity by a waiver signed and filed with the Board. Such a waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect. Such a waiver will have no effect on entitlement to, or the amount of, any other annuity or benefit.

(Aug. 29, 1935, ch. 812, § 11, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1344.)

§ 231k. Incompetence

(a) Every individual receiving or claiming benefits, or to whom any right or privilege is extended, under this subchapter or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall be conclusively presumed to have been competent until the date on which the Board receives written notice, in a form and manner acceptable to the Board, that he is an incompetent, or a minor, for whom a guardian or other person legally vested with the care of his person or estate has been appointed: *Provided, however*, That, regardless of the legal competency or incompetency of an individual entitled to a benefit administered by the Board, the Board may, if it finds the interest of such individual to be served thereby, recognize actions by, and conduct transactions with, and make payments to, such individual, or recognize actions by, and conduct transactions with, and make payments to, a relative or some other person for such individual's use and benefit.

(b) Every guardian or other person legally vested with the care of the person or estate of an incompetent or minor who is receiving or claiming benefits, or to whom any right or privilege is extended, under this subchapter or any other Act of Congress now or hereafter administered, in whole or in part, by the Board shall have power everywhere, in the manner and to the extent prescribed by the Board, but subject to the provisions of the preceding subsection, to take any action necessary or appropriate to perfect any right or exercise any privilege of the incompetent or minor and to conduct all transactions on his behalf under this subchapter or any other Act of Congress now or hereafter administered, in whole or in part, by the Board. Any payment made pursuant to the provisions of this section shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(Aug. 29, 1935, ch. 812, § 12, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1345.)

§ 231*l*. Penalties

(a) Any person who shall knowingly fail or refuse to make any report or furnish any information required by the Board in the administration of this subchapter, including the provisions of section 231f(b)(2) of this title or who shall knowingly make or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purpose of this subchapter, or who shall knowingly make or aid in making any false or fraudulent statement or claim for the purpose of causing an award or payment to be made, shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

(b) All fines and penalties imposed by a court pursuant to this subchapter shall be paid to the court and be remitted from time to time by order of the judge to the Treasury of the United States to be credited to the Railroad Retirement Account.

(Aug. 29, 1935, ch. 812, § 13, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1345.)

§ 231m. Assignability; exemption from levy

(a) Except as provided in subsection (b) of this section and the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], notwithstanding any other law of the United States, or of any State, territory, or the District of Columbia, no annuity or supplemental annuity shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated[1]

(b)(1) This section shall not operate to exclude the amount of any supplemental annuity paid to an individual under section 231a(b) of this title from income taxable pursuant to the Federal income tax provisions of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.].

(2) This section shall not operate to prohibit the characterization or treatment of that portion of an annuity under this subchapter which is not computed under section 231b(a), 231c(a), or 231c(f) of this title, or any portion of a supplemental annuity under this subchapter, as community property for the purposes of, or property subject to, distribution in accordance with a court decree of divorce, annulment, or legal separation or the terms of any court-approved property settlement incident to any such court decree. The Board shall make payments of such portions in accordance with any such characterization or treatment or any such decree or settlement.

(Aug. 29, 1935, ch. 812, § 14, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1345; amended Pub. L. 98–76, title IV, § 419(a), Aug. 12, 1983, 97 Stat. 438; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsecs. (a), (b)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1983—Subsec. (a). Pub. L. 98–76, § 419(a)(1), substituted ''(a) Except as provided in subsection (b) of this section and the Internal Revenue Code of 1954, notwithstanding'' for ''Notwithstanding''.

Subsec. (b)(1). Pub. L. 98–76, § 419(a)(2), substituted ''(b)(1) This'' for '': *Provided, however*, That the provisions of this''.

Subsec. (b)(2). Pub. L. 98–76, § 419(a)(3), added par. (2).

[1] So in original. Probably should be followed by a period.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 419(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall apply with respect to annuity amounts payable for months beginning after the date of the enactment of this Act [Aug. 12, 1983].''

§ 231n. Railroad Retirement Account

(a) Maintenance of account; authorization of appropriations

The Railroad Retirement Account established by section 15(a) of the Railroad Retirement Act of 1937 [45 U.S.C. 228*o*(a)] shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, to provide for the payment of benefits to be made from such Account in accordance with the provisions of section 231f(c)(1) of this title, and to provide for expenses necessary for the Board in the administration of all provisions of this subchapter, an amount equal to amounts covered into the Treasury (minus refunds) during each fiscal year under the Railroad Retirement Tax Act [26 U.S.C. 3201 et seq.].

(b) Authorization of appropriations; military service costs and administrative expenses

In addition to the amount appropriated in subsection (a) of this section, there is hereby authorized to be appropriated to the Railroad Retirement Account for each fiscal year, beginning with the fiscal year ending June 30, 1975, such amount as the Board determines to be necessary to meet (A) the additional costs, resulting from the crediting of military service under this subchapter, of benefits payable under section 231a of this title, but only to the extent that such Account is not reimbursed for such costs under section 231f(c)(2) of this title, (B) the additional administrative expenses resulting from the crediting of military service under this subchapter, and (C) any loss in interest to such Account resulting from the payment of additional benefits based on military service credited under this subchapter: *Provided, however*, That, in determining the amount to be appropriated to the Railroad Retirement Account for any fiscal year pursuant to the provisions of this subsection, there shall not be considered any costs resulting from the crediting of military service under this subchapter for which appropriations to such Account have already been made pursuant to section 4(*l*) of the Railroad Retirement Act of 1937 [45 U.S.C. 228c–1(*l*)]. Any determination as to loss in interest to the Railroad Retirement Account pursuant to clause (C) of the first sentence of this subsection shall take into account interest from the date each annuity based, in part, on military service began to accrue or was increased to the date or dates on which the amount appropriated is credited to the Account. The cost resulting from the payment of additional benefits under this subchapter based on military service determined pursuant to the preceding provisions of this subsection shall be adjusted by applying thereto the ratio of the total net level cost of all benefits under this subchapter to the portion of such net level cost remaining after the exclusion of administrative expenses and interest charges on the unfunded accrued liability as determined under the last completed actuarial valuation pursuant to the provisions of subsection (g) of this section. At the close of the fiscal year ending June 30, 1975, and each fiscal year thereafter, the Board shall, as promptly as practicable, determine the amount to be appropriated to the Account pursuant to the provisions of this subsection, and shall certify such amount to the Secretary of the Treasury for transfer from the general fund in the Treasury to the Railroad Retirement Account. When authorized by an appropriation Act, the Secretary of the Treasury shall transfer to the Railroad Retirement Account from the general fund in the Treasury such amounts as, from time to time, may be determined by the Board pursuant to the provisions of this subsection and certified by the Board for transfer to such Account. In any determination made pursuant to section 231f(c)(2) of this title, no further charges shall be made against the Trust Funds established by title II of the Social Security Act [42 U.S.C. 401 et seq.] for military service rendered before January 1, 1957, and with respect to which appropriations authorized by clause (2) of the first sentence of section 4(*l*) of the Railroad Retirement Act of 1937 shall have been credited to the Railroad Retirement Account, but the additional benefit payments incurred by such Trust Funds by reason of such military service shall be taken in account in making any such determination.

(c) Repealed. Pub. L. 107–90, title I, § 106(b), Dec. 21, 2001, 115 Stat. 887

(d) Dual Benefits Payments Account

(1) There is hereby created an account in the Treasury of the United States to be known as the Dual Benefits Payments Account. There is hereby authorized to be appropriated to such account for each fiscal year beginning with the fiscal year ending September 30, 1982, such sums as are necessary to pay during such fiscal year the amounts of annuities estimated by the Board to be paid under sections 231b(h), 231c(e), and 231c(h) of this title and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445. Not more than 30 days prior to each fiscal year beginning with the fiscal year ending September 30, 1982, the Board may request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Dual Benefits Payments Account any amount not exceeding the amount that the Board estimates will be necessary to pay on the first day of the next succeeding month the annuity amounts under sections 231b(h), 231c(e), and 231c(h) of this title and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445, taking into account any reduction in such annuity amounts as determined under section 231f(c)(1) of this title, and the Secretary of the Treasury shall make such transfer, but at no time shall the total amount of money outstanding to the Dual Benefits Payments Account from the Railroad Retirement Account exceed the amount necessary to pay the annuity amounts under sections 231b(h), 231c(e), and 231c(h) of this title and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445 for one month. Not more than 10 days

after the funds appropriated to the Dual Benefits Payments Account for each such fiscal year are received into such Account, the Board shall request the Secretary of the Treasury to retransfer from the Dual Benefits Payments Account to the credit of the Railroad Retirement Account an amount equal to the amount transferred to the Dual Benefits Payments Account prior to or during such fiscal year under the preceding sentence, together with such additional amount determined by the Board to be equal to the loss of interest to the Railroad Retirement Account resulting from such transfer, and the Secretary of the Treasury shall make such retransfer. The Secretary of the Treasury shall from time to time transfer from the Dual Benefits Payments Account to the disbursing agent under section 231f(b)(4) of this title amounts necessary to pay benefits payable from that Account.

(2) The Secretary of the Treasury—

(i) shall transfer from the general fund as a loan to the Board on January 1, 1984, one-third of the special amount described in subdivision (3) of this subsection;

(ii) shall transfer from the general fund as a loan to the Board on January 1, 1985, one-third of the special amount described in subdivision (3) of this subsection, plus an amount equal to the interest that one-third would have earned had it been in the Railroad Retirement Account since January 1, 1984; and

(iii) shall transfer from the general fund as a loan to the Board on January 1, 1986, the final one-third of the special amount described in subdivision (3) of this subsection, plus an amount equal to the interest that one-third would have earned had it been in the Railroad Retirement Account since January 1, 1984.

(3) The special amount referred to in subdivision (2) of this subsection is the amount which, as of January 1, 1984, would place the Railroad Retirement Account in the same position it would have been on that date if no annuity amounts had been paid during the period beginning January 1, 1975 and ending September 30, 1981, under sections 231b(h), 231c(e), and 231c(h) of this title and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445, and no sums had been appropriated as authorized in this subsection.

(4) For the purposes of subdivision (2) of this subsection, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued after August 12, 1983, under section 3102 of title 31 and the purposes for which securities may be so issued are extended to include such purposes.

(5) The amounts transferred to the Board as loans under subdivision (2) of this subsection shall be deposited in the Railroad Retirement Account.

(6) The amounts transferred as loans under subdivision (2) of this subsection shall be repaid to the general fund to the extent sums are appropriated for that purpose, and there are hereby authorized to be appropriated, in addition to any other sums authorized to be appropriated for the purposes of this subchapter and from any sums in the Treasury not otherwise appropriated, such sums as may be necessary to make such repayments.

(e) Investments

At the request and direction of the Board, it shall be the duty of the Secretary of the Treasury (hereinafter referred to as the ''Secretary'') to invest such portion of the amounts credited to the Railroad Retirement Account and the Dual Benefits Payments Account as are not transferred to the National Railroad Retirement Investment Trust as the Board may determine in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (A) on original issue at the issue price; or (B) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31, are hereby extended to authorize the issuance at par of special obligations exclusively to the accounts. Such obligations issued for purchase by the accounts shall have maturities fixed with due regard for the needs of the accounts, and shall bear interest at a rate equal to the average market yield, computed as of the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing notes of the United States then forming a part of the public debt that are not due or callable until after the expiration of three years from the end of such calendar month, except that where such rate is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligation shall be the multiple of one-eighth of 1 per centum nearest such rate: *Provided*, That the rate of interest on such obligations shall in no case be less than 3 per centum per annum. At the request of the Board the Secretary shall purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, or other obligations which are lawful investments for trust funds of the United States, on original issue or at the market price: *Provided*, That the interest yield of such obligations shall not be less than the interest rate determined in accordance with the preceding sentence. At the request of the Board, the Secretary shall sell at the market price such obligations in the accounts (other than special obligations issued exclusively to the accounts) as the Board designates. The Board shall from time to time request the Secretary to redeem such special obligations issued exclusively to the accounts as the Board designates and upon such request the Secretary shall redeem such obligations at par plus accrued interest. All requests of the Board to the Secretary, provided for in this subsection, shall be mandatory upon the Secretary. It shall be the duty of the Board to determine at all times what proportion of the accounts shall be invested in other than special obligations issued to the accounts and further to determine which of such obligations available to the accounts consistent with the requirements of this subsection will provide the greatest rate of return on the funds invested.

(f) Actuarial Advisory Committee

The Board is hereby authorized and directed to select two actuaries, one from recommendations made by representatives of employees and

the other from recommendations made by representatives of employers as defined in paragraph (i) of section 231(a)(1) of this title. These actuaries, along with a third who shall be designated by the Secretary of the Treasury, shall be known as the Actuarial Advisory Committee with respect to the Railroad Retirement Account. The actuaries so selected shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension plans: *Provided, however*, That these requirements shall not apply to any actuary who served as a member of the Committee prior to January 1, 1975. The Committee shall examine the actuarial reports and estimates made by the Board and shall have authority to recommend to the Board such changes in actuarial methods as they may deem necessary. The compensation of the members of the Committee, exclusive of the member designated by the Secretary, shall be fixed by the Board on a per diem basis.

(g) Annual report

The Board shall include in its annual report a statement of the status and the operations of the Railroad Retirement and Railroad Retirement Supplemental Accounts, and the Dual Benefits Payments Account. At intervals not longer than three years the Board shall make an estimate of the liabilities created by this subchapter and shall include such estimate in its annual report.

(h) Authorization of appropriations; administrative expenses of subchapter

There are hereby authorized to be appropriated from time to time such sums as may be necessary to provide for the expenses of the Board in administering the provisions of this subchapter.

(i) Crediting of accounts for unnegotiated benefit checks

(1) The Secretary of the Treasury shall implement procedures to permit the identification of each check issued for benefits under this subchapter that has not been presented for payment by the close of the sixth month following the month of its issuance.

(2) The Secretary of the Treasury shall, on a monthly basis, credit each account established in the Treasury for the payment of benefits under this subchapter for the proportionate amount of benefit checks (including interest thereon) drawn on each such Account more than six months previously but not presented for payment and not previously credited to such Account, to the extent provided in advance in appropriation Acts.

(3) If a benefit check is presented for payment to the Treasury and the amount of the appropriate portion thereof has been previously credited pursuant to paragraph (2) to an Account or Accounts, the Secretary of the Treasury shall nevertheless pay such check, if otherwise proper, recharge such Account or Accounts for the amount of such check attributable to such Account or Accounts and notify the Board.

(4) A benefit check bearing a current date may be issued to an individual who did not negotiate the original benefit check and who surrenders such check for cancellation if the Secretary of the Treasury determines it is necessary to effect proper payment of benefits.

(j) National Railroad Retirement Investment Trust

(1) Establishment

The National Railroad Retirement Investment Trust (hereinafter in this subsection referred to as the ''Trust'') is hereby established as a trust domiciled in the District of Columbia and shall, to the extent not inconsistent with this subchapter, be subject to the laws of the District of Columbia applicable to such trusts. The Trust shall manage and invest its assets in the manner set forth in this subsection.

(2) Not a Federal agency or instrumentality

The Trust is not a department, agency, or instrumentality of the Government of the United States and shall not be subject to title 31.

(3) Board of Trustees

(A) Generally

(i) Membership

The Trust shall have a Board of Trustees, consisting of 7 members. Three shall represent the interests of labor, 3 shall represent the interests of management, and 1 shall be an independent Trustee. The members of the Board of Trustees shall not be considered officers or employees of the Government of the United States.

(ii) Selection

(I) The 3 members representing the interests of labor shall be selected by the joint recommendation of labor organizations, national in scope, organized in accordance with sections 151a and 152 of this title, and representing at least ⅔ of all active employees, represented by such national labor organizations, covered under this subchapter.

(II) The 3 members representing the interests of management shall be selected by the joint recommendation of carriers as defined in section 151 of this title employing at least ⅔ of all active employees covered under this subchapter.

(III) The independent member shall be selected by a majority of the other 6 members of the Board of Trustees.

A member of the Board of Trustees may be removed in the same manner and by the same constituency that selected that member.

(iii) Dispute resolution

In the event that the parties specified in subclause (I), (II), or (III) of the previous clause cannot agree on the selection of Trustees within 60 days of the date of enactment or 60 days from any subsequent date that a position of the Board of Trustees becomes vacant, an impartial umpire to decide such dispute shall, on the petition of a party to the dispute, be appointed by the District Court of the United States for the District of Columbia.

(B) Qualifications

Members of the Board of Trustees shall be appointed only from among persons who have experience and expertise in the management of financial investments and pension plans. No member of the Railroad Retirement Board shall be eligible to be a member of the Board of Trustees.

(C) Terms

Except as provided in this subparagraph, each member shall be appointed for a 3-year term. The initial members appointed under this paragraph shall be divided into equal groups so nearly as may be, of which one group will be appointed for a 1-year term, one for a 2-year term, and one for a 3-year term. The Trustee initially selected pursuant to clause (ii)(III) shall be appointed to a 3-year term. A vacancy in the Board of Trustees shall not affect the powers of the Board of Trustees and shall be filled in the same manner as the selection of the member whose departure caused the vacancy. Upon the expiration of a term of a member of the Board of Trustees, that member shall continue to serve until a successor is appointed.

(4) Powers of the Board of Trustees

The Board of Trustees shall—

(A) retain independent advisers to assist it in the formulation and adoption of its investment guidelines;

(B) invest assets of the Trust in a manner consistent with such investment guidelines, either directly or through the retention of independent investment managers;

(C) adopt bylaws and other rules to govern its operations;

(D) employ professional staff, and contract with outside advisers, including the Railroad Retirement Board, to provide legal, accounting, investment advisory or management services (compensation for which may be on a fixed contract fee basis or on such other terms as are customary for such services), or other services necessary for the proper administration of the Trust;

(E) sue and be sued and participate in legal proceedings, have and use a seal, conduct business, carry on operations, and exercise its powers within or without the District of Columbia, form, own, or participate in entities of any kind, enter into contracts and agreements necessary to carry out its business purposes, lend money for such purposes, and deal with property as security for the payment of funds so loaned, and possess and exercise any other powers appropriate to carry out the purposes of the Trust;

(F) pay administrative expenses of the Trust from the assets of the Trust; and

(G) transfer money to the disbursing agent or as otherwise provided in section 231f(b)(4) of this title, to pay benefits payable under this subchapter from the assets of the Trust.

(5) Reporting requirements and fiduciary standards

The following reporting requirements and fiduciary standards shall apply with respect to the Trust:

(A) Duties of the Board of Trustees

The Trust and each member of the Board of Trustees shall discharge their duties (including the voting of proxies) with respect to the assets of the Trust solely in the interest of the Railroad Retirement Board and through it, the participants and beneficiaries of the programs funded under this subchapter—

(i) for the exclusive purpose of—

(I) providing benefits to participants and their beneficiaries; and

(II) defraying reasonable expenses of administering the functions of the Trust;

(ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(iii) by diversifying investments so as to minimize the risk of large losses and to avoid disproportionate influence over a particular industry or firm, unless under the circumstances it is clearly prudent not to do so; and

(iv) in accordance with Trust governing documents and instruments insofar as such documents and instruments are consistent with this subchapter.

(B) Prohibitions with respect to members of the Board of Trustees

No member of the Board of Trustees shall—

(i) deal with the assets of the Trust in the Trustee's own interest or for the Trustee's own account;

(ii) in an individual or in any other capacity act in any transaction involving the assets of the Trust on behalf of a party (or represent a party) whose interests are adverse to the interests of the Trust, the Railroad Retirement Board, or the interests of participants or beneficiaries; or

(iii) receive any consideration for the Trustee's own personal account from any party dealing with the assets of the Trust.

(C) Exculpatory provisions and insurance

Any provision in an agreement or instrument that purports to relieve a Trustee from responsibility or liability for any responsibility, obligation, or duty under this subchapter shall be void: *Provided, however*, That nothing shall preclude—

(i) the Trust from purchasing insurance for its Trustees or for itself to cover liability or losses occurring by reason of the act or omission of a Trustee, if such insurance permits recourse by the insurer against the Trustee in the case of a breach of a fiduciary obligation by such Trustee;

(ii) a Trustee from purchasing insurance to cover liability under this section from and for his own account; or

(iii) an employer or an employee organization from purchasing insurance to cover potential liability of one or more Trustees with respect to their fiduciary responsibil-

ities, obligations, and duties under this section.

(D) Bonding

Every Trustee and every person who handles funds or other property of the Trust (hereafter in this subsection referred to as ''Trust official'') shall be bonded. Such bond shall provide protection to the Trust against loss by reason of acts of fraud or dishonesty on the part of any Trust official, directly or through the connivance of others, and shall be in accordance with the following:

(i) The amount of such bond shall be fixed at the beginning of each fiscal year of the Trust by the Railroad Retirement Board. Such amount shall not be less than 10 percent of the amount of the funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Railroad Retirement Board, after consideration of the record, may prescribe an amount in excess of $500,000, subject to the 10 per centum limitation of the preceding sentence.

(ii) It shall be unlawful for any Trust official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Trust without being bonded as required by this subsection and it shall be unlawful for any Trust official, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any Trust official, with respect to whom the requirements of this subsection have not been met.

(iii) It shall be unlawful for any person to procure any bond required by this subsection from any surety or other company or through any agent or broker in whose business operations such person has any control or significant financial interest, direct or indirect.

(E) Audit and report

(i) The Trust shall annually engage an independent qualified public accountant to audit the financial statements of the Trust.

(ii) The Trust shall submit an annual management report to the Congress not later than 180 days after the end of the Trust's fiscal year. A management report under this subsection shall include—

(I) a statement of financial position;

(II) a statement of operations;

(III) a statement of cash flows;

(IV) a statement on internal accounting and administrative control systems;

(V) the report resulting from an audit of the financial statements of the Trust conducted under clause (i); and

(VI) any other comments and information necessary to inform the Congress about the operations and financial condition of the Trust.

(iii) The Trust shall provide the President, the Railroad Retirement Board, and the Director of the Office of Management and Budget a copy of the management report when it is submitted to Congress.

(F) Enforcement

The Railroad Retirement Board may bring a civil action—

(i) to enjoin any act or practice by the Trust, its Board of Trustees, or its employees or agents that violates any provision of this subchapter; or

(ii) to obtain other appropriate relief to redress such violations, or to enforce any provisions of this subchapter.

(6) State and local taxes

The Trust shall be exempt from any income, sales, use, property, or other similar tax or fee imposed or levied by a State, political subdivision, or local taxing authority. The district courts of the United States shall have original jurisdiction over a civil action brought by the Trust to enforce this subsection and may grant equitable or declaratory relief requested by the Trust.

(7) Quorum

Five members of the Board of Trustees constitute a quorum to do business. Investment guidelines must be adopted by a unanimous vote of the Trustees then holding office. All other decisions of the Board of Trustees shall be decided by a majority vote of the quorum present. All decisions of the Board of Trustees shall be entered upon the records of the Board of Trustees.

(k) Transfers to the Trust

The Board shall, upon establishment of the National Railroad Retirement Investment Trust and from time to time thereafter, direct the Secretary of the Treasury to transfer, in such manner as will maximize the investment returns to the Railroad Retirement system, that portion of the Railroad Retirement Account that is not needed to pay current administrative expenses of the Board to the National Railroad Retirement Investment Trust. The Secretary shall make that transfer.

***(l)* National Railroad Retirement Investment Trust**

The National Railroad Retirement Investment Trust shall from time to time transfer to the disbursing agent described in section 231f(b)(4) of this title or as otherwise directed by the Railroad Retirement Board pursuant to section 231f(b)(4) of this title, such amounts as may be necessary to pay benefits under this subchapter (other than benefits paid from the Social Security Equivalent Benefit Account or the Dual Benefit Payments Account).

(Aug. 29, 1935, ch. 812, § 15, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1346; amended Pub. L. 94–92, title II, § 201(a)–(d), Aug. 9, 1975, 89 Stat. 464, 465; Pub. L. 94–547, § 3(a), Oct. 18, 1976, 90 Stat. 2525; Pub. L. 97–34, title VII, § 742, Aug. 13, 1981, 95 Stat. 348; Pub. L. 97–35, title XI, §§ 1124, 1127(a), Aug. 13, 1981, 95 Stat. 639, 641; Pub. L. 98–76, title III, § 301(b), title IV, §§ 401(a), 417(a), Aug. 12, 1983, 97 Stat. 431, 433, 437; Pub. L. 107–90, title I, §§ 105(a), (b), 106(b), (c), 107(a), (b), (d), Dec. 21, 2001, 115 Stat. 882, 886–889; Pub. L. 108–203, title IV, § 426(a)–(d), (f), Mar. 2, 2004, 118 Stat. 537, 538.)

REFERENCES IN TEXT

Sections 4 and 15 of the Railroad Retirement Act of 1937, referred to in subsecs. (a) and (b)(1), which were classified to sections 228c–1 and 228*o* of this title, have been omitted from the Code.

The Railroad Retirement Tax Act, referred to in subsec. (a), is act Aug. 16, 1954, ch. 736, §§3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, as amended, which is classified generally to chapter 22 (§3201 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Sections 204, 206, and 207 of Pub. L. 93–445, referred to in subsec. (d)(1), (3), are sections 204, 206, and 207 of title II of Pub. L. 93–445, and are set out as part of a Transitional Provisions note under section 231 of this title.

Within 60 days of the date of enactment, referred to in subsec. (j)(3)(A)(iii), probably means within 60 days of the date of enactment of Pub. L. 107–90, which enacted subsec. (j) and was approved Dec. 21, 2001.

AMENDMENTS

2004—Subsec. (j)(4). Pub. L. 108–203, §426(b), reenacted heading without change and amended text of par. (4) generally, substituting provisions relating to retention of independent advisers, investment of assets, adoption of bylaws, employment of professional staff, possession and exercise of any powers appropriate to carry out purposes of Trust, and payment of administrative expenses, consisting of subpars. (A) to (G), for provisions relating to retention of independent advisers, retention of independent investment managers, investment of assets, payment of administrative expenses, and transfer of moneys for payment of benefits, consisting of subpars. (A) to (E).

Subsec. (j)(5)(B). Pub. L. 108–203, §426(f)(1), substituted ''Trustee's'' for ''trustee's'' wherever appearing.

Subsec. (j)(5)(C). Pub. L. 108–203, §426(f)(2), substituted ''Trustee'' for ''trustee'' wherever appearing and ''Trustees'' for ''trustees'' in two places.

Subsec. (j)(5)(D). Pub. L. 108–203, §426(f)(3), substituted ''Trustee'' for ''trustee'' in introductory provisions.

Subsec. (j)(6). Pub. L. 108–203, §426(c), amended heading and text of par. (6) generally. Prior to amendment, text read as follows: ''The Board of Trustees shall have the authority to make rules to govern its operations, employ professional staff, and contract with outside advisers, including the Railroad Retirement Board, to provide legal, accounting, investment advisory, or other services necessary for the proper administration of this subsection. In the case of contracts with investment advisory services, compensation for such services may be on a fixed contract fee basis or on such other terms and conditions as are customary for such services.''

Subsec. (j)(7). Pub. L. 108–203, §426(a), substituted ''Trustees then holding office'' for ''entire Board of Trustees''.

Subsec. (j)(8). Pub. L. 108–203, §426(d), struck out heading and text of par. (8). Text read as follows: ''The expenses of the Trust and the Board of Trustees incurred under this subsection shall be paid from the Trust.''

2001—Subsec. (a). Pub. L. 107–90, §106(c), struck out before period at end '', except those portions of the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of such Tax Act as are necessary to provide sufficient funds to meet the obligation to pay supplemental annuities at the level provided under section 231b(e) of this title and, with respect to those entitled to supplemental annuities under section 205(a) of title II of this Act, at the level provided under section 205(a). The Board is directed to determine what portion of the taxes collected under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act is to be credited to the Railroad Retirement Account pursuant to the preceding provisions of this subsection and what portion of such taxes is to be credited to the Railroad Retirement Supplemental Account pursuant to the provisions of subsection (c) of this section. The Board shall make such a determination with respect to each calendar quarter commencing with the quarter beginning January 1, 1975, shall make each such determination not later than fifteen days before each calendar quarter, and shall, as soon as practicable after each such determination, advise the Secretary of the Treasury of the determination made. The Secretary of the Treasury shall credit the amounts covered into the Treasury under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act to the Railroad Retirement Account and the Railroad Retirement Supplemental Account in such proportions as is determined by the Board pursuant to the provisions of this subsection''.

Subsec. (c). Pub. L. 107–90, §106(b), struck out subsec. (c) which read as follows: ''The Railroad Retirement Supplemental Account established by section 15(b) of the Railroad Retirement Act of 1937 shall continue to be maintained in the Treasury of the United States. There is hereby appropriated to such account for each fiscal year, beginning with the fiscal year ending June 30, 1975, out of any moneys in the Treasury not otherwise appropriated, to provide for the payment of supplemental annuities under section 231a(b) of this title, and to provide for the expenses necessary for the Board in the administration of the payment of such supplemental annuities, an amount equal to such portions of the amounts covered into the Treasury (minus refunds) during each fiscal year under sections 3211(b), 3221(c), and 3221(d) of the Railroad Retirement Tax Act as are not appropriated to the Railroad Retirement Account pursuant to the provisions of subsection (a) of this section. Whenever the Board finds at any time that the balance in the Railroad Retirement Supplemental Account will be insufficient to pay the supplemental annuities which it estimates are due, or will become due, under section 231a(b) of this title, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Railroad Retirement Supplemental Account such moneys as the Board estimates would be necessary for the payment of such supplemental annuities, and the Secretary shall make such transfer. Whenever the Board finds that the balance in the Railroad Retirement Supplemental Account, without regard to the amounts transferred pursuant to the next preceding sentence, is sufficient to pay such supplemental annuities, it shall request the Secretary of the Treasury to retransfer from the Railroad Retirement Supplemental Account to the credit of the Railroad Retirement Account such moneys as in its judgment are not needed for the payment of such supplemental annuities, plus interest at an annual rate equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the nearest multiple of one-eighth of 1 per centum, and the Secretary shall make such retransfer.''

Subsec. (d)(1). Pub. L. 107–90, §107(d), inserted at end ''The Secretary of the Treasury shall from time to time transfer from the Dual Benefits Payments Account to the disbursing agent under section 231f(b)(4) of this title amounts necessary to pay benefits payable from that Account.''

Subsec. (e). Pub. L. 107–90, §105(b)(1), substituted ''and the Dual Benefits Payments Account as are not transferred to the National Railroad Retirement Investment Trust as the Board may determine'' for '', the Dual Benefits Payments Account and the Railroad Retirement Supplemental Account as, in the judgment of the

Board, is not immediately required for the payment of annuities, supplemental annuities, and death benefits. Such investments may be made only''.

Pub. L. 107–90, § 105(b)(2), (3), substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended'' and ''the requirements of this subsection'' for ''the foregoing requirements''.

Subsec. (j). Pub. L. 107–90, § 105(a), added subsec. (j).

Subsec. (k). Pub. L. 107–90, § 107(a), added subsec. (k).

Subsec. (*l*). Pub. L. 107–90, § 107(b), added subsec. (*l*).

1983—Subsec. (b). Pub. L. 98–76, § 301(b), amended subsec. (b) generally, redesignating par. (1) as subsec. (b) and striking out par. (2) which read as follows: ''In any month when the Board finds that the balance in the Railroad Retirement Account is insufficient to pay annuity amounts due to be paid during the following month, the Board shall report to the Secretary of the Treasury the additional amount of money necessary in order to make such annuity payments, and the Secretary shall transfer to the credit of the Railroad Retirement Account such additional amount upon receiving such report from the Board. The total amount of money outstanding to the Railroad Retirement Account from the general fund at any time during any fiscal year shall not exceed the total amount of money the Board and the Trustees of the Social Security Trust Fund estimate will be transferred to the Railroad Retirement Account pursuant to section 231f(c)(2) of this title with respect to such fiscal year. Whenever the Board determines that the sums in the Railroad Retirement Account are sufficient to pay annuity amounts, the Board shall request the Secretary of the Treasury to retransfer to the general fund from the Railroad Retirement Account all or any part of the amount outstanding, and the Secretary of the Treasury shall make such retransfer of the amount requested. Not later than 10 days after a transfer to the Railroad Retirement Account under section 231f(c)(2) of this title, any amount of money outstanding to the Railroad Retirement Account from the general fund under this subdivision shall be retransferred in accordance with this subdivision. Any amount retransferred shall include an amount of interest computed at a rate determined in accordance with the following two sentences: The rate of interest payable with respect to an amount outstanding for any month shall be equal to the average investment yield for the most recent auction (before such month) of United States Treasury bills with maturities of 52 weeks, deeming any amount outstanding at the beginning of a month to have been borrowed at the beginning of such month. For this purpose the amount of interest computed in accordance with the preceding sentence but not repaid by the end of such month shall be added to the amount outstanding at the beginning of the next month.''

Subsec. (d)(1). Pub. L. 98–76, § 401(a)(1)–(3), designated existing provisions as par. (1), substituted ''the amount that the Board estimates will be necessary to pay on the first day of the next succeeding month the annuity amounts under sections 231b(h), 231c(e), and 231c(h) of this title and under sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445, taking into account any reduction in such annuity amounts as determined under section 231f(c)(1) of this title, and the Secretary of the Treasury shall make such transfer, but at no time shall the total amount of money outstanding to the Dual Benefits Payments Account from the Railroad Retirement Account exceed the amount necessary to pay the annuity amounts under sections 231b(h), 231c(e), and 231c(h) of this title and sections 204(a)(3), 204(a)(4), 206(3), and 207(3) of Public Law 93–445 for one month'' for ''one-twelfth of the amount which the Board has determined will be the amount of the appropriation to be made to the Dual Benefits Payments Account under the applicable public law making such appropriation for such fiscal year, and the Secretary of the Treasury shall make such transfer'', and inserted ''or during'' after ''prior to'' in last sentence.

Subsec. (d)(2) to (6). Pub. L. 98–76, § 401(a)(4), added pars. (2) to (6).

Subsec. (i). Pub. L. 98–76, § 417(a), added subsec. (i).

1981—Subsec. (b). Pub. L. 97–35, § 1127(a), made amendments identical to those of Pub. L. 97–34. See Amendment note below.

Pub. L. 97–34 designated existing provisions as subdiv. (1) and added subdiv. (2).

Subsec. (d). Pub. L. 97–35, § 1124(a), substituted provisions relating to creation of Dual Benefits Payments Account, authorizations of appropriations, and transfer and retransfer of funds for provisions relating to authorization of appropriations to Railroad Retirement Account.

Subsecs. (e), (g). Pub. L. 97–35, § 1124(b), (c), inserted reference to Dual Benefits Payments Account.

1976—Subsec. (c). Pub. L. 94–547 permitted Supplemental Account to borrow enough money from regular Railroad Retirement Account to continue payment of supplemental annuities during any period in which Supplemental Account was otherwise temporarily lacking in funds for this purpose, with any amounts so borrowed to be repaid, with interest, as soon as Supplemental Account has been credited with sufficient tax payments to both pay supplemental annuities on a current basis and repay amount of loan, and with authority granted to increase tax rate for calendar quarter following existence of a deficiency in Supplemental Account's funds to take account of deficiency.

1975—Subsec. (a). Pub. L. 94–92, § 201(a), substituted in second sentence ''is hereby appropriated'' for ''is hereby authorized to be appropriated''.

Subsec. (b). Pub. L. 94–92, § 201(b), substituted in introductory text ''amount appropriated'' for ''amount authorized to be appropriated''.

Subsec. (c). Pub. L. 94–92, § 201(c), substituted in second sentence ''is hereby appropriated'' for ''is hereby authorized to be appropriated'' and inserted ''out of any moneys in the Treasury not otherwise appropriated'' after ''June 30, 1975,''.

Subsec. (h). Pub. L. 94–92, § 201(d), added subsec. (h).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–90, title I, § 105(d), Dec. 21, 2001, 115 Stat. 887, provided that: ''The amendments made by this section [amending this section] shall take effect on the first day of the month that begins more than 30 days after enactment [Dec. 21, 2001].''

Pub. L. 107–90, title I, § 106(e), Dec. 21, 2001, 115 Stat. 887, provided that:

''(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a), (b), and (c) [amending this section and section 231f of this title] shall take effect January 1, 2002.

''(2) ACCOUNT IN EXISTENCE UNTIL TRANSFER MADE.—The Railroad Retirement Supplemental Account under section 15(c) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(c)) shall continue to exist until the date that the Secretary of the Treasury makes the transfer described in subsection (d)(2) [set out as a note below].''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 301(c)(2) of Pub. L. 98–76 provided that: ''The amendments made by subsection (b) of this section [amending this section] shall be effective on the date immediately following the day in June 1984 when the total amount of money outstanding to the Railroad Retirement Account under section 15(b)(2) of the Railroad Retirement Act of 1974 [subsec. (b)(2) of this section] is retransferred to the general fund under that section.''

Section 401(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section] shall be effective upon enactment [Aug. 12, 1983].''

Section 417(b) of Pub. L. 98–76 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to all checks for benefits under this Act [this subchapter] which are issued on or after May 1, 1985.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35, effective Oct. 1, 1981, see section 1129(g) of Pub. L. 97–35, set out as a note under section 231 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3(b) of Pub. L. 94–547 provided that: ''The amendment made by this section [amending this section] shall be effective on the enactment date of this Act [Oct. 18, 1976].''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 201(e) of Pub. L. 94–92 provided that: ''The amendments [amending this section] made by this section shall be effective January 1, 1975.''

TERMINATION OF ADVISORY COMMITTEES

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

PURCHASE OR SALE OF NON-FEDERAL ASSETS; MEANS OF FINANCING

Pub. L. 107–90, title I, §105(c), Dec. 21, 2001, 115 Stat. 887, provided that: ''For all purposes of the Congressional Budget Act of 1974 [see Short Title note set out under section 621 of Title 2, The Congress], the Balanced Budget and Emergency Deficit Control Act of 1985 [see Short Title note set out under section 900 of Title 2], and chapter 11 of title 31, United States Code, and notwithstanding section 20 of the Office of Management and Budget Circular No. A–11, the purchase or sale of non-Federal assets (other than gains or losses from such transactions) by the National Railroad Retirement Investment Trust shall be treated as a means of financing.''

TRANSFER OF FUNDS IN THE RAILROAD RETIREMENT SUPPLEMENTAL ACCOUNT

Pub. L. 107–90, title I, §106(d), Dec. 21, 2001, 115 Stat. 887, provided that:

''(1) DETERMINATION.—As soon as possible after December 31, 2001, the Railroad Retirement Board shall—

''(A) determine the amount of funds in the Railroad Retirement Supplemental Account under section 15(c) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(c)) as of the date of such determination; and

''(B) direct the Secretary of the Treasury to transfer such funds to the National Railroad Retirement Investment Trust under section 15(j) of such Act [45 U.S.C. 231n(j)] (as added by section 105).

''(2) TRANSFER BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall make the transfer described in paragraph (1).''

TRANSITIONAL RULE FOR EXISTING OBLIGATION

Pub. L. 107–90, title I, §107(g), Dec. 21, 2001, 115 Stat. 889, provided that: ''In making transfers under sections 15(k) and 15A(d)(2) of the Railroad Retirement Act of 1974 [45 U.S.C. 231n(k), 231n–1(d)(2)], as amended by subsections (a) and (c), respectively, the Railroad Retirement Board shall consult with the Secretary of the Treasury to design an appropriate method to transfer obligations held as of the date of enactment of this Act [Dec. 21, 2001] or to convert such obligations to cash at the discretion of the Railroad Retirement Board prior to transfer. The National Railroad Retirement Investment Trust may hold to maturity any obligations so received or may redeem them prior to maturity, as the Trust deems appropriate.''

COMMISSION ON RAILROAD RETIREMENT REFORM

Pub. L. 100–203, title IX, §9033, Dec. 22, 1987, 101 Stat. 1330–296, as amended by Pub. L. 100–647, title VII, §7108, Nov. 10, 1988, 102 Stat. 3774, established a commission, known as Commission on Railroad Retirement Reform, to conduct a comprehensive study of the issues pertaining to long-term financing of railroad retirement system and the system's short-term and long-term solvency, required Commission to submit not later than Oct. 1, 1990, a report containing a detailed statement of its findings and conclusions together with recommendations to Congress for revisions in, or alternatives to, current system to assure provision of retirement benefits to former, present, and future railroad employees on an actuarially sound basis, and provided for termination of Commission 60 days after submission of report.

SECTION 72(r) REVENUE INCREASE TRANSFERRED TO CERTAIN RAILROAD RETIREMENT ACCOUNTS

Section 224(c) of Pub. L. 98–76, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–203, title IX, §9034, Dec. 22, 1987, 101 Stat. 1330–299; Pub. L. 101–239, title X, §10102, Dec. 19, 1989, 103 Stat. 2471; Pub. L. 101–508, title V, §5126, Nov. 5, 1990, 104 Stat. 1388–286; Pub. L. 103–296, title III, §317, Aug. 15, 1994, 108 Stat. 1532, provided that:

''(1) IN GENERAL.—

''(A) TRANSFERS TO RAILROAD RETIREMENT ACCOUNT.—There are hereby appropriated to the Railroad Retirement Account amounts (other than amounts described in subparagraph (B)) equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] which is attributable to the application of section 72(r) of the Internal Revenue Code of 1986 [26 U.S.C. 72(r)] (as added by this Act).

''(B) REVENUE INCREASES ATTRIBUTABLE TO WINDFALL BENEFITS RECEIVED AFTER SEPTEMBER 30, 1988, TRANSFERRED TO DUAL BENEFITS PAYMENTS ACCOUNT.—There are hereby appropriated to the Dual Benefits Payments Account amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of such Code which is attributable to the application of section 72(r) of such Code (as added by this Act) with respect to windfall benefits received after September 30, 1988.

''(C) WINDFALL BENEFITS DEFINED.—For purposes of this paragraph, the term 'windfall benefits' means any benefit paid under section 3(h), 4(e), or 4(h) of the Railroad Retirement Act of 1974 [sections 231b(h), 231(e), (h) of this title].

''(2) TRANSFERS.—The amounts appropriated by paragraph (1) shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1). Any such quarterly payment shall be made on the first day of such quarter and shall take into account benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

''(3) REVENUE INCREASES FROM TAX ON SUPPLEMENTAL ANNUITIES NOT INCLUDED.—Paragraph (1) shall not apply to tax liabilities attributable to supplemental annuities paid under section 2(b) of the Railroad Retirement Act of 1974 [section 231a(b) of this title].''

TAX USED TO REPAY LOANS MADE TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT

Section 232 of Pub. L. 98–76, as amended by Pub. L. 99–272, title XIII, §13301(c), Apr. 7, 1986, 100 Stat. 326; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VII, §7106(c)(6), (7), Nov. 10, 1988, 102 Stat. 3774; Pub. L. 101–508, title XI, §11704(a)(40), Nov. 5, 1990, 104 Stat. 1388–520, provided that:

''(a) TRANSFER TO RAILROAD RETIREMENT ACCOUNT.—

''(1) IN GENERAL.—The Secretary of the Treasury shall transfer from the general fund of the Treasury to the Railroad Retirement Account an amount equal

to the additional railroad unemployment taxes received in the Treasury.

''(2) TAXES CREDITED AGAINST LOANS TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT.—

''(A) TAXES ATTRIBUTABLE TO BASIC RATE TO REDUCE RAILROAD UNEMPLOYMENT LOANS MADE BEFORE OCTOBER 1, 1985.—So much of the amount transferred under paragraph (1) as is not attributable to the surtax rate under section 7106(b) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 [Pub. L. 100–647, set out as a note under section 3321 of Title 26, Internal Revenue Code] shall be credited against, and operate to reduce, the outstanding balance of railroad unemployment loans made before October 1, 1985.

''(B) TAXES ATTRIBUTABLE TO SURTAX RATE TO REDUCE RAILROAD UNEMPLOYMENT LOANS MADE AFTER SEPTEMBER 30, 1985.—So much of the amount transferred under paragraph (1) as is attributable to the surtax rate under section 7106(b) of such Act shall be credited against, and operate to reduce, the outstanding balance of railroad unemployment loans made after September 30, 1985.

''(b) TRANSFERS MADE MONTHLY.—Transfers under subsection (a) shall be made at least monthly on the basis of estimates made by the Secretary of the Treasury of the amount of the additional railroad unemployment taxes received in the Treasury. Proper adjustments shall be made in the amount subsequently transferred to the extent prior estimates were in excess of or were less than the amounts required to be transferred.

''(c) TRANSFERS TO RAILROAD UNEMPLOYMENT FUND AFTER LOANS REPAID.—If—

''(1) the amount described in subparagraph (A) or (B) of subsection (a)(2) which (but for this subsection) would be transferred to the Railroad Retirement Account under subsection (a), exceeds—

''(2) the outstanding balance of railroad unemployment loans (as of the time of such transfer) against which the amount described in such subparagraph may be credited under such subparagraph,

such transfer (to the extent it exceeds such outstanding balance) shall be made to the Railroad Unemployment Account.

''(d) DEFINITIONS.—For purposes of this section—

''(1) ADDITIONAL RAILROAD UNEMPLOYMENT TAXES.—The term 'additional railroad unemployment taxes' means the taxes imposed by chapter 23A of the Internal Revenue Code of 1986 [26 U.S.C. 3321 et seq.].

''(2) RAILROAD UNEMPLOYMENT ACCOUNT.—The term 'Railroad Unemployment Account' means the railroad unemployment insurance account in the unemployment trust fund established pursuant to section 904 of the Social Security Act [42 U.S.C. 1104].

''(3) RAILROAD UNEMPLOYMENT LOANS.—The term 'railroad unemployment loans' means transfers under section 10(d) of the Railroad Unemployment Insurance Act [45 U.S.C. 360(d)] from the Railroad Retirement Account to the Railroad Unemployment Account. The outstanding balance of such loans shall include any interest required to be paid under such section 10(d).''

REIMBURSEMENT OF RAILROAD RETIREMENT ACT ACCOUNTS; ''UNNEGOTIATED BENEFIT CHECKS'' DEFINED

Section 417(c) of Pub. L. 98–76 provided that:

''(1) The Secretary of the Treasury shall transfer from the general fund of the Treasury to each Account established in the Treasury for the payment of benefits under the Railroad Retirement Act of 1974 [this subchapter] in the month following the month in which this section is enacted [Aug. 1983] and in each of the next succeeding months until May, 1985, such sums as may be necessary to reimburse such Accounts in the proportionate amount of all checks (including interest thereon) attributable to such Accounts which the Secretary and the Board jointly determine to be unnegotiated benefit checks, to the extent provided in advance in appropriation Acts. After any amounts authorized by this subsection have been transferred to an Account or Accounts with respect to any benefit check, the provisions of paragraphs (3) and (4) of section 15(i) of the Railroad Retirement Act of 1974 (as added by subsection (a) of this section) [subsec. (i)(3), (4) of this section] shall be applicable to such check.

''(2) As used in paragraph (1) of this subsection, the term 'unnegotiated benefit checks' means checks for benefits under the Railroad Retirement Act of 1974 [this subchapter] or under the Railroad Retirement Act of 1937 [subchapter III of this chapter] which are issued prior to May 1, 1985, which remain unnegotiated after the sixth month following the date on which they were issued, and with respect to which no transfers have previously been made in accordance with the first sentence of such paragraph.''

TREATMENT OF CERTAIN CREDITS AS AMOUNTS COVERED INTO THE TREASURY

Pub. L. 98–21, title I, § 123(b)(5), Apr. 20, 1983, 97 Stat. 89, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of subsection (a) of section 15 of the Railroad Retirement Act of 1974 [subsec. (a) of this section], amounts allowed as a credit under subsection (e) of section 3510 of the Internal Revenue Code of 1986 [26 U.S.C. 3510(e)] shall be treated as amounts covered into the Treasury under subsection (a) of section 3201 of such Code [26 U.S.C. 3201(a)].''

ANALYSIS OF OPTIONS THAT WILL ASSURE LONG-TERM FINANCIAL INTEGRITY OF THE RAILROAD RETIREMENT SYSTEM: REPORT AND RECOMMENDATIONS TO CONGRESS

Section 1126(a) of Pub. L. 97–35 directed President, not later than Oct. 1, 1982, to analyze options that would assure long-term financial integrity of railroad retirement system and report to Congress results of such analysis, together with recommendations with respect to such options and such comments as may have been submitted by representatives of railroad labor and management.

§ 231n–1. Social Security Equivalent Benefit Account

(a) Establishment

There is hereby created an account in the Treasury of the United States to be known as the ''Social Security Equivalent Benefit Account''.

(b) Transfers, etc., to Social Security Equivalent Benefit Account

(1) There is hereby appropriated to the Social Security Equivalent Benefit Account for each fiscal year, beginning with the fiscal year beginning October 1, 1984, an amount equal to the sum of the following amounts:

(A) Amounts covered into the Treasury (minus refunds) during such fiscal year under sections 3201(a), 3211(a)(1), and 3221(a) of the Railroad Retirement Tax Act [26 U.S.C. 3201(a), 3211(a)(1), 3221(a)].

(B) The amount which (but for this section) would have been transferred to the Railroad Retirement Account under section 121(e) of the Social Security Amendments of 1983 to the extent that the amount which would have been so transferred is attributable to taxation of social security equivalent benefits.

Amounts appropriated to the Railroad Retirement Account shall be appropriately reduced to take into account the amounts appropriated under this paragraph to the Social Security Equivalent Benefit Account.

(2) On and after October 1, 1984, any amount which (but for this section) would have been

transferred to the Railroad Retirement Account pursuant to paragraph (2) or (4) of section 231f(c) of this title shall be transferred to the Social Security Equivalent Benefit Account. On and after October 1, 1984, no transfer shall be made to the Railroad Retirement Account pursuant to paragraph (2) or (4) of section 231f(c) of this title.

(3) To the extent that the authorization for appropriation contained in section 231n(b) of this title is attributable to the cost of social security equivalent benefits, on and after October 1, 1984, any reference in such section to the Railroad Retirement Account shall be treated as a reference to the Social Security Equivalent Benefit Account.

(4) Amounts appropriated or transferred to the Social Security Equivalent Benefit Account under this section shall be credited or transferred to such Account at the same time and in the same manner as such amounts would have been credited or transferred to the Railroad Retirement Account but for this section.

(c) Availability and transfer of funds

(1) Except as otherwise provided in this section, amounts in the Social Security Equivalent Benefit Account shall be available only for purposes of paying social security equivalent benefits under this subchapter and to provide for the administrative expenses of the Board allocable to social security equivalent benefits. The Secretary shall from time to time transfer to the disbursing agent under section 231f(b)(4) of this title amounts necessary to pay those benefits.

(2) On and after October 1, 1984, any transfer which (but for this paragraph) would be required to be made from the Railroad Retirement Account under paragraph (2) or (4) of section 231f(c) of this title shall be made from the Social Security Equivalent Benefit Account.

(d) Transfers to Social Security Equivalent Benefit Account and National Railroad Retirement Investment Trust

(1) Whenever the Board finds that the balance in the Social Security Equivalent Benefit Account will be insufficient to pay social security equivalent benefits which it estimates are due in any month, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Social Security Equivalent Benefit Account such moneys as the Board estimates will be necessary for the payment of such benefits, and the Secretary shall make such transfer.

(2) Upon establishment of the National Railroad Retirement Investment Trust and from time to time thereafter, the Board shall direct the Secretary of the Treasury to transfer, in such manner as will maximize the investment returns to the Railroad Retirement system, the balance of the Social Security Equivalent Benefit Account not needed to pay current benefits and administrative expenses required to be paid from that Account to the National Railroad Retirement Investment Trust or the Railroad Retirement Account, and the Secretary shall make that transfer. Any balance transferred under this paragraph shall be used by the National Railroad Retirement Investment Trust or the Railroad Retirement Board only to pay benefits under this subchapter or to purchase obligations of the United States (either directly or through a commingled account consisting only of such obligations) that are backed by the full faith and credit of the United States pursuant to chapter 31 of title 31. The proceeds of sales of, and the interest income from, such obligations shall be used by the Trust only to pay benefits under this subchapter or to purchase such additional obligations.

(e) Applicability of section 231n

The provisions of subsections (e), (f), and (g) of section 231n of this title are hereby made applicable to the Social Security Equivalent Benefit Account.

(f) References to Railroad Retirement Account deemed references to Social Security Equivalent Benefit Account; "social security equivalent benefits" defined

(1) For purposes of making payments of social security equivalent benefits, references in the[1] subchapter to the Railroad Retirement Account shall be treated as references to the Social Security Equivalent Benefit Account.

(2) For purposes of this section, the term ''social security equivalent benefits'' means benefits payable under this subchapter which are of a kind taken into account in determining the amount of transfers made under section 231f(c)(2) of this title.

(Aug. 29, 1935, ch. 812, § 15A, as added Pub. L. 98–76, title V, § 501(a), Aug. 12, 1983, 97 Stat. 438; amended Pub. L. 107–90, title I, § 107(c), Dec. 21, 2001, 115 Stat. 888; Pub. L. 108–203, title IV, § 426(e), Mar. 2, 2004, 118 Stat. 538.)

REFERENCES IN TEXT

Section 121(e) of the Social Security Amendments of 1983, referred to in subsec. (b)(1)(B), is section 121(e) of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 83, which is set out as a note under section 401 of Title 42, The Public Health and Welfare.

AMENDMENTS

2004—Subsec. (d)(2). Pub. L. 108–203 inserted ''or the Railroad Retirement Account'' before '', and the Secretary shall make'', ''or the Railroad Retirement Board'' before ''only to pay benefits'', ''(either directly or through a commingled account consisting only of such obligations)'' after ''obligations of the United States'', and ''or to purchase such additional obligations'' before period at end.

2001—Subsec. (c)(1). Pub. L. 107–90, § 107(c)(2), inserted at end ''The Secretary shall from time to time transfer to the disbursing agent under section 231f(b)(4) of this title amounts necessary to pay those benefits.''

Subsec. (d)(1). Pub. L. 107–90, § 107(c)(3), struck out at end: ''Whenever later in such month there is a transfer to the Social Security Equivalent Benefit Account under paragraph (2) or (4) of section 231f(c) of this title, the amount so transferred shall be immediately retransferred to the Railroad Retirement Account. The amount retransferred under the preceding sentence shall not exceed the amount of any outstanding transfers under this paragraph from the Railroad Retirement Account plus such additional amounts determined by the Board to be equal to the loss of interest to the Railroad Retirement Account resulting from such outstanding transfers.''

Subsec. (d)(2). Pub. L. 107–90, § 107(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Whenever the Board determines that—

[1] So in original. Probably should be ''this''.

''(A) amounts in the Railroad Retirement Account will not be sufficient to pay the annuities which it estimates are due, or will become due, from such Account, and

''(B) the transfer under this paragraph will not jeopardize the present or future payment of social security equivalent benefits,

the Board shall request the Secretary of the Treasury to transfer from the Social Security Equivalent Benefit Account to the Railroad Retirement Account such moneys as the Board estimates will be necessary for the payment of such annuities, and the Secretary shall make such transfer. No transfer under this paragraph shall be required to be repaid.''

EFFECTIVE DATE

Section 501(b)(1) of Pub. L. 98–76 provided that: ''The amendment made by this section [enacting this section] shall take effect on October 1, 1984.''

TREATMENT OF TIER 1 PORTION OF TAX IMPOSED WITH RESPECT TO COMPENSATION PAID BEFORE 1985

Section 501(b)(2) of Pub. L. 98–76, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) The tier 1 portion of the tax imposed by section 3201, 3211, or 3221 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3201, 3211, 3221], as the case may be, with respect to compensation paid before 1985 shall be treated as described in subparagraph (A) of section 15A(b)(1) of the Railroad Retirement Act of 1974 [subsec. (b)(1)(A) of this section].

''(B) For purposes of subparagraph (A), the tier 1 portion of any tax is so much of such tax as is determined by reference to the rates of taxes imposed by chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.].''

§ 231*o*. Private pensions

Nothing in this subchapter shall be taken as restricting or discouraging payment by employers to retired employees of pensions or gratuities in addition to the annuities paid to such employees under this subchapter, nor shall this subchapter be taken as terminating any trust heretofore created for the payment of such pensions or gratuities. The annuity, except a supplemental annuity under section 231a(b) of this title, of an individual shall not be reduced on account of any pension or gratuity paid by an employer to such individual.

(Aug. 29, 1935, ch. 812, § 16, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1349.)

§ 231p. Free transportation

It shall not be unlawful for carriers by railroad subject to this subchapter to furnish free transportation to individuals receiving annuities under this subchapter in the same manner as such transportation is furnished to employees in their service.

(Aug. 29, 1935, ch. 812, § 17, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1349.)

§ 231q. Crediting service under Social Security Act

(1) Except as provided in subdivision (2), the term ''employment'' as defined in section 216 of the Social Security Act [42 U.S.C. 416] shall not include service performed by an individual as an employee as defined in section 231(b) of this title.

(2) For the purpose of determining (i) monthly insurance benefits under the Social Security Act [42 U.S.C. 301 et seq.] to an employee who will have completed less than ten years of service (or less than five years of service, all of which accrues after December 31, 1995) and to others deriving from him or her during his or her life and (ii) monthly insurance benefits and lump-sum death benefits under such Act with respect to the death of an employee who (A) will have completed less than ten years of service (or less than five years of service, all of which accrues after December 31, 1995) or (B) will have completed ten or more years of service (or five or more years of service, all of which accrues after December 31, 1995) but will not have had a current connection with the railroad industry at the time of his death, and for the purposes of section 203 and section 216(i) of that Act [42 U.S.C. 403, 416(i)], section 210(a)(9) of the Social Security Act [42 U.S.C. 410(a)(9)] and subdivision (1) of this section shall not operate to exclude from ''employment'' under the Social Security Act service which would otherwise be included in such ''employment'' but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in service as an employee. In the application of the Social Security Act pursuant to this subdivision to service as an employee, all service as defined in section 231(d) of this title shall be deemed to have been performed within the United States.

(Aug. 29, 1935, ch. 812, § 18, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1349; amended Pub. L. 97–35, title XI, § 1125, Aug. 13, 1981, 95 Stat. 639; Pub. L. 107–90, title I, § 103(g), Dec. 21, 2001, 115 Stat. 881.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2001—Par. (2). Pub. L. 107–90 inserted ''(or less than five years of service, all of which accrues after December 31, 1995)'' after ''ten years of service'' in two places and inserted ''(or five or more years of service, all of which accrues after December 31, 1995)'' after ''ten or more years of service''.

1981—Par. (2). Pub. L. 97–35 inserted ''and section 216(i)'' after ''203''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Jan. 1, 1975, see section 1129(b)(2) of Pub. L. 97–35, set out as a note under section 231 of this title.

§ 231r. Automatic benefit eligibility requirement adjustments

(a) Reduced benefits

If title II of the Social Security Act [42 U.S.C. 401 et seq.] is amended at any time after December 31, 1974, to reduce the eligibility requirements for old-age insurance benefits, disability insurance benefits, wife's insurance benefits payable to a wife, husband's insurance benefits, child's insurance benefits payable to a child of a deceased individual, widow's insurance benefits payable to a widow, widower's insurance benefits, mother's insurance benefits payable to a widow, or parent's insurance benefits, such reduced eligibility requirements shall be applicable, in accordance with regulations prescribed by the Board, to individuals, spouses, or survivors, as the case may be, under section 231a of this title to the extent that such reduced eligibility requirements would provide such individuals, spouses, or survivors with entitlement to annuities under such section 231a of this title to which they would not be entitled except for such reduced eligibility requirements: *Provided, however*, That no annuity shall be paid to any person pursuant to the provisions of this subsection if that person does not satisfy an eligibility requirement imposed by section 231a of this title of a kind not imposed by the Social Security Act [42 U.S.C. 301 et seq.] on December 31, 1974, or an eligibility requirement imposed by section 231a of this title of a kind which was imposed by the Social Security Act on December 31, 1974, but which was not reduced by the amendment to that Act: *Provided further*, That the annuity amounts to which such individuals, spouses, or survivors will be entitled under this subchapter by reason of the provisions of this subsection shall be only such amounts as are determined under the provisions of section 231b(a), 231c(a), or 231c(f), respectively, of this title.

(b) Additional eligible beneficiaries

If title II of the Social Security Act [42 U.S.C. 401 et seq.] is amended at any time after December 31, 1974, to provide monthly insurance benefits under that Act to a class of beneficiaries not entitled to such benefits thereunder prior to January 1, 1975, every person who is a member of such class of beneficiaries shall be entitled to annuities under section 231a of this title, in accordance with regulations prescribed by the Board, in an amount equal to the amount of the monthly insurance benefit to which such person would have been entitled under the Social Security Act [42 U.S.C. 301 et seq.] if service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in that Act.

(c) Reduced conditions of entitlement; expanded benefits

If section 226 [42 U.S.C. 426] or title XVIII [42 U.S.C. 1395 et seq.] of the Social Security Act is amended at any time after December 31, 1974, to reduce the conditions of entitlement to, or to expand the nature of, the benefits payable thereunder, or if health care benefits in addition to, or in lieu of, the benefits payable under such section 226 or such title XVIII are provided by any provision of law which becomes effective at any time after December 31, 1974, such reductions in the conditions of entitlement to benefits, such expanded benefits, or such additional, or substituted, health care benefits shall be available to every employee (as defined in this subchapter), and those deriving from him, in the same manner, and to the same extent, as if his service as an employee after December 31, 1936, had been included in the term ''employment'' as defined in the Social Security Act [42 U.S.C. 301 et seq.]. The Board shall have the same authority, in accordance with regulations prescribed by it, to determine the rights of employees who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995), and of those deriving from such employees, to benefits provided by reason of the provisions of this subsection as the Secretary of Health and Human Services has with respect to individuals insured under the Social Security Act.

(d) Limitations

Notwithstanding the provisions of subsections (a), (b), and (c) of this section—

(1) No annuity or other benefit shall be payable to any person on the basis of the compensation and years of service of an individual by reason of the provisions of subsection (a), (b), or (c) of this section if, and to the extent that, such annuity or other benefit would duplicate a benefit payable to such person on the basis of such compensation and years of service under a provision of the Social Security Act [42 U.S.C. 301 et seq.], or any other Act of Congress, which becomes effective after December 31, 1974.

(2) No annuity shall be payable to a person by reason of subsection (a) or (b) of this section unless the individual upon whose compensation and years of service such annuity would be based will have (A) completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995), and (B) in the case of a survivor, had a current connection with the railroad industry at the time of his death.

(3) If the Social Security Act [42 U.S.C. 301 et seq.] is amended after December 31, 1974, to remove any, or all, restriction on the receipt of more than one monthly insurance benefit thereunder, annuity amounts provided a person under section 231b(h), 231c(e), or 231c(h) of this title, or under section 204(a)(3), 204(a)(4), 206(3), or 207(3) of title II of this Act, shall be reduced (but not below zero) by the amount of any annuity provided such person under this subchapter by reason of such amendment.

(4) If and to the extent that an annuity or other benefit payable to a person by reason of the provisions of subsection (a), (b), or (c) of this section duplicates an annuity or other benefit then payable to such person under other provisions of this subchapter, such annuity or other benefit then payable under other provisions of this subchapter shall be reduced (but not below zero) by the amount of the annuity or other benefit payable by reason of subsection (a), (b), or (c) of this section.

(Aug. 29, 1935, ch. 812, § 19, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub.

L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1350; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 107–90, title I, § 103(h), Dec. 21, 2001, 115 Stat. 881.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a), (b), (c), and (d)(1), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Titles II and XVIII of the Social Security Act are classified generally to subchapters II (§ 401 et seq.) and XVIII (§ 1395 et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Sections 204(a)(3), 204(a)(4), 206(3), 207(3) of title II of this Act, referred to in subsec. (d)(3), are sections 204(a)(3), 204(a)(4), 206(3), 207(3) of title II of Pub. L. 93–445 and are set out as part of a Transitional Provisions note under section 231 of this title.

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–90, § 103(h)(1), inserted ''(or five or more years of service, all of which accrues after December 31, 1995)'' after ''ten years of service''.

Subsec. (d)(2). Pub. L. 107–90, § 103(h)(2), inserted ''(or five or more years of service, all of which accrues after December 31, 1995)'' after ''ten years of service''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (c) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–90 effective Jan. 1, 2002, see section 103(j) of Pub. L. 107–90, set out as a note under section 405 of Title 42, The Public Health and Welfare.

§ 231s. Separability

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

(Aug. 29, 1935, ch. 812, § 20, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1351.)

§ 231t. Short title

This subchapter may be cited as the ''Railroad Retirement Act of 1974''.

(Aug. 29, 1935, ch. 812, § 21, as restated June 24, 1937, ch. 382, pt. I, 50 Stat. 307, as restated Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1351.)

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 109–478, § 1, Jan. 12, 2007, 120 Stat. 3573, provided that: ''This Act [amending section 231a of this title and enacting provisions set out as a note under section 231a of this title] may be cited as the 'Railroad Retirement Disability Earnings Act'.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–305, § 1, Oct. 6, 2006, 120 Stat. 1719, provided that: ''This Act [amending section 231f of this title] may be cited as the 'Railroad Retirement Technical Improvement Act of 2006'.''

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–90, § 1(a), Dec. 21, 2001, 115 Stat. 878, provided that: ''This Act [enacting section 231v of this title and subchapter E of chapter 22 of Title 26, Internal Revenue Code, amending sections 231a to 231f, 231n, 231n–1, 231q, 231r, and 231u of this title, sections 24, 72, 501, 3201, 3211, 3221, and 3231 of Title 26, and section 405 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 231b, 231c, and 231n of this title, sections 24 and 3211 of Title 26, and section 405 of Title 42] may be cited as the 'Railroad Retirement and Survivors' Improvement Act of 2001'.''

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–76, § 1, Aug. 12, 1983, 97 Stat. 411, provided: ''That this Act [enacting sections 231f–1, 231n–1 and 231v of this title and sections 3321 to 3323 and 6050G of Title 26, Internal Revenue Code, amending sections 231 to 231f, 231m, 231n, 231u, 351 to 354, 358, and 360 of this title, sections 72, 86, 105, 3201, 3202, 3211, 3221, 3231, 6157, 6201, 6317, 6513, and 6601 of Title 26, and section 430 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 231 to 231d, 231f, 231m, 231n, 231n–1, 351, 352, and 362 of this title and sections 1, 72, 105, 3201, 3321, and 6302 of Title 26] may be cited as the 'Railroad Retirement Solvency Act of 1983'.''

§ 231u. Benefit preservation

(a)(1) On or before May 1 of each year beginning in 1984, the Railroad Retirement Board shall prepare a five-year projection of anticipated revenues to and payments from the Railroad Retirement Account to determine the ability of such Account to pay benefits in each of the next succeeding five calendar years. On or before May 1 of each year beginning in 2003, the Railroad Retirement Board shall compute its projection of the account benefits ratio and the average account benefits ratio (as defined by section 3241(c) of the Internal Revenue Code of 1986 [26 U.S.C. 3241(c)]) for each of the next succeeding five fiscal years. No later than July 1 of each year, the Board shall submit a written report to the President, the Speaker of the House, and the President of the Senate setting forth the results of the projections prepared pursuant to the preceding two sentences. If the projection indicates that the funds in the Railroad Retirement Account will be insufficient to pay the full amount of the benefits under this subchapter which are payable from that Account at any time during the five-year period, the Board's report shall include—

(A) the first fiscal year during which benefits under this subchapter must be reduced, in the absence of any adjustments, because insufficient funds (including any general revenue borrowing authority under this subchapter) would preclude payment of full benefits (other than benfits[1] payable from the Dual Benefits Payments Account) for every month in such fiscal year;

(B) the first fiscal year during which the Board would recommend suspension of the authority to borrow contained in section 360(d) of this title, in order to prevent depletion of the Railroad Retirement Account; and

(C) the amount, if any, of adjustments (stated in terms of percentage of taxable payroll), and any other changes such as cash flow adjustments, necessary to preserve the financial solvency of the Railroad Retirement Account,

[1] So in original. Probably should be ''benefits''.

if such adjustments were effective at the beginning of the next succeeding fiscal year.

(2) Not less than 20 nor more than 30 days after the submission of a written report under this subsection which indicates that, in the absence of any adjustments, the Railroad Retirement Account will contain insufficient funds to pay the full amount of the benefits under this subchapter which are payable from that Account at some time during the five-year period covered by the report, the Board shall publish such report in the Federal Register.

(b) Not later than 180 days after the publication in the Federal Register of any Board report referred to in subsection (a) of this section which states an amount of adjustments (in terms of percentage of taxable payroll) necessary to preserve the financial solvency of the railroad retirement account—

(1) representatives of railroad employees and carriers shall, jointly or separately, submit to the President, the Speaker of the House, and the President of the Senate, funding proposals designed to preserve the financial solvency of the Railroad Retirement Account; and

(2) the President shall submit to the Speaker of the House and the President of the Senate such recommendations as he may deem appropriate with respect to the preservation of the Railroad Retirement Account, including a specific proposal to assure continuous payments of social security equivalent benefits by separating the social security equivalent benefits from industry pension equivalent benefits payable under this subchapter.

(c) Not later than 180 days after the submission of a written report under subsection (a) of this section which states the first fiscal year during which benefits under this subchapter must be reduced because insufficient funds would preclude payment of full benefits for every month of that year, the Board shall issue and publish in the Federal Register such regulations as may be necessary which shall be designed to—

(1) provide a constant level of benefits at the maximum level possible for every month of that fiscal year; and

(2) provide that no individual shall receive less during that fiscal year than the amount otherwise payable if the employee's service as an employee after December 31, 1936, had been covered under the Social Security Act [42 U.S.C. 301 et seq.], minus the amount of any reduction required under section 231b(m) or 231c(i) of this title.

Unless otherwise provided by law enacted after August 13, 1981, or by a later report filed by the Board under subsection (a) of this section, regulations issued by the Board under this subsection shall apply beginning with the fiscal year designated by the Board in its written report under subsection (a) of this section. Any Board regulation which becomes effective under this subsection may be modified, rescinded, or superseded in the same manner and to the same extent as in the case of any other Board regulation issued under authority of this subchapter.

(Aug. 29, 1935, ch. 812, § 22, as added Pub. L. 97–35, title XI, § 1126(b), Aug. 13, 1981, 95 Stat. 639; amended Pub. L. 98–76, title I, § 105, Aug. 12, 1983, 97 Stat. 416; Pub. L. 104–66, title II, § 2221(b), Dec. 21, 1995, 109 Stat. 733; Pub. L. 107–90, title I, § 108(a), Dec. 21, 2001, 115 Stat. 890.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–90 in introductory provisions, inserted after first sentence "On or before May 1 of each year beginning in 2003, the Railroad Retirement Board shall compute its projection of the account benefits ratio and the average account benefits ratio (as defined by section 3241(c) of the Internal Revenue Code of 1986) for each of the next succeeding five fiscal years." and substituted "the projections prepared pursuant to the preceding two sentences" for "the projection prepared pursuant to the preceding sentence".

1995—Subsec. (a)(1). Pub. L. 104–66 substituted "May 1" and "July 1" for "February 1" and "April 1", respectively, in introductory provisions.

1983—Subsec. (a). Pub. L. 98–76 amended subsec. (a) generally, substituting provisions requiring Railroad Retirement Board to annually prepare and report on a five-year projection of ability of Railroad Retirement Account to pay benefits during five-year period for provisions which required Board to prepare a report in any fiscal year in which it determined that more than 50 percent of borrowing authority under this subchapter would be used.

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 1129(g) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 231 of this title.

§ 231v. Computation and certification of account benefit ratios

(a) Initial computation and certification

On or before November 1, 2003, the Railroad Retirement Board shall—

(1) compute the account benefits ratios for each of the most recent 10 preceding fiscal years, and

(2) certify the account benefits ratios for each such fiscal year to the Secretary of the Treasury.

(b) Computations and certifications after 2003

On or before November 1 of each year after 2003, the Railroad Retirement Board shall—

(1) compute the account benefits ratio for the fiscal year ending in such year, and

(2) certify the account benefits ratio for such fiscal year to the Secretary of the Treasury.

(c) Definition

As used in this section, the term "account benefits ratio" has the meaning given that term in section 3241(c) of the Internal Revenue Code of 1986 [26 U.S.C. 3241(c)].

(Aug. 29, 1935, ch. 812, § 23, as added Pub. L. 107–90, title I, § 108(b), Dec. 21, 2001, 115 Stat. 890.)

PRIOR PROVISIONS

A prior section 231v, act Aug. 29, 1935, ch. 812, § 23, as added Aug. 12, 1983, Pub. L. 98–76, title IV, § 418, 97 Stat. 438, provided that for purposes of Inspector General Act

of 1978, the Railroad Retirement Board is an ''establishment'' and the Chairman of such Board the ''head of the establishment'', prior to repeal by Pub. L. 100–504, title I, §§102(e)(3), 113, Oct. 18, 1988, 102 Stat. 2517, 2530, effective 180 days after Oct. 18, 1988.

CHAPTER 10—TAX ON CARRIERS AND EMPLOYEES

§§ 241 to 253. Repealed. June 29, 1937, ch. 405, § 11, 50 Stat. 440

Section 241, act Aug. 29, 1935, ch. 813, §1, 49 Stat. 974, defined terms for purposes of this subchapter.

Section 242, act Aug. 29, 1935, ch. 813, §2, 49 Stat. 975, related to income tax on employees.

Section 243, act Aug. 29, 1935, ch. 813, §3, 49 Stat. 975, related to deduction of tax from wages.

Section 244, act Aug. 29, 1935, ch. 813, §4, 49 Stat. 975, related to excise tax on carriers.

Section 245, act Aug. 29, 1935, ch. 813, §5, 49 Stat. 975, related to adjustment of tax.

Section 246, act Aug. 29, 1935, ch. 813, §6, 49 Stat. 975, related to refunds and deficiencies.

Section 247, act Aug. 29, 1935, ch. 813, §7, 49 Stat. 975, related to income tax on employees' representatives.

Section 248, act Aug. 29, 1935, ch. 813, §8, 49 Stat. 976, related to collection and payment of taxes.

Section 249, act Aug. 29, 1935, ch. 813, §9, 49 Stat. 976, related to court jurisdiction.

Section 250, act Aug. 29, 1935, ch. 813, §10, 49 Stat. 976, related to penalties under this subchapter.

Section 251, act Aug. 29, 1935, ch. 813, §11, 49 Stat. 976, related to meaning of ''employment''.

Section 252, acts Aug. 29, 1935, ch. 813, §12, 49 Stat. 976; Feb. 27, 1937, ch. 19, 50 Stat. 23, related to termination of taxes.

Section 253, act Aug. 29, 1935, ch. 813, §13, 49 Stat. 977, related to separability of provisions.

§§ 261 to 273. Omitted

CODIFICATION

Sections 261 to 273 were omitted pursuant to section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1, which provided that all laws or parts of laws codified into the Internal Revenue Code of 1939, enacted by act Feb. 10, 1939, to the extent they related exclusively to internal revenue laws, were repealed. The Internal Revenue Code of 1939 was generally repealed by section 7851 of act Aug. 16, 1954, ch. 736, 68A Stat. 919 (section 7851 of Title 26, Internal Revenue Code), which act enacted the Internal Revenue Code of 1954 [now 1986]. See section 7807 of Title 26, relating to applicability of rules in effect upon the enactment of the Internal Revenue Code of 1986.

Section 261, acts June 29, 1937, ch. 405, §1, 50 Stat. 435; Aug. 13, 1940, ch. 664, §§1, 3, 54 Stat. 785, 786, defined terms for purposes of this subchapter.

Section 262, act June 29, 1937, ch. 405, §2, 50 Stat. 437, related to income tax on employees.

Section 263, act June 29, 1937, ch. 405, §3, 50 Stat. 437, related to excise tax on employers.

Section 264, act June 29, 1937, ch. 405, §4, 50 Stat. 438, related to refunds and deficiencies.

Section 265, act June 29, 1937, ch. 405, §5, 50 Stat. 438, related to income tax on employee representatives.

Section 266, act June 29, 1937, ch. 405, §6, 50 Stat. 439, related to deductibility from regular income tax.

Section 267, act June 29, 1937, ch. 405, §7, 50 Stat. 439, related to collection and payment of taxes.

Section 268, act June 29, 1937, ch. 405, §8, 50 Stat. 439, related to court jurisdiction.

Section 269, act June 29, 1937, ch. 405, §9, 50 Stat. 439, related to Social Security Act.

Section 270, act June 29, 1937, ch. 405, §10, 50 Stat. 440, related to separability of provisions.

Section 271, act June 29, 1937, ch. 405, §11, 50 Stat. 440, related to repeals.

Section 272, act June 29, 1937, ch. 405, §12, 50 Stat. 440, related to rules and regulations.

Section 273, act June 29, 1937, ch. 405, §13, 50 Stat. 440, related to short title of this subchapter.

For provisions formerly set out in this subchapter which were covered by sections of the Internal Revenue Code of 1939, see the sections of the Internal Revenue Code of 1986, Title 26, Internal Revenue Code, indicated in the following table:

Omitted sections	I.R.C. 1939	I.R.C. 1986
261 (as amended Aug. 13, 1940, ch. 664, §§1, 3, 54 Stat. 785, 786).	1532	3231, 7701.
262	1500, 1501	3201, 3202, 6205(a)(1), 6413(a)(1).
263	1520, 1521	3221, 6205(a)(1), 6413(a)(1).
264	1502, 1522	6205(b), 6413(b).
265	1510, 1511	3211, 3212.
266	1503, 1508, 1512	3502.
267	1422, 1530, 1531, 1536	3501, 3503, 6011(a), 6071, 6081(a), 6091(a), 6151(a), 6313, 6601(a), (f)(1).
268	1534	3232.
269	1426(b)(9), (10), 1428	3121(b)(9), (10), 3124.
270	3802	7511.
271		
272	1535	7805(a), (c).
273		

COMPENSATION FROM LOCAL DIVISION OF RAILWAY-LABOR-ORGANIZATION EMPLOYER TAX—UNPAID BEFORE JULY 1, 1940

Act Oct. 10, 1940, ch. 842, §27(b), 54 Stat. 1101, provided that, for the purpose of determining the amount of taxes under sections 262(a) and 263(a) of this title, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3 and the taxes thereon under such sections are not paid before July 1, 1940.

CHAPTER 11—RAILROAD UNEMPLOYMENT INSURANCE

Sec.
351. Definitions.
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§ 351. Definitions

For the purposes of this chapter, except when used in amending the provisions of other Acts—

(a) The term ''employer'' means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however*, That the term ''employer'' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is hereby authorized and directed upon request of the Railroad Retirement Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term ''employer'' shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term ''employer'' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) The term ''carrier'' means a railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49.

(c) The term ''company'' includes corporations, associations, and joint-stock companies.

(d) The term ''employee'' (except when used in phrases establishing a different meaning) means any individual who is or has been (i) in the service of one or more employers for compensation, or (ii) an employee representative. The term ''employee'' shall include an employee of a local lodge or division defined as an employer in subsection (a) of this section only if he was in the service of a carrier on or after August 29, 1935. The term ''employee'' includes an officer of an employer.

The term ''employee'' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(e) An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation: *Provided, however*, That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: *Provided further*, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof.

(f) The term ''employee representative'' means any officer or official representative of a railway labor organization other than a labor organization included in the term employer as defined in subsection (a) of this section who before or after August 29, 1935, was in the service of an employer as defined in said subsection and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act [45 U.S.C. 151 et seq.], and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(g) The term ''employment'' means service performed as an employee. For the purposes of determining eligibility for and the amount of benefits and the amount of contributions due pursuant to this chapter, employment after June 30, 1940, in the service of a local lodge or division of a railway-labor-organization employer or as an employee representative shall be disregarded. For purposes of determining eligibility for and the amount of benefits and the amount of contributions due pursuant to this chapter, employment as a delegate to a national or international convention of a railway labor organization defined as an ''employer'', in subsection (a) of this section, shall be disregarded if the individual having such employment has not previously rendered service, other than as such a delegate, which may be included in his ''years of service'' for purposes of the Railroad Retirement Act [45 U.S.C. 231 et seq.].

(h) The term ''registration period'' means, with respect to any employee, the period which begins with the first day for which such employee registers at an employment office in accordance with such regulations as the Board may prescribe, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office; and thereafter each period which begins with the first day for which he next registers at an employment office after the end of his last preceding registration period which began with a day for which he registered at an employment office and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day for which he next registers at a different employment office.

The term ''registration period'' means also, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness for a ''period of continuing sickness'' (as defined in section 352(a) of this title) is filed in his behalf in accordance with such regulations as the Board may prescribe, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness for a ''period of continuing sickness'' (as defined in section 352(a) of this title) was filed in his behalf, and ends with whichever is the earlier of (i) the thirteenth day thereafter, or (ii) the day immediately preceding the day with respect to which a statement of sickness for a new ''period of continuing sickness'' (as defined in section 352(a) of this title) is filed in his behalf.

(i)(1) IN GENERAL.—The term ''compensation'' means any form of money remuneration, including pay for time lost but excluding tips, paid for services rendered as an employee to one or more employers, or as an employee representative, except that in computing the compensation paid to any employee, no part of any month's compensation in excess of the monthly compensation base (as defined in subdivision (2)) for any month shall be recognized. Solely for the purpose of determining the compensation received by an employee in a base year, the term ''compensation'' shall include any separation allowance or subsistence allowance paid under any benefit schedule provided under section 701[1] of title VII of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] and any termination allowance paid under section 702 of that Act [45 U.S.C. 797a], but does not include any other benefits payable under that title [45 U.S.C. 797 et seq.]. The total amount of any subsistence allowance payable under a benefit schedule provided pursuant to section 701[1] of the Regional Rail Reorganization Act of 1973 shall be considered as being compensation in the month in which the employee first timely filed a claim for such an allowance. Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 1101(a)(15) of title 8 and which is performed to carry out the purpose specified in subparagraph (F) or (J) as the case may be. A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, ''for time lost'' the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 356 of this title, the period during which such compensation will have been earned.

(2) MONTHLY COMPENSATION BASE.—

[1] See References in Text note below.

(A) IN GENERAL.—For purposes of subdivision (1), the term ''monthly compensation base'' means the amount—

(i) of $400 for calendar months before January 1, 1984;

(ii) of $600 for calendar months after December 31, 1983 and before January 1, 1989; and

(iii) computed under subparagraph (B) for months after December 31, 1988.

(B) COMPUTATION.—

(i) IN GENERAL.—The amount of the monthly compensation base for each calendar year beginning after December 31, 1988, is the greater of—

(I) $600; or

(II) the amount, as rounded under clause (iii) if applicable, computed under the formula:

$$B=600\left(1+\frac{A-37{,}800}{56{,}700}\right)$$

(ii) MEANING OF SYMBOLS.—For the purposes of the formula in clause (i)—

(I) ''B'' is the dollar amount of the monthly compensation base; and

(II) ''A'' is the amount of the applicable base with respect to tier 1 taxes, for the calendar year for which the monthly compensation base is being computed, as determined under section 3231(e)(2) of title 26.

(iii) ROUNDING RULE.—If the monthly compensation base computed under this formula is not a multiple of $5, it shall be rounded to the nearest multiple of $5, with such rounding being upward in the event the amount computed is equidistant between two multiples of $5.

(j) The term ''remuneration'' means pay for services for hire, including pay for time lost, and tips, but pay for time lost shall be deemed earned on the day on which such time is lost. The term ''remuneration'' includes also earned income other than for services for hire if the accrual thereof in whole or in part is ascertainable with respect to a particular day or particular days. The term ''remuneration'' does not include any money payments received pursuant to any nongovernmental plan for unemployment insurance, maternity insurance, or sickness insurance.

(k) Subject to the provisions of section 354 of this title (1) a day of unemployment, with respect to any employee, means a calendar day on which he is able to work and is available for work and with respect to which (i) no remuneration is payable or accrues to him, and (ii) he has, in accordance with such regulations as the Board may prescribe, registered at an employment office; and (2) a ''day of sickness'', with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work, or, with respect to a female employee, a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health, and with respect to which (i) no remuneration is payable or accrues to him, and (ii) in accordance with such regulations as the Board may prescribe, a statement of sickness is filed within such reasonable period, not in excess of ten days, as the Board may prescribe: *Provided*, *however*, That ''subsidiary remuneration'', as hereinafter defined in this subsection, shall not be considered remuneration for the purpose of this subsection except with respect to an employee whose base-year compensation, exclusive of earnings from the position or occupation in which he earned such subsidiary remuneration, is less than an amount that is equal to 2.5 times the monthly compensation base for months in such base year as computed under subsection (i) of this section: *Provided further*, That remuneration for a working day which includes a part of each of two consecutive calendar days shall be deemed to have been earned on the first of such two days, and any individual who takes work for such working day shall not by reason thereof be deemed not available for work on the second of such calendar days: *Provided further*, That any calendar day on which no remuneration is payable to or accrues to an employee solely because of the application to him of mileage or work restrictions agreed upon in schedule agreements between employers and employees or solely because he is standing by for or laying over between regularly assigned trips or tours of duty shall not be considered either a day of unemployment or a day of sickness.

For the purpose of this subsection, the term ''subsidiary remuneration'' means, with respect to any employee, remuneration not in excess of an average of $15 a day for the period with respect to which such remuneration is payable or accrues, if the work from which the remuneration is derived (i) requires substantially less than full time as determined by generally prevailing standards, and (ii) is susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

(*l*)(1) The term ''benefits'' (except in phrases clearly designating other payments) means the money payments payable to an employee as provided in this chapter, with respect to his unemployment or sickness.

(2) The term ''statement of sickness'' means a statement with respect to days of sickness of an employee, executed in such manner and form by an individual duly authorized pursuant to section 362(i) of this title to execute such statements, and filed as the Board may prescribe by regulations.

(m) The term ''benefit year'' means the twelve-month period beginning July 1 of any year and ending June 30 of the next year, except that a registration period beginning in June and ending in July shall be deemed to be in the benefit year ending in such month of June.

(n) The term ''base year'' means the completed calendar year immediately preceding the beginning of the benefit year.

(*o*) The term ''employment office'' means a free employment office operated by the Board, or designated as such by the Board pursuant to section 362(i) of this title.

(p) The term ''account'' means the railroad unemployment insurance account established pursuant to section 360 of this title in the unemployment trust fund.

(q) The term ''fund'' means the railroad unemployment insurance administration fund, established pursuant to section 361 of this title in the unemployment trust fund.

(r) The term ''Board'' means the Railroad Retirement Board.

(s) The term ''United States'', when used in a geographical sense, means the States and the District of Columbia.

(t) The term ''State'' means any of the States or the District of Columbia.

(u) Any reference in this chapter to any other Act of Congress, including such reference in amendments to other Acts, includes a reference to such other Act as amended from time to time.

(June 25, 1938, ch. 680, § 1, 52 Stat. 1094; June 20, 1939, ch. 227, §§ 1–6, 20, 53 Stat. 845, 848; Aug. 13, 1940, ch. 664, §§ 1, 3, 54 Stat. 785, 786; Oct. 10, 1940, ch. 842, §§ 2–8, 54 Stat. 1094, 1095; Apr. 8, 1942, ch. 227, § 15, 56 Stat. 210; July 31, 1946, ch. 709, §§ 1, 2, 301–304, 60 Stat. 722, 735, 736; Oct. 30, 1951, ch. 632, § 26, 65 Stat. 691; Aug. 31, 1954, ch. 1164, pt. III, §§ 301–303, 68 Stat. 1041; Pub. L. 85–927, pt. II, § 201, Sept. 6, 1958, 72 Stat. 1782; Pub. L. 86–28, pt. III, § 301, May 19, 1959, 73 Stat. 30; Pub. L. 89–700, title II, § 201, Oct. 30, 1966, 80 Stat. 1087; Pub. L. 90–257, title II, § 201, Feb. 15, 1968, 82 Stat. 23; Pub. L. 90–624, § 3, Oct. 22, 1968, 82 Stat. 1316; Pub. L. 94–92, title I, § 1(a), (b), Aug. 9, 1975, 89 Stat. 461; Pub. L. 98–76, title IV, §§ 402(b), 403(b), 411(a)(1), title V, § 503(b), Aug. 12, 1983, 97 Stat. 434, 436, 441; Pub. L. 100–647, title VII, §§ 7101(a), (b), 7203(a), Nov. 10, 1988, 102 Stat. 3757, 3758, 3776; Pub. L. 104–88, title III, § 324(1), (2), Dec. 29, 1995, 109 Stat. 950.)

REFERENCES IN TEXT

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

The Railroad Retirement Act, referred to in subsec. (g), probably means the Railroad Retirement Act of 1937, act Aug. 29, 1935, ch. 812, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, which was classified principally to subchapter III (§ 228a et seq.) of chapter 9 of this title. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of this title. For complete classification of these Acts to the Code, see Tables.

The Regional Rail Reorganization Act of 1973, referred to in subsec. (i)(1), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended. Section 701 of title VII of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] was repealed by Pub. L. 99–509, title IV, § 4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987). Title VII of the Regional Rail Reorganization Act of 1973 is classified generally to subchapter VII (§ 797 et seq.) of chapter 16 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–88, § 324(1), substituted ''Surface Transportation Board is hereby authorized and directed upon request of the Railroad Retirement Board'' for ''Interstate Commerce Commission is hereby authorized and directed upon request of the Board''.

Subsec. (b). Pub. L. 104–88, § 324(2), added subsec. (b) and struck out former subsec. (b) which read as follows: ''The term 'carrier' means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.''

1988—Subsec. (i). Pub. L. 100–647, § 7101(a), designated existing provisions as par. (1), inserted par. heading, substituted '', except that in computing the compensation paid to any employee, no part of any month's compensation in excess of the monthly compensation base (as defined in subdivision (2)) for any month shall be recognized'' for '': *Provided, however*, That in computing the compensation paid to any employee, no part of any month's compensation in excess of $300 for any month before July 1, 1954, or in excess of $350 for any month after June 30, 1954, and before the calendar month next following the month in which this chapter was amended in 1959, or in excess of $400 for any month after the month in which this chapter was so amended and before January 1984, or in excess of $600 for any month after 1983, shall be recognized'', and added par. (2).

Subsec. (k). Pub. L. 100–647, § 7203(a), which directed amendment of second par. of subsec. (k) by substituting ''$15'' for ''$10'', was executed by making the substitution for ''ten dollars'' as the probable intent of Congress.

Pub. L. 100–647, § 7101(b), substituted ''an amount that is equal to 2.5 times the monthly compensation base for months in such base year as computed under subsection (i) of this section'' for ''$1,500''.

1983—Subsec. (i). Pub. L. 98–76, § 503(b), inserted ''and before January 1984, or in excess of $600 for any month after 1983''.

Pub. L. 98–76, § 403(b), inserted after first sentence ''Solely for the purpose of determining the compensation received by an employee in a base year, the term 'compensation' shall include any separation allowance or subsistence allowance paid under any benefit schedule provided under section 701 of title VII of the Regional Rail Reorganization Act of 1973 and any termination allowance paid under section 702 of that Act, but does not include any other benefits payable under that title. The total amount of any subsistence allowance payable under a benefit schedule provided pursuant to section 701 of the Regional Rail Reorganization Act of 1973 shall be considered as being compensation in the month in which the employee first timely filed a claim for such an allowance.''

Subsec. (j). Pub. L. 98–76, § 402(b), struck out ''(i) the voluntary payment by another, without deduction from the pay of an employee, of any tax or contribution now or hereafter imposed with respect to the remuneration of such employee, or (ii)'' after ''''remuneration' does not include''.

Subsec. (k). Pub. L. 98–76, § 411(a)(1), substituted ''$1,500'' for ''$1,000''.

1975—Subsec. (h). Pub. L. 94–92, § 1(a), inserted ''for a period of continuing sickness (as defined in section 352(a) of this title)'' after ''a statement of sickness'' wherever appearing and incorporated ''and ends with the thirteenth day thereafter'' in provision reading ''and ends with whichever is the earlier of (i) the thirteenth day thereafter,'' and inserted cl. (ii) thereafter.

Subsec. (k). Pub. L. 94–92, § 1(b), substituted in second sentence ''ten'' for ''three'' dollars.

1968—Subsec. (i). Pub. L. 90–624 excluded remuneration for services performed by nonresident alien individuals temporarily in the United States as participants in a cultural exchange or training program.

Subsec. (k). Pub. L. 90–257, § 201(a), amended definitions of ''day of sickness'' so as to remove reference to a day in a maternity period and inserted references to a day of sickness for female employees when, because of pregnancy, miscarriage, or the birth of a child, she is unable to work or working is injurious to her health and raised from $750 to $1,000 the amount specified in the subsidiary remuneration provision.

Subsec. (*l*). Pub. L. 90–257, §201(b), redesignated subsec. (*l*) defining ''benefits'' as subsec. (*l*)(1). Former subsec. (*l*)(1) redesignated (*l*)(2).

Subsec. (*l*)(1). Pub. L. 90–257, §201(b), redesignated as subsec. (*l*)(1) former subsec. (*l*) defining ''benefits''.

Subsec. (*l*)(2). Pub. L. 90–257, §201(b), redesignated as subsec. (*l*)(2) former subsec. (*l*)(1) defining ''statement of sickness'' and struck out reference to statement of maternity sickness. Former subsec. (*l*)(2) defining ''maternity period'' was struck out.

1966—Subsec. (i). Pub. L. 89–700, §201(a), substituted ''section 356 of this title'' for ''section 358 of this title.''

Subsec. (k). Pub. L. 89–700, §201(b), substituted ''$750'' for ''500''.

Subsecs. (s), (t). Pub. L. 89–700, §201(c), struck out '', Alaska, Hawaii,'' after ''States''.

1959—Subsec. (i). Pub. L. 86–28, §301(a), increased, for any month after May 1959, from $350 to $400 the maximum amount of monthly compensation to be used in computing benefits.

Subsec. (k). Pub. L. 86–28, §301(b), substituted ''$500'' for ''$400''.

1958—Subsec. (k). Pub. L. 85–927, §201(a), substituted ''first'' for ''second'' and ''second'' for ''first'' in second proviso of first paragraph, and substituted ''three dollars'' for ''one dollar'' in second paragraph.

Subsec. (q). Pub. L. 85–927, §201(b), inserted ''in the unemployment trust fund''.

1954—Subsec. (g). Act Aug. 31, 1954, §301, provided that compensation for service by an individual as a delegate to a convention of a national railway labor organization shall be disregarded in determining eligibility for benefits, if he has no previous creditable service.

Subsec. (i). Act Aug. 31, 1954, §302, increased, after June 30, 1954, from $300 to $350 the maximum amount of monthly compensation to be used in computing benefits.

Subsec. (k). Act Aug. 31, 1954, §303 (part), substituted ''$400'' for ''$150''.

1951—Subsec. (k). Act Oct. 30, 1951, inserted last proviso of first par.

1946—Subsec. (e). Act July 31, 1946, §1, changed opening par. to include professional or technical services when integrated into staff of employer or other personal services the rendition of which is integrated into the employer's operations and added clause at end of first proviso excluding compensation of less than 10% of remuneration.

Subsec. (h). Act July 31, 1946, §301, changed definition of registration period to cover days of sickness as well as days of unemployment.

Subsec. (i). Act July 31, 1946, §2, changed definition of compensation to remuneration ''paid'' instead of ''payable'' and inserted provisions relating to presumption that a payment is compensation; payments for time lost and with respect to personal injury; and payments after the end of a calendar year earned during that year.

Subsec. (j). Act July 31, 1946, §302, inserted reference to maternity insurance and sickness insurance.

Subsec. (k)(2). Act July 31, 1946, §303, inserted cl. (2) defining day of sickness.

Subsec. (*l*). Act July 31, 1946, §304, expanded definition of benefits to include payment with respect to sickness and added pars. (1) and (2), defining statement of sickness, statement of maternity sickness, and maternity period.

1942—Subsec. (e). Act Apr. 8, 1942, amended first proviso.

1940—Subsec. (a). Act Aug. 13, 1940, §1, excluded from definition of employer companies engaged in mining coal, supplying coal not beyond the mine tipple, and the operation of equipment or facilities therefor.

Subsec. (d). Act Aug. 13, 1940, §3, excluded from definition of employee individuals engaged in mining coal, preparation of coal, handling (other than rail movement by standard locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Subsec. (*l*). Act Oct. 10, 1940, §6, redesignated subsec. (m) as (*l*). Former subsec. (*l*) redesignated (n) by act Oct. 10, 1940, §8.

Subsec. (m). Act Oct. 10, 1940, §7, redesignated subsec. (n) as (m). Former subsec. (m) redesignated (*l*) by act Oct. 10, 1940, §6.

Subsec. (n). Act Oct. 10, 1940, §8, redesignated former subsec. (*l*) as (n), and amended provisions generally. Former subsec. (n) redesignated (m) by act Oct. 10, 1940, §7.

Subsec. (g). Act Oct. 10, 1940, §2, inserted provisions relating to employment after June 30, 1940, in service of a local lodge, etc.

Subsec. (h). Act Oct. 10, 1940, §3, substituted provisions defining ''registration period'' for provisions defining ''half month''.

Subsec. (j). Act Oct 10, 1940, §4, inserted provisions relating to earned income other than for services for hire to definition of ''remuneration''.

Subsec. (k). Act Oct. 10, 1940, §5, inserted in cl. (i) ''accrues'' after ''or'', inserted provisions relating to ''subsidiary remuneration'', and substituted provisions relating to working days which include part of each of two consecutive calendar days, for provisions relating to work shifts which include part of two consecutive calendar days.

1939—Subsec. (d). Act June 20, 1939, §1, designated second paragraph as subsec. (e).

Subsec. (e). Act June 20, 1939, §§1, 2, designated second paragraph of subsec. (d) as (e) and inserted proviso relating to an individual not deemed a citizen or resident of the United States. Former subsec. (e) redesignated (f).

Subsec. (f). Act June 20, 1939, §§2, 3, redesignated former subsec. (e) as (f). Former subsec. (f), which defined ''part-time worker'', was struck out.

Subsec. (h). Act June 20, 1939, §4, substituted provisions authorizing Board to define ''half-month'' for provisions defining ''half-month'' as a period of any fifteen consecutive days, with no day to be included in more than one period for any individual.

Subsec. (i). Act June 20, 1939, §5, struck out comma after ''money''.

Subsec. (k). Act June 20, 1939, §6, struck out proviso relating to calendar days for part-time workers.

Subsec. (n). Act June 20, 1939, §20, inserted provisions relating to inclusion within ''benefit year'' half-months containing days of unemployment.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7101(f) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and sections 352, 354, and 362 of this title] shall take effect upon the date of the enactment of this Act [Nov. 10, 1988].''

Section 7203(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall take effect on July 1, 1988.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 402(b) of Pub. L. 98–76 applicable to compensation paid for services rendered after June 30, 1983, see section 402(c) of Pub. L. 98–76, set out as a note under section 231 of this title.

Amendment by section 403(b) of Pub. L. 98–76 effective Aug. 13, 1981, see section 403(c) of Pub. L. 98–76, set out as a note under section 231 of this title.

Section 411(b) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section and sections 353 and 354 of this title] shall apply to compensation paid for services rendered after December 31, 1983.''

Section 503(c) of Pub. L. 98–76 provided that: ''The amendments made by this section [amending this section and section 358 of this title] shall apply to compensation paid for services rendered after December 31, 1983.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2 of Pub. L. 94–92 provided that:

''(a) The amendment made by section 1(a) of this Act [amending this section] shall be effective with respect to days of sickness in registration periods beginning after June 30, 1975.

''(b) The amendment with respect to qualifying conditions made by section 1(f) [amending section 353 of this title] shall be effective for services rendered after December 31, 1973.

''(c) The amendments made by sections 1(b), 1(c), and 1(d)(1) of this Act [amending this section and section 352 of this title] shall be effective with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1975: *Provided, however*, That the amount of benefits paid for days of unemployment or days of sickness in a registration period beginning after June 30, 1975, and prior to the date of enactment of this Act [Aug. 9, 1975] shall, if paid to an employee who is covered by a nongovernmental plan for unemployment or sickness insurance and who has been paid benefits under such plan for one or more days within the registration period, be reduced by the amount, if any, by which the benefits paid to him under the nongovernmental plan would have been reduced if this Act [amending this section, sections 231m, 352, 353, 358, 360, 361 of this title, and sections 1402 and 3231 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under this section and sections 231 and 231m of this title, and section 1402 of Title 26] had been enacted prior to July 1, 1975, so that the employee will receive, the full amount of the combined benefits that he would have received under the Railroad Unemployment Insurance Act [this chapter] and the nongovernmental plan if the benefit increases provided by this Act had been enacted prior to said date. The amount of each such reduction in the benefits paid under the amendment made by section 1(c)(2) of this Act [amending section 352 of this title] shall be paid over by the Board to the insurer of the nongovernmental plan or to the employer if a self-insurer. Reductions in benefits and payments to insurers and employers hereunder shall be made on claims filed with the Board by such insurers and employers within thirty days after the date of enactment of this Act [Aug. 9, 1975].

''(d) The amendments made by sections 1(d)(2) and 1(e) of this Act [amending section 352 of this title] shall be effective with respect to days of unemployment in registration periods beginning after June 30, 1975.

''(e) The amendments made by sections 1(g), 1(h), 1(i)(1), and 1(j) of this Act [amending sections 358, 360, and 361 of this title] shall be effective with respect to compensation paid for services rendered after December 31, 1975.

''(f) The amendment made by section 1(i)(2) of this Act [amending section 360 of this title] shall be effective on the date of enactment of this Act [Aug. 9, 1975].''

EFFECTIVE DATE OF 1968 AMENDMENTS

Section 4(b) of Pub. L. 90–624 provided that: ''The amendments made by section 3 [amending this section] shall apply with respect to service performed after December 31, 1967.''

Amendment by section 201(a)(1) of Pub. L. 90–257 effective as of July 1, 1968, and amendment by section 201(a)(2) of Pub. L. 90–257 effective with respect to base years beginning in calendar years after December 31, 1966, see section 208 of Pub. L. 90–257, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 309 of Pub. L. 86–28 provided that: ''The amendments made by section 301(b) [amending this section] shall be effective with respect to days in registration periods beginning after June 30, 1959. The amendments made by sections 302, 303(a), and 305 [amending sections 352 and 354 of this title] shall be effective with respect to benefits accruing in general benefit years which begin after the benefit year ending June 30, 1958, and in extended benefit periods which begin after December 31, 1957. The amendment made by section 304 [amending section 353 of this title] shall be effective with respect to base years after the base year ending December 31, 1957. The amendments made by clauses (4) and (5) of section 306 [amending section 358 of this title, increasing the contribution rates for compensation paid after May, 1959] and clause (1) of section 307 [amending section 358 of this title, increasing the contribution rate from 3 to 3¾ percent] shall be effective as of the first day of the calendar month next following the month in which this Act was enacted [May, 1959], and shall apply only with respect to compensation paid for services rendered in calendar months after the month in which this Act was enacted [May, 1959].''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 207 of Pub. L. 85–927 provided that:

''(a) The amendments made by section 201(a) [amending this section] shall be effective with respect to registration periods in benefit years after the benefit year ending on June 30, 1958.

''(b) The amendments made by section 202 [amending section 354 of this title] shall be effective with respect to days in benefit years after the benefit year ending on June 30, 1958.

''(c) The remaining amendments made by this part [amending this section, sections 358, 361, 362 of this title, and section 1104 of Title 42, The Public Health and Welfare] shall be effective, except as otherwise indicated therein, on the date of the enactment of this Act [Sept. 6, 1958].''

EFFECTIVE DATE OF 1954 AMENDMENT

Sections 401 and 402 of act Aug. 31, 1954, provided that:

''SEC. 401. The amendments made by this Act [enacting section 228s–1 of this title, amending this section, sections 228a, 228b, 228c, 228e, 352, 353, and 358 of this title, sections 3201, 3202, 3211, 3221, and 3231 of Title 26, Internal Revenue Code, and sections 1500, 1501, 1510, 1520, 1532 of the Internal Revenue Code of 1939] shall be effective July 1, 1954, except as otherwise provided.

''SEC. 402. The provisions of sections 1, 205, and 301 of this Act [amending this section, section 228a of this title, and section 1532 of the Internal Revenue Code of 1939] shall be effective with respect to compensation paid on and after April 1, 1954.''

EFFECTIVE DATE OF 1951 AMENDMENT

Section 28 of act Oct. 30, 1951, provided that: ''The provisions of sections 26 and 27 of the Act [amending sections 350 and 354 of this title] shall become effective with respect to registration periods beginning on and after January 1, 1952.''

EFFECTIVE DATE OF 1946 AMENDMENTS

Amendment by sections 1 and 2 of act July 31, 1946, effective July 31, 1946, see section 401 of act July 31, 1946.

Amendment by sections 301 to 304 of act July 31, 1946, effective as of July 1, 1947, see section 403 of act July 31, 1946, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1942 AMENDMENT

Act Apr. 8, 1942, besides amending subsec. (e) of this section, contained the following paragraph: ''The amendment in this section shall operate in the same manner and have the same effect as if it had been part of the Railroad Unemployment Insurance Act [this chapter] when that Act was enacted on June 25, 1938: *Provided, however*, That no interest or penalties shall accrue or be deemed to have accrued for the failure to make returns under, or pay contributions levied by, section 8 of said Railroad Unemployment Insurance Act [section 358 of this title] with respect to the compensation of employees of any local lodge or division of a

railway-labor-organization employer earned prior to July 1, 1940, and with respect to the compensation of employees of any general committee of a railway-labor-organization employer earned prior to the enactment of this amendment if, with respect to any such local lodge or division (1) the headquarters of such a local lodge or division was not located in the United States or (2) all, or substantially all, the individuals constituting the membership of such a local lodge or division were employees of an employer not conducting the principal part of its business in the United States; and if, with respect to any such general committee (1) the individuals represented by such a general committee were employees of an employer not conducting the principal part of its business in the United States, or (2) the service to such a general committee was rendered outside the United States, or (3) the office or headquarters of the individual rendering service to such a general committee was not located in the United States and if such returns are made and such contributions are paid by such a local lodge or division or by such a general committee within the time allowed for making returns and paying contributions with respect to the first calendar quarter beginning after the enactment of this amendment.''

EFFECTIVE DATE OF 1940 AMENDMENT

Section 1 of act Oct. 10, 1940, provided: ''That the provisions of this act [amending this section, sections 228a, 228i, 352 to 355, 356, 361, and 362 of this title, and section 1532 of former Title 26, Internal Revenue Code of 1939, and enacting provisions set out as notes under this section and section 262 of this title] shall take effect on November 1, 1940, except that sections 2, 11, 25, 26, and 27 [amending sections 228a, 228i, 351, and 352 of this title and section 1532 of former Title 26 and enacting provisions set out as a note under section 262 of this title] shall be effective as of July 1, 1940, and sections 19 and 20 [amending section 355 of this title] shall become effective upon the approval of this act: *Provided, however*, That—

''(a) A half-month which has begun prior to November 1, 1940, in accordance with the Railroad Unemployment Insurance Act [this chapter] and regulations thereunder, and which includes such date, shall continue, and benefits with respect thereto shall be computed and paid as if this act had not been enacted;

''(b) All benefit years current on October 31, 1940, shall terminate (1) on October 31, 1940, or (2) on the last day of a half-month which includes October 31, 1940 and November 1, 1940, whichever is later, and, for the purposes of section 2(c) of the Railroad Unemployment Insurance Act [section 352(c) of this title], as amended by this act, all benefits paid for unemployment in half-months begun subsequent to June 30, 1940, and prior to November 1, 1940, shall be deemed to have been paid for unemployment within the benefit year ending June 30, 1941;

''(c) Benefits for unemployment in the first registration period, beginning after October 31, 1940, of an employee who has, subsequent to June 30, 1940, completed a waiting period under section 3(b) of the Railroad Unemployment Insurance Act [section 353(b) of this title], shall be determined and computed as though such registration period were a subsequent registration period in the same benefit year.''

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term ''compensation'' shall not include the amount of any refund required under section 421 of Pub. L. 100–360 [42 U.S.C. 1395b note], see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

§ 352. Benefits

(a) Days for which benefits payable; determination of amount

(1)(A) PAYMENT OF UNEMPLOYMENT BENEFITS.—

(i) GENERALLY.—Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of unemployment in excess of 4 during any registration period within a period of continuing unemployment.

(ii) WAITING PERIOD FOR FIRST REGISTRATION PERIOD.—Benefits shall be payable to any qualified employee for each day of unemployment in excess of 7 during that employee's first registration period in a period of continuing unemployment if such period of continuing unemployment is the employee's initial period of continuing unemployment commencing in the benefit year.

(iii) STRIKES.—

(I) INITIAL 14-DAY WAITING PERIOD.—If the Board finds that a qualified employee has a period of continuing unemployment that includes days of unemployment due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which such employee was last employed, no benefits shall be payable for such employee's first 14 days of unemployment due to such stoppage of work.

(II) SUBSEQUENT DAYS OF UNEMPLOYMENT.—For subsequent days of unemployment due to the same stoppage of work, benefits shall be payable as provided in clause (i) of this subparagraph.

(III) SUBSEQUENT PERIODS OF CONTINUING UNEMPLOYMENT.—If such period of continuing unemployment ends by reason of clause (v) but the stoppage of work continues, the waiting period established in clause (ii) shall apply to the employee's first registration period in a new period of continuing unemployment based upon the same stoppage of work.

(iv) DEFINITION OF PERIOD OF CONTINUING UNEMPLOYMENT.—Except as limited by clause (v), for the purposes of this subparagraph, the term ''period of continuing unemployment'' means—

(I) a single registration period that includes more than 4 days of unemployment;

(II) a series of consecutive registration periods, each of which includes more than 4 days of unemployment; or

(III) a series of successive registration periods, each of which includes more than 4 days of unemployment, if each succeeding registration period begins within 15 days after the last day of the immediately preceding registration period.

(v) SPECIAL RULE REGARDING END OF PERIOD.—For purposes of applying clause (ii), a period of continuing unemployment ends when an employee exhausts rights to unemployment benefits under subsection (c) of this section.

(vi) LIMIT ON AMOUNT OF BENEFITS.—No benefits shall be payable to an otherwise eligible employee for any day of unemployment in a registration period where the total amount of the remuneration (as defined in section 351(j)

of this title) payable or accruing to him for days within such registration period exceeds the amount of the base year monthly compensation base. For purposes of the preceding sentence, an employee's remuneration shall be deemed to include the gross amount of any remuneration that would have become payable to that employee but did not become payable because that employee was not ready or willing to perform suitable work available to that employee on any day within such registration period.

(B) PAYMENT OF SICKNESS BENEFITS.—

(i) GENERALLY.—Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of sickness after the 4th consecutive day of sickness in a period of continuing sickness but excluding 4 days of sickness in any registration period in such period of continuing sickness.

(ii) WAITING PERIOD FOR FIRST REGISTRATION PERIOD.—Benefits shall be payable to any qualified employee for each day of sickness in excess of 7 during that employee's first registration period in a period of continuing sickness if such period of continuing sickness is the employee's initial period of continuing sickness commencing in the benefit year. For the purposes of this clause, the first registration period in a period of continuing sickness is that registration period that first begins with 4 consecutive days of sickness and includes more than 4 days of sickness.

(iii) DEFINITION OF PERIOD OF CONTINUING SICKNESS.—For the purposes of this subparagraph, a period of continuing sickness means—

(I) a period of consecutive days of sickness, whether from 1 or more causes; or

(II) a period of successive days of sickness due to a single cause without interruption of more than 90 consecutive days which are not days of sickness.

(iv) SPECIAL RULE REGARDING END OF PERIOD.—For purposes of applying clause (ii), a period of continuing sickness ends when an employee exhausts rights to sickness benefits under subsection (c) of this section.

(2) The daily benefit rate with respect to any such employee for such day of unemployment or sickness shall be in an amount equal to 60 per centum of the daily rate of compensation for the employee's last employment in which he engaged for an employer in the base year, but not less than $12.70: *Provided, however*, That for registration periods beginning after June 30, 1975, but before July 1, 1976, such amount shall not exceed $24 per day of such unemployment or sickness, that for registration periods beginning after June 30, 1976, but before July 1, 1988, such amount shall not exceed $25 per day of such unemployment or sickness, that for registration periods beginning after June 30, 1988, but before July 1, 1989, such amount shall not exceed $30 per day of unemployment or sickness, and that for registration periods beginning after June 30, 1989, such amount shall not exceed the maximum daily benefit rate provided in paragraph (3) of this subsection. The daily rate of compensation referred to in this paragraph shall be determined by the Board on the basis of information furnished to the Board by the employee, his employer, or both.

(3) The maximum daily benefit rate computed by the Board under section 362(r)(2) of this title shall be the product of the monthly compensation base, as computed under section 351(i)(2) of this title for the base year immediately preceding the beginning of the benefit year, multiplied by 5 percent. If the maximum daily benefit rate so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

(4) In computing benefits to be paid, days of unemployment shall not be combined with days of sickness in the same registration period.

(b) Time of payments

The benefits provided for in this section shall be paid to an employee at such reasonable intervals as the Board may prescribe.

(c) Maximum number of days for benefits

(1) Normal benefits

(A) Generally

The maximum number of days of unemployment within a benefit year for which benefits may be paid to an employee shall be 130, and the maximum number of days of sickness within a benefit year for which benefits may be paid to an employee shall be 130.

(B) Limitation

The total amount of benefits that may be paid to an employee for days of unemployment within a benefit year shall in no case exceed the employee's compensation in the base year; and the total amount of benefits that may be paid to an employee for days of sickness within a benefit year shall in no case exceed the employee's compensation in the base year, except that notwithstanding section 351(i) of this title, in determining the employee's compensation in the base year for the purpose of this sentence, any money remuneration paid to the employee for services rendered as an employee shall be taken into account that is not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 351(i) of this title bears to $600.

(2) Extended benefits

(A) Generally

With respect to an employee who has 10 or more years of service as defined in section 231(f) of this title, who did not voluntarily retire and (in a case involving exhaustion of rights to normal benefits for days of unemployment) did not voluntarily leave work without good cause, and who had current rights to normal benefits for days of unemployment or days of sickness in a benefit year but has exhausted such rights, the benefit year in which such rights are exhausted shall be deemed not to be ended until the last day of the extended benefit period determined under this paragraph, and extended unemployment benefits or extended sickness benefits (depending on the type of normal

benefit rights exhausted) may be paid for not more than 65 days of unemployment or 65 days of sickness within such extended benefit period.

(B) Beginning date

An employee's extended benefit period shall begin on the employee's first day of unemployment or first day of sickness, as the case may be, following the day on which the employee exhausts the employee's then current rights to normal benefits for days of unemployment or days of sickness and shall continue for 7 consecutive 14-day periods, each of which shall constitute a registration period, but no such extended benefit period shall extend beyond the beginning of the first registration period in a benefit year in which the employee is again qualified for benefits in accordance with section 353 of this title on the basis of compensation earned after the first of such consecutive 14-day periods has begun.

(C) Termination when employee reaches age of 65

Notwithstanding any other provision of this paragraph, an extended benefit period for sickness benefits shall terminate on the day next preceding the date on which the employee attains age 65, except that it may continue for the purpose of paying benefits for days of unemployment.

(3) Accelerated benefits

(A) General rule

With respect to an employee who has 10 or more years of service as defined in section 231(f) of this title, who did not voluntarily retire, and (in a case involving unemployment benefits) did not voluntarily leave work without good cause, who has 14 or more consecutive days of unemployment, or 14 or more consecutive days of sickness, and who is not a qualified employee with respect to the general benefit year current when such unemployment or sickness commences but is or becomes a qualified employee for the next succeeding general benefit year, such succeeding general benefit year shall, in that employee's case, begin on the first day of the month in which such unemployment or sickness commences.

(B) Exception

In the case of a succeeding benefit year beginning in accordance with subparagraph (A) by reason of sickness, such sentence shall not operate to permit the payment of benefits in the period provided for in such sentence for any day of sickness beginning with the date on which the employee attains age 65, and continuing through the day preceding the first day of the next succeeding general benefit year.

(C) Determination of age

For the purposes of this subsection, the Board may rely on evidence of age available in its records and files at the time determinations of age are made.

(d) Overpayment of benefits; recovery; liability of officers

If the Board finds that at any time more than the correct amount of benefits has been paid to any individual under this chapter or a payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940), recovery by adjustments in subsequent payments to which such individual is entitled under this chapter or any other Act administered by the Board may, except as otherwise provided in this subsection, be made under regulations prescribed by the Board. If such individual dies before recovery is completed, recovery may be made by set-off or adjustments, under regulations prescribed by the Board, in subsequent payments due, under this chapter or any other Act administered by the Board, to the estate, designee, next of kin, legal representative, or surviving spouse of such individual, with respect to the employment of such individual.

Adjustments under this subsection may be made either by deductions from subsequent payments or, with respect to payments which are to be made during a lifetime or lifetimes, by subtracting the total amount of benefits paid in excess of the proper amount from the actuarial value, as determined by the Board, of such payments to be made during a lifetime or lifetimes and recertifying such payments on the basis of the reduced actuarial value. In the latter case, recovery shall be deemed to have been completed upon such recertification.

There shall be no recovery in any case in which more than the correct amount of benefits has been paid to an individual or payment has been made to an individual not entitled thereto (including payments made prior to July 1, 1940) who, in the judgment of the Board, is without fault when, in the judgment of the Board, recovery would be contrary to the purpose of this chapter or would be against equity or good conscience.

No certifying or disbursing officer shall be held liable for any amount certified or paid by him in good faith to any person where the recovery of such amount is waived under the third paragraph of this subsection or has been begun but cannot be completed under the first paragraph of this subsection.

(e) Assignment, taxation, garnishment, attachment, etc., of benefits

Notwithstanding any other law of the United States, or of any State, Territory, or the District of Columbia, no benefits shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

(f) Effect of payment of benefits for remunerable period; payment of surplus remuneration to Board

If (i) benefits are paid to any employee with respect to unemployment or sickness in any registration period, and it is later determined that remuneration is payable to such employee with respect to any period which includes days in such registration period which had been determined to be days of unemployment or sickness,

and (ii) the person or company from which such remuneration is payable has, before payment thereof, notice of the payment of benefits upon the basis of days of unemployment or sickness included in such period, the remuneration so payable shall not be reduced by reason of such benefits but the remuneration so payable, to the extent to which benefits were paid upon the basis of days which had been determined to be days of unemployment or sickness and which are included in the period for which such remuneration is payable, shall be held to be a special fund in trust for the Board. The amount of such special fund shall be paid to the Board and in the collection thereof the Board shall have the same authority, and the same penalties shall apply, as are provided in section 358 of this title with respect to contributions. The proceeds of such special fund shall be credited to the account. Such benefits, to the extent that they are represented in such a special fund which has been collected by the Board, shall be disregarded for the purposes of subsection (c) of this section.

(g) Payment of accrued benefits upon death

Benefits accrued to an individual but not yet paid at death shall, upon certification by the Board, be paid, without necessity of filing further claims therefor, to the same individual or individuals to whom any accrued annuities under section 231e(a)(1) of this title are paid. In the event that no such accrued annuities are paid, and if application for such accrued benefits is filed prior to the expiration of two years after the death of the individual to whom such benefits accrued, such accrued benefits shall be paid, upon certification by the Board, to the individual or individuals who would be entitled thereto under section 231e(a)(1) of this title if such accrued benefits were accrued annuities. If there is no individual to whom all or any part of such accrued benefits can be paid in accordance with the foregoing provisions, such benefits or part thereof shall escheat to the credit of the account.

(June 25, 1938, ch. 680, § 2, 52 Stat. 1096; June 20, 1939, ch. 227, §§ 7–9, 21, 53 Stat. 845, 848; Oct. 10, 1940, ch. 842, §§ 9–12, 54 Stat. 1095, 1096; July 31, 1946, ch. 709, §§ 305–307, 60 Stat. 736, 737; May 15, 1952, ch. 290, § 1, 66 Stat. 73; Aug. 31, 1954, ch. 1164, pt. III, § 304, 68 Stat. 1041; Aug. 12, 1955, ch. 869, § 4, 69 Stat. 716; Pub. L. 86–28, pt. III, §§ 302, 303(a), May 19, 1959, 73 Stat. 30; Pub. L. 89–700, title II, § 202, Oct. 30, 1966, 80 Stat. 1087; Pub. L. 90–257, title II, § 202, Feb. 15, 1968, 82 Stat. 23; Pub. L. 93–445, title IV, § 401, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94–92, title I, § 1(c)–(e), Aug. 9, 1975, 89 Stat. 461, 462; Pub. L. 98–76, title IV, § 412(a), Aug. 12, 1983, 97 Stat. 436; Pub. L. 100–647, title VII, §§ 7101(c), 7201(a), Nov. 10, 1988, 102 Stat. 3758, 3774; Pub. L. 104–88, title III, § 324(3), Dec. 29, 1995, 109 Stat. 950; Pub. L. 104–251, §§ 2–5(b), Oct. 9, 1996, 110 Stat. 3161–3165.)

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104–251, § 2, inserted heading and amended text generally. Prior to amendment, text read as follows: ''(A)(i) Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of unemployment in excess of 4 during any registration period.

''(ii) No benefits shall be payable for days of unemployment during the first registration period within a benefit year in which the employee has more than 4 days of unemployment.

''(iii) In any case in which the Board finds that an employee's unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which such employee was last employed, no benefits shall be payable for the first 14 days of unemployment due to such stoppage of work. However, for subsequent days of unemployment due to such stoppage of work, benefits shall be payable to days in excess of 4 during any registration period.''

Subsec. (a)(1)(B). Pub. L. 104–251, § 3, inserted heading and amended text generally. Prior to amendment, text read as follows:

''(B)(i) Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of sickness after the 4th consecutive day of sickness in a period of continuing sickness but excluding 4 days of sickness in any registration period.

''(ii) No benefits shall be payable for days of sickness in the first registration period within a benefit year in which the employee has both 4 consecutive days of sickness and more than 4 days of sickness.

''(iii) For the purposes of this subparagraph, a period of continuing sickness means (I) a period of consecutive days of sickness, whether from one or more causes, or (II) a period of successive days of sickness due to a single cause without interruption of more than 90 consecutive days which are not days of sickness.''

Subsec. (a)(3). Pub. L. 104–251, § 4, amended par. (3) generally. Prior to amendment, par. (3) provided the formula under which the Board was required to compute the maximum daily benefit rate under section 362(r)(2) of this title which could not be less than $30.

Subsec. (c). Pub. L. 104–251, § 5(a), inserted heading and amended text generally, designating existing provisions relating to normal benefits, extended benefits, and accelerated benefits as pars. (1) to (3), respectively, making technical changes in pars. (1) and (3), and in par. (2), deleting provisions which authorized extended benefits for certain employees with less than ten years of service as defined in section 231(f) of this title.

Subsec. (h). Pub. L. 104–251, § 5(b), struck out subsec. (h), which provided for determining extended benefit period for employees with less than 10 years of service under former subsec. (c).

1995—Subsec. (h)(3). Pub. L. 104–88 substituted ''Surface Transportation Board, adjusted, as determined by the Railroad Retirement Board'' for ''Interstate Commerce Commission, adjusted, as determined by the Board''.

1988—Subsec. (a)(1). Pub. L. 100–647, § 7201(a)(1), (2), inserted ''(1)'' after ''(a)'' and substituted subpars. (A) and (B) for ''Benefits shall be payable to any qualified employee for each day of unemployment in excess of four during any registration period: *Provided, however*, That in any case in which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, no benefits shall be payable for the first fourteen days of unemployment due to such stoppage of work. Benefits shall be payable to any qualified employee for each day of sickness after the fourth consecutive day of sickness in a period of continuing sickness, but excluding four days of sickness in any registration period. A period of continuing sickness means (i) a period of consecutive days of sickness, whether from one or more causes, or (ii) a period of successive days of sickness due to a single cause without interruption of more than ninety consecutive days which are not days of sickness.''

Subsec. (a)(2). Pub. L. 100–647, § 7201(a)(3)–(6), inserted ''(2)'' before ''The daily benefit'', substituted ''sickness, that for'' for ''sickness and that for'', inserted ''but before July 1, 1988,'' after ''June 30, 1976,'' and inserted '', that for registration periods beginning after June 30, 1988, but before July 1, 1989, such amount shall not exceed $30 per day of unemployment or sickness, and that for registration periods beginning after June 30, 1989,

such amount shall not exceed the maximum daily benefit rate provided in paragraph (3) of this subsection.'' after ''unemployment or sickness''.

Subsec. (a)(3). Pub. L. 100–647, §7201(a)(7), added par. (3).

Subsec. (a)(4). Pub. L. 100–647, §7201(a)(8), inserted ''(4)'' before ''In computing benefits''.

Subsec. (c). Pub. L. 100–647, §7101(c), substituted ''shall be taken into account that is not in excess of $775 in any month before 1989 and, in any month in a base year after 1988, is not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 351(i) of this title bears to $600'' for ''not in excess of $775 in any month shall be taken into account''.

1983—Subsec. (a). Pub. L. 98–76 substituted ''That in any case in which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, no benefits shall be payable for the first fourteen days of unemployment due to such stoppage of work'' for ''That notwithstanding the provisions of section 351(h) of this title, in any case in which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, other than a strike subject to the disqualification in section 354(a–2)(iii) of this title, none of the first seven days of unemployment due to such stoppage of work shall be included in any registration period; and subject to the registration provisions of section 351(h) of this title, so many of the ensuing seven consecutive calendar days during which his unemployment continues to be caused by such stoppage of work shall constitute a registration period, during which benefits shall be payable for each day of unemployment''.

1975—Subsec. (a), first par. Pub. L. 94–92, §1(c)(1), inserted proviso and definition of registration period, provided for payment of sickness benefits after four rather than after seven days of sickness, and inserted definition of period of continuing sickness.

Subsec. (a), second par. Pub. L. 94–92, §1(c)(2), substituted provisions for a daily rate of unemployment and sickness benefits, for registration periods beginning after June 30, 1975, but before July 1, 1976, equal to the smaller of $24 or 60 percent of the employee's last daily rate of pay in the base period (but not less than $12.70), and for registration periods beginning after June 30, 1976, a daily rate of $25 for prior provision for such benefits set out in a table with ten levels of base year compensation and corresponding daily benefit rates starting at $8.00, payable to those with the minimum qualifying base year compensation, and rising to a maximum of $12.70, which is reached by those who received base year compensation totalling $4,000 or more and prescribing a minimum daily benefit not less than the smaller of the table maximum ($12.70) or 60 percent of the employee's last daily rate of pay in the base period.

Subsec. (c). Pub. L. 94–92, §1(d), inserted exception provision in first proviso and proviso respecting an employee with less than ten years of service.

Subsec. (h). Pub. L. 94–92, §1(e), added subsec. (h).

1974—Subsec. (c). Pub. L. 93–445, §401(a), substituted ''ten or more years of service as defined in section 231(f) of this title'' for ''ten or more years of service as defined in section 228a(f) of this title'' and struck out ''and section 360(h) of this title'' after ''For purposes of this subsection''.

Subsec. (g). Pub. L. 93–445, §401(b), substituted ''section 231e(a)(1) of this title'' for ''section 228c(f)(1) of this title'' in two places.

1968—Subsec. (a). Pub. L. 90–257, §202(a), struck out all references to the payment of maternity benefits, amended table of benefit rates by striking out the line for persons in the compensation range of $750 to $999.99 and by increasing the rates of benefits for the remaining categories from $5.50 to $8.00, $6.00 to $8.50, $6.50 to $9.00, $7.00 to $9.50, $7.50 to $10.00, $8.00 to $10.50, $8.50 to $11.00, $9.00 to $11.50, $9.50 to $12.00, and $10.20 to $12.70 respectively, and raised from $10.20 to $12.70 the maximum rate applicable if the formula of 60 per centum of the daily rate of compensation for the employee's last employment in which he engaged for an employer in the base year is used.

Subsec. (c). Pub. L. 90–257, §202(b), removed all references to payment of maternity benefits, made provision for extended sickness benefits similar to extended unemployment benefits, added to existing provisions for the early beginning of a general benefit year (or accelerated benefit year) in certain cases involving days of unemployment similar provisions for a similar early beginning of a general benefit year in certain cases involving days of sickness, and inserted provisions dealing with the effect of the attainment of age 65 on an employee's receipt of extended sickness benefits and on his receipt of sickness benefits in an accelerated benefit year and relating to the evidence of age on which the Board may rely for purposes of determining the attainment of age 65.

1966—Subsec. (a). Pub. L. 89–700, §202(a), struck out daily benefit rate of $4.50 for the compensation range of $500 to $699.99 from the table, and substituted ''750'' for ''700'' in Column I.

Subsec. (g). Pub. L. 89–700, §202(b), amended subsec. (g) generally, and among other changes, provided that if there is no individual to whom accrued benefits can be paid, such benefits or parts thereof shall escheat to the credit of the account.

1959—Subsec. (a). Pub. L. 86–28, §302, substituted ''for each day of unemployment in excess of four during any registration period, and'' for ''for each day of unemployment in excess of seven during the first registration period, within a benefit year, in which he will have had seven or more days of unemployment, and for each day of unemployment in excess of four during any subsequent registration period in the same benefit year, and'', ''60 per centum'' for ''50 per centum'', and ''not to exceed $10.20'' for ''not to exceed $8.50'', and increased the daily benefit rates.

Subsec. (c). Pub. L. 86–28, §303(a), provided for an extended benefit period with respect to employees who have ten or more years of service, who did not voluntarily leave work without good cause or voluntarily retire, and who have exhausted their rights to normal benefits for days of unemployment in a benefit year.

1955—Subsec. (e). Act Aug. 12, 1955, specified that exemption applies to the laws of the several States, the District of Columbia, and the Territories.

1954—Subsec. (a). Act Aug. 31, 1954, §304(a), changed the table of daily benefit rates and qualifying amounts of earnings in the base year so that such rates and amounts will begin with $3.50 and $4.00, respectively, to a maximum of $8.50 for $4,000 and over, and inserted proviso immediately after the table.

Subsec. (c). Act Aug. 31, 1954, §304(b), inserted proviso at end.

1952—Subsec. (a). Act May 15, 1952, substituted a new table of daily benefit rates.

1946—Subsec. (a). Act July 31, 1946, §305, changed first and second pars. to include benefits for days of sickness, changed reference to total amount of compensation payable to him in second par. to total compensation, added new benefit rates to table for compensation of $2,000 to $2,499.99 and $2,500 and over, and added last two pars. relating to maternity benefits and to computation of benefits.

Subsec. (c). Act July 31, 1946, §306, increased maximum days of unemployment to 130 and established same maximum for days of sickness.

Subsec. (f). Act July 31, 1946, §307, inserted references to sickness.

1940—Subsec. (a). Act Oct. 10, 1940, §9, designated existing provisions as cl. (i), substituted registration period for half-month as determining factor, added cl. (ii), and increased total compensation amounts set out in Column I and daily benefit amounts set out in Column II.

Subsec. (c). Act Oct. 10, 1940, §10, substituted provisions relating to maximum number of days of unem-

ployment within a benefit year, for provisions relating to maximum benefits payable to an employee within his benefit year.

Subsec. (d). Act Oct. 10, 1940, § 11, substituted provisions relating to adjustments for erroneous payments and procedure for recovery of such payments, for provisions making applicable section 228i of this title for adjustments and recovery of erroneous payments.

Subsec. (f). Act Oct. 10, 1940, § 12, in cl. (i) substituted provisions relating to registration periods for provisions relating to benefits paid with respect to any period, and in text following cl. (ii) inserted condition relating to benefits which were paid upon the basis of days determined to be days of unemployment and included in the period for which remuneration is payable.

1939—Subsec. (a). Act June 20, 1939, § 7, struck out exception relating to part-time workers.

Subsec. (d). Act June 20, 1939, §§ 8, 9, redesignated subsec. (e) as (d). Former subsec. (d), which authorized Board to prescribe regulations for determining amount of daily benefits and maximum benefits during any benefit year, was struck out.

Subsec. (e). Act June 20, 1939, § 9, redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsecs. (f), (g). Act June 20, 1939, § 9, redesignated subsec (g) as (f) and struck out reference to subsec. (a). Former subsec. (f) redesignated (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 6 of Pub. L. 104–251 provided that: ''The amendments made by this Act [amending this section and repealing section 368 of this title] shall take effect on the date of the enactment of this Act [Oct. 9, 1996].''

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7201(b) of Pub. L. 100–647 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].

''(2) The amendments made by paragraph (2) of subsection (a) shall apply with respect to registration periods beginning after June 30, 1988.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 412(b) of Pub. L. 98–76 provided that: ''The amendment made by this section [amending this section] shall apply with respect to days of unemployment in registration periods beginning after December 31, 1983.''

EFFECTIVE DATE OF 1975 AMENDMENT; REDUCTION OF BENEFITS IN VIEW OF COVERAGE UNDER NONGOVERNMENTAL PLAN; FILING CLAIMS FOR PAYMENTS TO INSURERS AND EMPLOYERS

Amendment by section 1(c), (d)(1) of Pub. L. 94–92 effective with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1975, reduction of benefits in view of coverage under nongovernmental plan, and filing of claims for payments to insurers and employers; and amendment by section 1(d)(2), (e) of Pub. L. 94–92 effective with respect to days of unemployment in registration periods beginning after June 30, 1975, see section 2 of Pub. L. 94–92, set out as an Effective Date of 1975 Amendment note under section 351 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1968 AMENDMENT

Section 208 of Pub. L. 90–257 provided that: ''The amendments made by sections 201(a)(1), 201(b), 202(a)(1), 202(a)(2), 202(b)(1), 206 and 207 [amending this section and sections 351, 362, and 363 of this title] shall be effective as of July 1, 1968. The amendments made by sections 201(a)(2) and 203 [amending sections 351 and 353 of this title] shall be effective with respect to base years beginning in calendar years after December 31, 1966, except that with respect to the base year in calendar year 1967 the amendments made by section 203 [amending section 353 of this title] shall not be applicable to an employee whose compensation with respect to that base year was not less than $750 but less than $1,000; further, as to such an employee, the amendments made by section 202(a)(3) [amending this section] shall not be applicable with respect to days of unemployment and days of sickness in registration periods in the benefit year beginning July 1, 1968. The amendments made by section 202(a)(3) [amending this section] shall otherwise be effective with respect to days of unemployment and days of sickness in registration periods beginning on or after July 1, 1968. The amendments made by sections 202(b)(2)(i) through (vi) [amending this section] shall be effective to provide the beginning of extended benefit periods on or after July 1, 1968. The amendments made by section 202(b)(2)(vii) through (ix) [amending this section] shall be effective to provide for the early beginning of a benefit year on or after July 1, 1967. The amendment made by section 204(a) [amending section 354 of this title] shall be effective with respect to calendar days in benefit years beginning after June 30, 1968, and the amendment made by section 204(b) [amending section 354 of this title] shall be effective with respect to voluntary leaving of work (within the meaning of section 4(a–2)(i) of the Railroad Unemployment Insurance Act [section 354(a–2)(i) of this title]) after the enactment date of this Act [Feb. 15, 1968].''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–28 effective with respect to benefits accruing in general benefit years which begin after the benefit year ending June 30, 1958, and in extended benefit periods which begin after Dec. 31, 1957, see section 309 of Pub. L. 86–28, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 4 of act Aug. 12, 1955, provided that the amendment made by that section is effective as of the date of its ''original enactment'' [June 25, 1938].

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective July 1, 1954, see section 401 of act Aug. 31, 1954, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 3 of act May 15, 1952, provided that: ''The amendments made by this Act [amending this section and section 353 of this title] shall be effective with respect to benefit years beginning on and after July 1, 1952.''

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by section 306 of act July 31, 1946, effective July 1, 1946, see section 402 of that Act.

Section 403 of act July 31, 1946, provided that: ''Sections 301, 302, 303, 304, 305 (except for the revision of the table which shall become effective on the date of enactment of this Act [July 31, 1946]), 307, 308, 309, and 310 [amending sections 351 to 354 of this title] shall become effective on July 1, 1947.''

EFFECTIVE DATE OF 1940 AMENDMENT

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

EXTENDED RAILROAD UNEMPLOYMENT INSURANCE BENEFITS DURING PERIODS OF HIGH NATIONAL UNEMPLOYMENT

Pub. L. 102–164, title V, § 501, Nov. 15, 1991, 105 Stat. 1064, as amended by Pub. L. 102–182, § 3(a)(6), (7), Dec. 4,

1991, 105 Stat. 1234; Pub. L. 102–244, §5, Feb. 7, 1992, 106 Stat. 5; Pub. L. 102–318, title I, §105, July 3, 1992, 106 Stat. 293; Pub. L. 103–6, §3(a), (b), Mar. 4, 1993, 107 Stat. 33; Pub. L. 103–152, §§8, 9(b), Nov. 24, 1993, 107 Stat. 1519, provided that:

''(a) IN GENERAL.—For purposes of section 2(h) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(h)(2)), a 'period of high unemployment' includes any month during the period November 1991 through February 1994.

''(b) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), no employee shall have an extended benefit period under the second proviso of section 2(c) of the Railroad Unemployment Insurance Act beginning before November 17, 1991, or after February 5, 1994.

''(2) TRANSITION.—If an employee has established an extended benefit period under the second proviso of section 2(c) of the Railroad Unemployment Insurance Act and the last day of such extended benefit period, as established, is after February 5, 1994, such employee shall continue to be entitled to extended unemployment benefits for days of unemployment in registration periods included in such extended benefit period, provided that such employee meets the eligibility requirements of this section and the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

''(3) REACHBACK PROVISIONS.—If an employee has exhausted that employee's rights to normal unemployment benefits under section 2(c) of the Railroad Unemployment Insurance Act [45 U.S.C. 352(c)] after February 28, 1991, but before November 17, 1991, such employee shall, for the purposes of the application of this section, be deemed to have exhausted such rights after November 17, 1991.

''(c) LIMITATION ON PAYMENT.—Extended benefits under this section shall be payable for a maximum of 65 days of unemployment, including any extended benefits payable by reason of the application of the reachback provisions.

''(d) ENLARGEMENT OF BENEFITS.—

''(1) GENERALLY.—During the period that begins on the date of the enactment of this subsection [Feb. 7, 1992]—

''(A) subsection (c) of this section shall be applied by substituting '130' for '65';

''(B) section 2(c) of the Railroad Unemployment Insurance Act [45 U.S.C. 352(c)] shall be applied—

''(i) by substituting '13 (but not more than 130 days)' for '7 (but not more than 65 days)' in the table; and

''(ii) by substituting 'but not by more than 130 days' for 'but not by more than sixty-five days' in the second proviso; and

''(C) section 2(h)(1) of the Railroad Unemployment Insurance Act [45 U.S.C. 352(h)(1)] shall be applied by substituting '13' for 'seven'.

''(2) PHASE-OUT.—

''(A) BENEFITS ON OR AFTER JUNE 14, 1992.—Effective on and after June 14, 1992, paragraph (1) of this section shall be applied by substituting '100' for '130' each place it appears, and by substituting '10' for '13' each place it appears.

''(B) REDUCTIONS UNDER EMERGENCY COMPENSATION EXTENSION PROVISIONS.—

''(i) Effective on and after the date on which a reduction in benefits is imposed under section 102(b)(2)(A)(iii) [section 102(b)(2)(A)(iii) of Pub. L. 102–164, 26 U.S.C. 3304 note], subparagraph (A) of this paragraph and subparagraphs (B) and (C) of paragraph (1) shall not apply and subparagraph (A) of paragraph (1) shall be applied by substituting '50' for '130'.

''(ii) Effective after October 2, 1993, subparagraph (A) of this paragraph and subparagraphs (B) and (C) of paragraph (1) shall not apply and subparagraph (A) of paragraph (1) shall be applied by substituting '35' for '130'.

''(C) LIMITATIONS ON REDUCTIONS.—Notwithstanding subparagraphs (A) and (B), in the case of an individual who is receiving extended benefits under section 2(c) of the Railroad Unemployment Insurance Act [45 U.S.C. 352(c)] for persons with 10 or more but less than 15 years of service, or extended benefits by reason of this section, for any day during a week which precedes a period for which a reduction under this paragraph takes effect, such reduction shall not apply for purposes of determining the amount of benefits payable to such individual for any day thereafter for which the individual meets the eligibility requirements of this section and the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

''(e) TERMINATION OF BENEFITS.—In the case of an individual who is receiving extended benefits by reason of this section on February 5, 1994, such benefits shall not continue to be payable to such individual after April 30, 1994.''

[Section 3(c) of Pub. L. 103–6 provided that: ''The amendments made by this section [amending section 501 of Pub. L. 102–164, set out above] shall apply to weeks beginning after March 6, 1993.'']

[Amendments made by Pub. L. 102–182 to section 501 of Pub. L. 102–164, set out above, applicable as if included in the provisions of and the amendments made by Pub. L. 102–164, see section 3(b) of Pub. L. 102–182, set out as a note under section 3304 of Title 26, Internal Revenue Code.]

GAO STUDY OF FRAUD AND PAYMENT ERRORS

Section 7107 of Pub. L. 100–647 provided that: ''The Comptroller General shall study the frequency of fraud and payment errors in the railroad unemployment compensation program. Not later than 1 year after the date of the enactment of this Act [Nov. 10, 1988], the Comptroller General shall report to Congress the results of such study. Such report shall include—

''(1) estimates of rates and amounts of annual losses due to fraud and overpayment;

''(2) comparisons of such rates with the rates of losses in other Federal programs which experience such losses;

''(3) recommendations for legislative measures that could be taken to reduce the losses in the railroad unemployment compensation program arising from fraud and payment errors; and

''(4) such other matters relating to such fraud and payment errors as the Comptroller General determines are appropriate.''

BENEFITS FOR CERTAIN EMPLOYEES WHO EXHAUSTED RIGHTS TO BENEFITS BEFORE APRIL 1, 1959

Section 303(b) of Pub. L. 86–28 provided that: ''An employee who has less than ten years of service as defined in section 1(f) of the Railroad Retirement Act of 1937 [section 228a(f) of this title], and who has after June 30, 1957, and before April 1, 1959, exhausted (within the meaning prescribed by the Railroad Retirement Board by regulation) his rights to unemployment benefits, shall be paid unemployment benefits for days of unemployment, not exceeding sixty-five, which occur in registration periods beginning on or after June 19, 1958, and before July 1, 1959, and which would not be days with respect to which he would be held entitled otherwise to receive unemployment benefits under the Railroad Unemployment Insurance Act [this chapter], except that an employee who has filed, and established, a first claim for benefits under the Temporary Unemployment Compensation Act of 1958 [42 U.S.C. 1400 et seq.] may not thereafter establish a claim under this subsection, and an employee who has registered for, and established a claim for benefits under this subsection may not thereafter establish a claim under the Temporary Unemployment Compensation Act of 1958. Except to the extent inconsistent with this subsection, the provisions of the Railroad Unemployment Insurance Act [this chapter] shall be applicable in the administration of this subsection.''

INTERCHANGE OF INFORMATION BETWEEN SECRETARY OF LABOR AND RAILROAD RETIREMENT BOARD

Section 303(c) of Pub. L. 86–28 provided that: ''The Secretary of Labor, upon request shall furnish the Board information deemed necessary by the Board for the administration of the provisions of subsection (b) hereof [set out above], and the Board, upon request, shall furnish the Secretary of Labor information deemed necessary by the Secretary for the administration of the Temporary Unemployment Compensation Act of 1958 [section 1400 et seq. of Title 42, The Public Health and Welfare].''

§ 353. Qualifying condition

An employee shall be a ''qualified employee'' if the Board finds that his compensation with respect to the base year will have been not less than 2.5 times the monthly compensation base for months in such base year as computed under section 351(i) of this title, and, if such employee has had no compensation prior to such year, that he will have had compensation with respect to each of not less than five months in such year.

(June 25, 1938, ch. 680, § 3, 52 Stat. 1097; June 20, 1939, ch. 227, § 10, 53 Stat. 845; Oct. 10, 1940, ch. 842, § 13, 54 Stat. 1097; July 31, 1946, ch. 709, § 308, 60 Stat. 737; May 15, 1952, ch. 290, § 2, 66 Stat. 73; Aug. 31, 1954, ch. 1164, pt. III, § 303, 68 Stat. 1041; Pub. L. 86–28, pt. III, § 304, May 19, 1959, 73 Stat. 31; Pub. L. 88–133, title III, § 301(a), Oct. 5, 1963, 77 Stat. 222; Pub. L. 90–257, title II, § 203, Feb. 15, 1968, 82 Stat. 24; Pub. L. 94–92, title I, § 1(f), Aug. 9, 1975, 89 Stat. 463; Pub. L. 98–76, title IV, § 411(a)(2), Aug. 12, 1983, 97 Stat. 436; Pub. L. 100–647, title VII, § 7202(a), Nov. 10, 1988, 102 Stat. 3776.)

AMENDMENTS

1988—Pub. L. 100–647 inserted ''with respect to the base year'' after ''his compensation'' and substituted ''2.5 times the monthly compensation base for months in such base year as computed under section 351(i) of this title'' for ''$1,500 with respect to the base year''.

1983—Pub. L. 98–76 substituted ''$1,500'' for ''$1,000''.

1975—Pub. L. 94–92 substituted ''five'' for ''seven'' months.

1968—Pub. L. 90–257 substituted ''$1,000'' for ''$750''.

1963—Pub. L. 88–133 increased from $500 to $750 the amount of compensation in a base year required to qualify for benefits and provided that if employee has had no compensation prior to such year he will have had compensation with respect to each of not less than 7 months in such year.

1959—Pub. L. 86–28 substituted ''$500'' for ''$400''.

1954—Act Aug. 31, 1954, substituted ''$400'' for ''$300''.

1952—Act May 15, 1952, substituted ''$300'' for ''$150'' to conform to the new table of daily benefit rates as set out in section 352 of this title.

1946—Act July 31, 1946, changed section to relate to compensation paid instead of compensation earned during a year.

1940—Act Oct. 10, 1940, reorganized structure by striking out designations for subsecs. ''(a)'' and ''(b)'' and, as so restructured, provisions of former subsec. (a) became entire section and defined ''qualified employee'' and provisions of former subsec. (b), which related to the employee's waiting period, were omitted.

1939—Subsec. (b). Act June 20, 1939, substituted provisions relating to half-months as the waiting period, for provisions relating to fifteen consecutive days of unemployment or two half months.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7202(b) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, see section 411(b) of Pub. L. 98–76, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–92 effective for services rendered after Dec. 31, 1973, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–257 effective with respect to base years beginning in calendar years after December 31, 1966, except that with respect to the base year in calendar year 1967 such amendments not to be applicable to an employee whose compensation with respect to that base year was not less than $750 but was less than $1,000, see section 208 of Pub. L. 90–257, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Section 301(b) of Pub. L. 88–133 provided that: ''The amendment made by subsection (a) [amending this section] shall be fully effective with respect to base years after 1963. With respect to the base year 1963, they shall be applicable only to an employee concerning whom the Railroad Retirement Board finds that his compensation in that portion of the calendar year 1963 preceding the first day of the calendar month next following the month of enactment of this Act [October 1963] will have been less than $500.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–28 effective with respect to base years after the base year ending Dec. 31, 1957, see section 309 of Pub. L. 86–28, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective July 1, 1954, see section 401 of act Aug. 31, 1954, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act May 15, 1952, effective with respect to benefit years beginning on and after July 1, 1952, see section 3 of act May 15, 1952, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 1, 1947, see section 403 of act July 31, 1946, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1940 AMENDMENT

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

§ 354. Disqualifying conditions

(a–1) Day of unemployment or day of sickness

There shall not be considered as a day of unemployment, or as a day of sickness, with respect to any employee—

(i) any of the seventy-five days beginning with the first day of any registration period with respect to which the Board finds that he knowingly made or aided in making or caused to be made any false or fraudulent statement or claim for the purpose of causing benefits to be paid;

(ii) any day in any period with respect to which the Board finds that he is receiving or will have received annuity payments under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], or insurance benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.], or unemployment, maternity, or sickness benefits under an unemployment, maternity, or sickness compensation law other than this chapter, or any other social-insurance payments under any law: *Provided*, That if an employee receives or is held entitled to receive any such payments, other than unemployment, maternity, or sickness payments, with respect to any period which include days of unemployment or sickness in a registration period, after benefits under this chapter for such registration period will have been paid, the amount by which such benefits under this chapter will have been increased by including such days as days of unemployment or as days of sickness shall be recoverable by the Board: *Provided further*, That, if that part of any such payment or payments, other than unemployment, maternity, or sickness payments, which is apportionable to such days of unemployment or days of sickness is less in amount than the benefits under this chapter which, but for this paragraph, would be payable and not recoverable with respect to such days of unemployment or days of sickness, the preceding provisions of this paragraph shall not apply but such benefits under this chapter for such days of unemployment or days of sickness shall be diminished or recoverable in the amount of such part of such other payment or payments;

(iii) if he is paid a separation allowance, any of the days in the period beginning with the day following his separation from service and continuing for that number of consecutive fourteen-day periods which is equal, or most nearly equal, to the amount of the separation allowance divided (i) by ten times his last daily rate of compensation prior to his separation if he normally works five days a week, (ii) by twelve times such rate if he normally works six days a week, and (iii) by fourteen times such rate if he normally works seven days a week;[1]

(a–2) Day of unemployment

(i)(A) subject to the provisions of subdivision (B) hereof, any of the days in the period beginning with the day with respect to which the Board finds that he left work voluntarily, and continuing until he has been paid compensation of not less than $1,500 with respect to time after the beginning of such period and before 1989 or, if any part of such compensation is paid in a calendar year after 1988, not less than an amount that is equal to 2.5 times the monthly compensation base for months in such calendar year, as computed under section 351(i) of this title;

(B) if the Board finds that he left work voluntarily with good cause, the provisions of subdivision (A) shall not apply, with respect to him, to any day in a registration period if such period does not include any day which is in a period for which he could receive benefits under an unemployment compensation law other than this chapter, and he so certifies. Such certification shall, in the absence of evidence to the contrary, be accepted subject to the penalty provisions of section 359(a) of this title;

(ii) any of the thirty days beginning with the day with respect to which the Board finds that he failed, without good cause, to accept suitable work available on such day and offered to him, or to comply with instructions from the Board requiring him to apply for suitable work or to report, in person or by mail as the Board may require, to an employment office;

(iii) subject to the provisions of subsection (b) of this section, any day with respect to which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, and the Board finds that such strike was commenced in violation of the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.] or in violation of the established rules and practices of a bona fide labor organization of which he was a member.

(b) Participation, interest, or financial assistance in labor dispute

The disqualification provided in subsection (a–2)(iii) of this section shall not apply if the Board finds that—

(i) the employee is not participating in or financing or directly interested in the strike which causes the stoppage of work: *Provided*, That payment of regular union dues shall not be construed to constitute financing a strike or direct interest in a strike within the meaning of this and the following paragraphs; and

(ii) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed in the establishment, premises, or enterprise at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute: *Provided*, That if separate types of work are commonly conducted in separate departments of a single enterprise, each such department shall, for the purposes of this subsection, be deemed to be a separate establishment, enterprise, or other premises.

(c) Unsuitable work

No work shall be deemed suitable for the purposes of subsection (a–2)(ii) of this section, and benefits shall not be denied under this chapter to any otherwise qualified employee for refusing to accept work if—

(i) the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) the remuneration, hours, or other conditions of work offered are substantially less favorable to the employee than those prevailing for similar work in the locality, or the rate of remuneration is less than the union wage rate, if any, for similar work in the locality;

(iii) as a condition of being employed he would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(iv) acceptance of the work would require him to engage in activities in violation of law

[1] So in original. The semicolon probably should be a period.

or which, by reason of their being in violation of reasonable requirements of the constitution, bylaws, or similar regulations of a bona fide labor organization of which he is a member, would subject him to expulsion from such labor organization; or

(v) acceptance of the work would subject him to loss of substantial seniority rights under any collective bargaining agreement between a railway labor organization, organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], and any other employer.

(d) Factors in determination of suitable work

In determining, within the limitations of subsection (c) of this section, whether or not any work is suitable for an employee for the purposes of subsection (a–2)(ii) of this section, the Board shall consider, in addition to such other factors as it deems relevant, (i) the current practices recognized by management and labor with respect to such work; (ii) the degree of risk involved to such employee's health, safety, and morals; (iii) his physical fitness and prior training; (iv) his experience and prior earnings; (v) his length of unemployment and prospects for securing work in his customary occupation; and (vi) the distance of the available work from his residence and from his most recent work.

(e) Voluntarily leaving unsuitable work

For the purposes of subsection (a–2)(i) of this section, no voluntary leaving of work shall be deemed to have been without good cause if the Board finds that such work would not have been suitable for the purposes of subsection (a–2)(ii) of this section.

(June 25, 1938, ch. 680, § 4, 52 Stat. 1098; June 20, 1939, ch. 227, § 11, 53 Stat. 846; Oct. 10, 1940, ch. 842, §§ 14–18, 54 Stat. 1097, 1098; July 31, 1946, ch. 709, §§ 309, 310, 60 Stat. 737, 738; Oct. 30, 1951, ch. 632, § 27, 65 Stat. 691; Pub. L. 85–927, pt. II, § 202, Sept. 6, 1958, 72 Stat. 1782; Pub. L. 86–28, pt. III, § 305, May 19, 1959, 73 Stat. 31; Pub. L. 88–133, title III, § 302(a), Oct. 5, 1963, 77 Stat. 222; Pub. L. 90–257, title II, § 204, Feb. 15, 1968, 82 Stat. 24; Pub. L. 93–445, title IV, § 402, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 98–76, title IV, § 411(a)(3), Aug. 12, 1983, 97 Stat. 436; Pub. L. 100–647, title VII, § 7101(d), Nov. 10, 1988, 102 Stat. 3758.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a–1)(ii), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

The Social Security Act, referred to in subsec. (a–1)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railway Labor Act, referred to in subsecs. (a–2)(iii) and (c)(v), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

AMENDMENTS

1988—Subsec. (a–2)(i)(A). Pub. L. 100–647 inserted "and before 1989 or, if any part of such compensation is paid in a calendar year after 1988, not less than an amount that is equal to 2.5 times the monthly compensation base for months in such calendar year, as computed under section 351(i) of this title" after "such period".

1983—Subsec. (a–2)(i)(A). Pub. L. 98–76 substituted "$1,500" for "$1,000".

1974—Subsec. (a–1)(ii). Pub. L. 93–445 substituted "annuity payments under the Railroad Retirement Act of 1974" for "annuity payments or pensions under the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937".

1968—Subsec. (a–1)(iii). Pub. L. 90–257, § 204(a), added cl. (iii).

Subsec. (a–2)(i)(A). Pub. L. 90–257, § 204(b), substituted "$1,000" for "$750".

1963—Subsec. (a–2)(i). Pub. L. 88–133 substituted cl. (i) providing in subd. (A) that an employee who voluntarily leaves his work shall not be considered as having days of unemployment for a period beginning with the day he so leaves and continuing until he has been paid compensation of not less than $750 with respect to time after the beginning of such period and subd. (B) that if the Board finds that the employee left work voluntarily with good cause, such disqualification shall not apply, except that in such case the employee would not be considered as having days of unemployment with respect to any day in a registration period if such period includes a day which is in a period for which he could receive benefits under an unemployment law other than this chapter and he so certifies, for former cl. (i) providing that an employee who leaves work voluntarily is not considered as having days of unemployment with respect to any of the first 30 days after he so leaves if the Board finds that he left work voluntarily without good cause.

1959—Subsec. (a–2)(iv). Pub. L. 86–28 struck out cl. (iv) which prevented Sundays and holidays from being considered as days of unemployment unless they were preceded and succeeded by a day of unemployment.

1958—Subsec. (a–1)(ii). Pub. L. 85–927 substituted "other than this chapter or any other social-insurance payments under any law" for "of any State of the United States other than this chapter, or any other social-insurance payments under a law of any State or of the United States".

1951—Subsec. (a–1). Act Oct. 30, 1951, struck out cls. (iii) and (iv) which excepted from consideration as a day of unemployment or as a day of sickness, any days in any registration period in which the employee had certain specified earnings.

1946—Subsec. (a–1). Act July 31, 1946, § 309(a), (b), designated provisions of former subsec. (a) which apply both to days of unemployment and to days of sickness as subsec. (a–1) and changed cl. (ii) to include sickness and maternity benefits.

Subsec. (a–2). Act July 31, 1946, § 309(c), designated provisions of former subsec. (a) which apply only to days of unemployment as subsec. (a–2).

Subsecs. (b) to (e). Act July 31, 1946, § 310, changed references to subsec. (a) of this section to refer to subsec. (a–2).

1940—Subsec. (a)(ii). Act Oct. 10, 1940, § 14, inserted provisions relating to employee's failure to comply with instructions of the Board.

Subsec. (a)(iv). Act Oct. 10, 1940, § 15, substituted "registration period" for "half-month".

Subsec. (a)(v). Act Oct. 10, 1940, § 16, struck out applicability to employee having a right to receive compensation or other wages in lieu of notice, and inserted provisions relating to recovery of certain other payments and inapplicability of paragraph under specified conditions.

Subsec. (a)(vi). Act Oct. 10, 1940, § 17, substituted provisions relating to earnings of employees during any day in any registration period, for provisions relating to earnings of employees during any day in any half-month.

Subsec. (a)(vii), (viii). Act Oct. 10, 1940, § 18, added cls. (vii) and (viii).

1939—Subsec. (a). Act June 20, 1939, generally revised criteria for determining what shall not be considered as a day of unemployment with respect to any employee.

Subsec. (b). Act June 20, 1939, substituted provisions setting forth criteria for determining nonapplicability of disqualification provided in subsec. (a)(iii) of this section, for provisions setting forth criteria for determining nonapplicability of disqualification provided in subsec. (a)(v) of this section.

Subsecs. (c) to (e). Act June 20, 1939, substituted references to subsec. (a)(ii) of this section for references to subsec. (a)(iii) or (iv) of this section.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, see section 411(b) of Pub. L. 98–76, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 204(a) of Pub. L. 90–257 effective with respect to calendar days in benefit years beginning after June 30, 1968, and amendment by section 204(b) of Pub. L. 90–257 effective with respect to voluntary leaving of work (within the meaning of subsec. (a–2)(i) this section) after February 15, 1968, see section 208 of Pub. L. 90–257, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Section 302(b) of Pub. L. 88–133 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective only with respect to an employee who leaves work voluntarily after the date of enactment of this Act [Oct. 5, 1963].''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–28 effective with respect to benefits accruing in general benefit years which begin after the benefit year ending June 30, 1958, and in extended benefit periods which begin after Dec. 31, 1957, see section 309 of Pub. L. 86–28, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–927 effective with respect to days in benefit years after the benefit year ending on June 30, 1958, see section 207(a) of Pub. L. 85–927, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment by act Oct. 30, 1951, effective with respect to registration periods beginning on and after Jan. 1, 1952, see section 28 of act Oct. 30, 1951, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective July 1, 1947, see section 403 of act July 31, 1946, set out as a note under section 352 of this title.

EFFECTIVE DATE OF 1940 AMENDMENT

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

§ 355. Claims for benefits

(a) Publication of Board's regulations

Claims for benefits and appeals from determinations with respect thereto shall be made in accordance with such regulations as the Board shall prescribe. Each employer shall post and maintain, in places readily accessible to employees in his service, such printed statements concerning such regulations as the Board supplies to him for such purpose, and shall keep available to his employees copies of such printed statements. Such printed statements shall be supplied by the Board to each employer without cost to him.

(b) Findings, hearings, investigations, etc., by Board

The Board is authorized and directed to make findings of fact with respect to any claim for benefits and to make decisions as to the right of any claimant to benefits. The Board is further authorized to hold such hearings, to conduct such investigations and other proceedings, and to establish, by regulations or otherwise, such procedures as it may deem necessary or proper for the determination of a right to benefits. When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant's base-year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the Board initially determines to pay benefits to a claimant under this chapter, the Board shall provide notice of such determination to the claimant's base-year employer or employers.

(c) Hearing and review of decisions on claims

(1) Each qualified employee whose claim for benefits has been denied in whole or in part upon an initial determination with respect thereto upon a basis other than one which is reviewable pursuant to one of the succeeding paragraphs of this subsection, shall be granted an opportunity for a fair hearing thereon before a referee or such other reviewing body as the Board may establish or assign thereto. In any such case the Board or the person or reviewing body so established or assigned shall, by publication or otherwise, notify all parties properly interested of their right to participate in the hearing and of the time and place of the hearing.

(2) Any claimant whose claim for benefits has been denied in an initial determination with respect thereto upon the basis of his not being a qualified employee, and any claimant who contends that under an initial determination of his claim he has been awarded benefits at less than the proper rate, may appeal to the Board for the review of such determination. Thereupon the Board shall review the determination and for such review may designate one of its officers or employees to receive evidence and to report to the Board thereon together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

(3) Any base-year employer of a claimant whose claim for benefits has been granted in whole or in part, either in an initial determination with respect thereto or in a determination after a hearing pursuant to paragraph (1), and who contends that the determination is erroneous for a reason or reasons other than a reason that is reviewable under paragraph (4), may appeal to the Board for review of such determination. Despite such an appeal, the benefits awarded shall be paid to such claimant, subject to recovery by the Board if and to the extent found on the appeal to have been erroneously awarded. The Board shall take such action as is appropriate to recover the amount of such benefits including if feasible adjustment in subsequent payments pursuant to the first two paragraphs of section 352(d) of this title. Upon an appeal, the Board shall review the determination appealed from and for such review may designate one of its officers or employees to receive evidence and report to the Board thereof together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

(4) In any case in which benefits are awarded to a claimant in whole or in part upon the basis of pay earned in the service of a person or company found by the Board to be an employer as defined in this chapter but which denies that it is such an employer, such benefits awarded on such basis shall be paid to such claimant subject to a right of recovery of such benefits. The Board shall thereupon designate one of its officers or employees to receive evidence and to report to the Board on whether such benefits should be repaid. The Board may also designate one of its officers or employees to receive evidence and report to the Board whether or not any person or company is entitled to a refund of contributions or should be required to pay contributions under this chapter, regardless of whether or not any claims for benefits will have been filed upon the basis of service in the employ of such person or company, and shall follow such procedure if contributions are assessed and payment is refused or payment is made and a refund claimed upon the basis that such person or company is or will not have been liable for such contributions. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the proceedings provided for in this paragraph and for decisions upon such proceedings.

(5) Final decision of the Board in the cases provided for in the preceding three paragraphs shall be communicated to the claimant and to the other interested parties within fifteen days after it is made. Any properly interested party notified, as hereinabove provided, of his right to participate in the proceedings may obtain a review of any such decision by which he claims to be aggrieved or the determination of any issue therein in the manner provided in subsection (f) of this section with respect to the review of the Board's decisions upon claims for benefits and subject to all provisions of law applicable to the review of such decisions. Subject only to such review, the decision of the Board upon all issues determined in such decision shall be final and conclusive for all purposes and shall conclusively establish all rights and obligations, arising under this chapter, of every party notified as hereinabove provided of his right to participate in the proceedings.

(6) For purposes of this subsection and subsections (d) and (f) of this section, any base-year employer of the claimant is a properly interested party.

(7) Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f) of this section.

(d) Decisions of reviewing bodies; review and finality

The Board shall prescribe regulations governing the filing of cases with and the decision of cases by reviewing bodies, and the review of such decisions. The Board may provide for intermediate reviews of such decisions by such bodies as the Board may establish or assign thereto. The Board may (i) on its own motion review a decision of an intermediate reviewing body on the basis of the evidence previously submitted in such case, and may direct the taking of additional evidence, or (ii) permit such parties as it finds properly interested in the proceedings to take appeals to the Board. Unless a review or an appeal is had pursuant to this subsection, the decision of an intermediate reviewing body shall, subject to such regulations as the Board may prescribe, be deemed to be the final decision of the Board.

(e) Application of rules of evidence in law and equity; notice of findings

In any proceeding other than a court proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling, but a full and complete record shall be kept of all proceedings and testimony, and the Board's final determination, together with its findings of fact and conclusions of law in connection therewith, shall be communicated to the parties within fifteen days after the date of such final determination.

(f) Review of final decision of Board by Courts of Appeals; costs

Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.], of which claimant is a member, or any base-year employer of the claimant, or any other party aggrieved by a final decision under subsection (c) of this section, may, only after all administra-

tive remedies within the Board will have been availed of and exhausted, obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Court of Appeals for the Seventh Circuit or in the United States Court of Appeals for the District of Columbia. A copy of such petition, together with initial process, shall forth-with be served upon the Board or any officer designated by it for such purpose. A copy of such petition also shall forthwith be served upon any other properly interested party, and such party shall be a party to the review proceeding. Service may be made upon the Board by registered mail addressed to the Chairman. Within thirty days after receipt of service, or within such additional time as the court may allow, the Board shall file with the court in which such petition has been filed the record upon which the findings and decision complained of are based, as provided in section 2112 of title 28. Upon the filing of such petition the court shall have exclusive jurisdiction of the proceeding and of the question determined therein. It shall have power to enter a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. The findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive. No additional evidence shall be received by the court but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court the additional record. The judgment and decree of the court shall be final, subject to review as in equity cases.

An applicant for review of a final decision of the Board concerning a claim for benefits shall not be liable for costs, including costs of service, or costs of printing records, except that costs may be assessed by the court against such applicant if the court determines that the proceedings for such review have been instituted or continued without reasonable ground.

(g) Finality of Board decisions

Findings of fact and conclusions of law of the Board in the determination of any claim for benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and the determination of the Board that the unexpended funds in the account are available for the payment of any claim for benefits or refund under this chapter, shall be, except as provided in subsection (f) of this section, binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States, and shall not be subject to review in any manner other than that set forth in subsection (f) of this section.

(h) Benefits payable prior to final decision of Board

Except as may be otherwise prescribed by regulations of the Board, benefits payable with respect to any period prior to the date of a final decision of the Board with respect to a claim therefor, shall be paid only after such final decision.

(i) Fees for presenting claims; penalties

No claimant or other properly interested person claiming benefits shall be charged fees of any kind by the Board, its employees or representatives, with respect to such claim. Any such claimant or other properly interested person may be represented by counsel or other duly authorized agent, in any proceeding before the Board or its representatives or a court, but no such counsel or agent for a claimant shall either charge or receive for such services more than an amount approved by the Board or by the court before whom the proceedings of the Board are reviewed. Any person who violates any provision of this subsection shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year.

(June 25, 1938, ch. 680, §5, 52 Stat. 1099; Oct. 10, 1940, ch. 842, §§19, 20, 54 Stat. 1098; July 31, 1946, ch. 709, §§311–316, 60 Stat. 738; June 25, 1948, ch. 646, §§1, 32(a), 62 Stat. 870, 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §23, Aug. 28, 1958, 72 Stat. 948; Pub. L. 97–35, title XI, §1128(a), Aug. 13, 1981, 95 Stat. 641; Pub. L. 98–620, title IV, §402(47), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 100–647, title VII, §7104(a)–(c), Nov. 10, 1988, 102 Stat. 3771.)

REFERENCES IN TEXT

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

CODIFICATION

In subsec. (f), ''Courts of Appeals'', ''United States court of appeals for the circuit'', ''United States Court of Appeals for the Seventh Circuit'' substituted for ''Circuit Courts of Appeals'', ''United States circuit court of appeals for the circuit'', and ''United States Circuit Court of Appeals for the Seventh Circuit'', respectively, on authority of act June 25, 1948, §32(a), as amended by act May 24, 1949, §127. ''United States Court of Appeals for the District of Columbia'' substituted for ''Court of Appeals for the District of Columbia'' pursuant to act June 7, 1934, ch. 426, 48 Stat. 926.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647, §7104(a), inserted at end ''When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant's base-year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the Board initially determines to pay benefits to a claimant under this chapter, the Board shall provide notice of such determination to the claimant's base-year employer or employers.''

Subsec. (c)(1). Pub. L. 100–647, §7401(b)(1), (2), inserted ''(1)'' after ''(c)'' and inserted at end ''In any such case the Board or the person or reviewing body so established or assigned shall, by publication or otherwise,

notify all parties properly interested of their right to participate in the hearing and of the time and place of the hearing.''

Subsec. (c)(2). Pub. L. 100–647, § 7104(b)(3), inserted ''(2)'' before ''Any claimant whose claim''.

Subsec. (c)(3). Pub. L. 100–647, § 7104(b)(4), added par. (3).

Subsec. (c)(4). Pub. L. 100–647, § 7104(b)(5), inserted ''(4)'' before ''In any case in which''.

Subsec. (c)(5). Pub. L. 100–647, § 7104(b)(6), (7), inserted ''(5)'' before ''Final decision of the Board'' and substituted ''preceding three paragraphs'' for ''preceding two paragraphs''.

Subsec. (c)(6). Pub. L. 100–647, § 7104(b)(8), added par. (6).

Subsec. (c)(7). Pub. L. 100–647, § 7104(b)(9), inserted ''(7)'' before ''Any issue determinable''.

Subsec. (f). Pub. L. 100–647, § 7104(c), inserted ''or any base-year employer of the claimant,'' after ''member,'' and inserted after second sentence ''A copy of such petition also shall forthwith be served upon any other properly interested party, and such party shall be a party to the review proceeding.''

1984—Subsec. (f). Pub. L. 98–620 struck out provision requiring court to give precedence in adjudication of petition over all other civil cases not otherwise entitled by law to precedence.

1981—Subsec. (f). Pub. L. 97–35 substituted ''Within thirty days'' for ''Within fifteen days''.

1958—Subsec. (f). Pub. L. 85–791, in fourth sentence, struck out ''certify and'' after ''shall'' and ''a transcript of'' after ''filed'', and inserted ''as provided in section 2112 of title 28''; in fifth sentence, substituted ''the filing of such petition'' for ''such filing''; in sixth sentence, struck out ''upon the pleadings and transcript of the record,'' after ''enter''; and in eighth sentence struck out ''a transcript of'' before ''the additional record''.

1946—Subsec. (c). Act July 31, 1946, § 311, struck out provisions for district boards, placing their functions in referees or such other reviewing bodies as Board may establish; changed third par. to allow Board to determine if a person or company is covered by this chapter regardless of whether or not benefit claims are pending; and added last par.

Subsec. (d). Act July 31, 1946, § 312, changed references to district boards to refer to reviewing bodies.

Subsec. (e). Act July 31, 1946, § 313, struck out provisions restricting subsection to proceedings on a claim for benefits.

Subsec. (f). Act July 31, 1946, § 314, changed first sentence to provide for review by circuit courts of appeals instead of district courts.

Subsec. (g). Act July 31, 1946, § 315, inserted reference to determination of any other matter pursuant to subsec. (c) of this section.

Subsec. (i). Act July 31, 1946, § 316, extended provisions to other properly interested persons besides a claimant.

1940—Subsec. (c). Act Oct. 10, 1940, substituted provisions relating to a fair hearing for each qualified employee for provisions relating to a fair hearing for each claimant, and added paragraphs relating to review for claimants denied benefits on basis of not being a qualified employee or awarded benefits at an improper rate, payment of benefits to employees of noncomplying employers, and final decisions of Board.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7104(f) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 362 of this title] shall take effect on January 1, 1990.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, and applicable only with respect to annuities awarded on or after that date, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

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

EFFECTIVE DATE OF 1940 AMENDMENT

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

§ 355a. Acceptance of claims for benefits

Whenever there is duly tendered to the Board, by any person, any claim for unemployment compensation pursuant to the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.], such claim shall be accepted by the Board without delay and appropriate administrative action for the allowance or disallowance of such claim shall be taken by the Board at the earliest practicable time.

(June 29, 1956, ch. 477, title V, § 501, 70 Stat. 437.)

REFERENCES IN TEXT

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

CODIFICATION

Section was enacted as part of act June 29, 1956, popularly known as the Departments of Labor, and Health, Education, and Welfare, Appropriation Act, 1957, and not as a part of the Railroad Unemployment Insurance Act which comprises this chapter.

PRIOR PROVISIONS

Similar provisions were contained in the following prior appropriation act: Aug. 1, 1955, ch. 437, title V, § 501, 69 Stat. 411.

§ 356. Returns of compensation; conclusiveness; failure to make

Employers shall file with the Board, in such manner and at such times as the Board by regulations may prescribe, returns of compensation of employees, and, if the Board shall so require, shall distribute to employees annual statements of compensation: *Provided*, That no returns shall be required of employers which would duplicate information contained in similar returns required under any other Act of Congress administered by the Board. The Board's record of the compensation so returned shall, for the purpose of determining eligibility for and the amount of benefits, be conclusive as to the amount of compensation paid to an employee during the period covered by the return, and the fact that the Board's records show that no return was made of the compensation claimed to have been paid to an employee during a particular period shall, for the purposes of determining eligibility for and the amount of benefits, be taken as conclusive that no compensation was paid to such employee during that period, unless the error in the amount of compensation in the one case, or failure to make or record return of the com-

pensation in the other case, is called to the attention of the Board within eighteen months after the date on which the last return covering any portion of the calendar year which includes such period is required to have been made.

(June 25, 1938, ch. 680, § 6, 52 Stat. 1101; June 20, 1939, ch. 227, § 12, 53 Stat. 847; Oct. 10, 1940, ch. 842, § 21, 54 Stat. 1099; July 31, 1946, ch. 709, § 317, 60 Stat. 739; Pub. L. 89–700, title II, § 203, Oct. 30, 1966, 80 Stat. 1087.)

AMENDMENTS

1966—Pub. L. 89–700 struck out provisions which required returns of compensation of employees to be under oath.

1946—Act July 31, 1946, changed references to compensation earned by an employee to refer to compensation paid to an employee.

1940—Act Oct. 10, 1940, inserted provisions relating to conclusiveness of returns for purpose of determining eligibility for and amount of benefits, and struck out requirements that returns relate to monthly compensation and that distributed statements of compensation be prepared by Board.

1939—Act June 20, 1939, struck out requirement that return shall be in form required by Board, inserted proviso relating to return containing duplicative information, and substituted provisions relating to conclusiveness of returns not questioned within eighteen months after last return is filed, for provisions relating to conclusiveness of returns not questioned within four years after last date on which return was required to be made.

EFFECTIVE DATE OF 1946 AMENDMENT

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

EFFECTIVE DATE OF 1940 AMENDMENT

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

§ 357. Free transportation

It shall not be unlawful for carriers to furnish free transportation to employees qualified for benefits or serving waiting periods under this chapter.

(June 25, 1938, ch. 680, § 7, 52 Stat. 1102.)

§ 358. Contributions

(a) Employer contribution

(1) In general

(A) General rule

(i) Contribution rate generally

Every employer shall pay a contribution, with respect to having employees in his service, equal to the percentage determined under subparagraph (B), (C), or (D), whichever is applicable, of so much of the compensation paid in any calendar month by such employer to any employee as is not in excess of the monthly compensation base for that month as computed under section 351(i) of this title.

(ii) Multiple employer limitation

If compensation is paid to an employee by more than one employer in any calendar month—

(I) the contributions required by this subsection shall not apply to any amount of the aggregate compensation paid to such employee by all such employers in such calendar month which is in excess of such monthly compensation base; and

(II) each employer (other than a subordinate unit of a national-railway-labor-organization employer) shall be liable for that portion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him to such employee bears to the total compensation paid in such month by all such employers to such employee.

In the event that the compensation paid by such employers to the employee in such month is less than such monthly compensation base, each subordinate unit of a national-railway-labor-organization employer shall be liable for such portion of any additional contribution as the compensation paid by such employer to such employee in such month bears to the total compensation paid by all such employers to such employee in such month.

(B) Transitional rule

(i) 1st, 2d, and 3d calendar years

Except as provided in clause (vi), with respect to compensation paid in calendar years 1988, 1989, and 1990, the contribution rate shall be 8 percent.

(ii) 4th calendar year

With respect to compensation paid in calendar year 1991, the contribution rate shall be the smaller of—

(I) the maximum contribution limit computed under paragraph (20); or

(II) the percentage computed pursuant to the following formula:

$$R = \frac{2A+B}{3}$$

(iii) 5th calendar year

With respect to compensation paid in calendar year 1992, the contribution rate shall be the smaller of—

(I) the maximum contribution limit computed under paragraph (20); or

(II) the percentage computed pursuant to the following formula:

$$R = \frac{A+2C}{3}$$

(iv) Meaning of symbols

For purposes of the formulas in clauses (ii) and (iii)—

(I) ''R'' is the applicable contribution rate expressed as a percentage for months in the calendar year;

(II) ''A'' is the contribution rate determined under clause (i);

(III) ''B'' is the percentage rate for the employer, as determined under subparagraph (C), for calendar year 1991; and

(IV) ''C'' is the percentage rate for the employer, as determined under subparagraph (C), for calendar year 1992.

(v) Special rule for certain computations

For purposes of computing B and C in such formulas—

(I) the percentage rate computed under subparagraph (C), if more than the maximum contribution limit computed under paragraph (20) shall not be reduced to that limit; and

(II) any computations which under subparagraph (C) are to be made on the basis of a 4-quarter or a 12-quarter period ending on a given June 30 shall be made on the basis of a period beginning on January 1, 1990, and ending on that June 30, and the amount so computed shall be increased to an amount that bears the same ratio to the amount so computed as 4 or 12, as appropriate, bears to the number of calendar quarters in the period on which the computation was based.

(vi) Special transition rule for public commuter railroads

With respect to each of calendar years 1989 and 1990, the contribution of the National Railroad Passenger Corporation and an employer which on November 10, 1988, is a publicly funded and publicly operated carrier providing rail commuter service shall be equal to the amount of benefits attributable to such carrier, plus an amount equal to 0.65 percent of the total compensation paid by that employer in that year on which that employer's contribution would be based under clause (i) if such employer's contribution were determined under that clause.

(C) Experience-rated contributions

With respect to compensation paid in a calendar year that begins after December 31, 1992, the contribution rate for each employer shall be determined as follows:

(i) Step 1

Compute the employer's benefit ratio as of the preceding June 30 to 4 decimal points in accordance with paragraph (2).

(ii) Step 2

Subtract the employer's reserve ratio as of the preceding June 30 as computed to 4 decimal points in accordance with paragraph (4).

(iii) Step 3

Subtract the pooled credit ratio for the calendar year, if any, as computed to 4 decimal points in accordance with paragraph (12).

(iv) Step 4

Multiply by 100 the total arrived at under the steps set forth in clauses (i) through (iii) so as to obtain a percentage rate, which shall be rounded to the nearest 100th of 1 percent. If the total arrived at under such steps is 0 or less than 0, the percentage rate as so computed shall be 0.

(v) Step 5

Add 0.65 to the percentage rate arrived at under clause (iv), representing the portion of the employer's contribution which is to be deposited to the credit of the fund under subsection (i) of this section.

(vi) Step 6

Add the surcharge rate for the calendar year, if any, as computed under paragraph (14).

(vii) Step 7

Add the pooled charge ratio for the calendar year, if any, as computed to 4 decimal points under paragraph (13) and multiplied by 100.

(viii) Step 8

Reduce the precentage[1] rate computed in accordance with the preceding steps to the maximum contribution limit computed under paragraph (20), if such rate is higher than such limit. The rate computed in accordance with the preceding steps, after any reduction under this clause, is the contribution rate.

(D) New-employer contribution rates

Notwithstanding subparagraphs (B) and (C), the contribution rate applicable to a new employer who does not become subject to this chapter until after December 31, 1989, shall be determined as follows:

(i) 1st calendar year

With respect to compensation paid in calendar months before the end of the first full calendar year in which the employer is subject to this chapter, the contribution rate shall be the average contribution rate paid by all employers during the 3 calendar years preceding the calendar year before the calendar year in which the compensation is paid. The average contribution rate shall be determined—

(I) by dividing the aggregate contributions paid by all employers under this subsection in those 3 calendar years by the aggregate compensation with respect to which such contributions were paid; and

(II) by multiplying the resulting ratio as computed to 4 decimal points by 100.

(ii) 2d calendar year

With respect to compensation paid in calendar months in the next calendar year, the contribution rate shall be the smaller of—

(I) the maximum contribution limit computed under paragraph (20); or

(II) the percentage rate computed pursuant to the following formula:

$$R=\left(\frac{2(A2)+B}{3}\right)$$

(iii) 3d calendar year

With respect to compensation paid in calendar months in the third full calendar year in which the employer is subject to the coverage of this chapter, the contribution rate shall be the smaller of—

[1] So in original. Probably should be ''percentage''.

(I) the maximum contribution limit computed under paragraph (20); or

(II) the percentage rate computed pursuant to the following formula:

$$R = \frac{A3+2C}{3}$$

(iv) Subsequent calendar years

With respect to all calendar months in calendar years subsequent to that calendar year, the contribution rate shall be determined under subparagraph (C).

(v) Meaning of symbols

For purposes of the formulas in clauses (ii) and (iii)—

(I) ''R'' is the applicable contribution rate expressed as a percentage for months in the calendar year;

(II) ''A1'' is the contribution rate determined under clause (i) for such employer's first full calendar year;

(III) ''A2'' is the contribution rate which would have been determined under clause (i) if the employer's second calendar year had been its first full calendar year;

(IV) ''A3'' is the contribution rate which would have been determined under clause (i) if the employer's third calendar year had been such employer's first full calendar year;

(V) ''B'' is the contribution rate for the employer as determined under subparagraph (C) for the employer's second full calendar year; and

(VI) ''C'' is the contribution rate for the employer as determined under subparagraph (C) for the employer's third full calendar year.

(vi) Special rule for certain computations

For purposes of computing B and C in such formulas—

(I) the percentage rate computed under subparagraph (C), shall not be reduced under clause (viii) of that subparagraph; and

(II) any computations which under subparagraph (C) are to be made on the basis of a 4-quarter or 12-quarter period ending on a given June 30 shall be made on the basis of a period commencing with the first day of the first calendar quarter that begins after the date on which the employer first commenced paying compensation subject to this chapter and ending on that June 30, and the amount so computed shall be increased to an amount that bears the same ratio to the amount so computed as 4 or 12, as appropriate, bears to the number of calendar quarters in the period on which the computation was based.

(2) Benefit ratio

An employer's benefit ratio as of any given June 30 shall be determined by dividing all benefits charged to the employer under paragraph (15) during the 12 calendar quarters ending on such June 30 by the employer's 3-year compensation base as of such June 30 as computed under paragraph (3).

(3) 3-year compensation base

An employer's 3-year compensation base as of any given June 30 is the aggregate compensation with respect to which contributions were paid by the employer under this subsection in the 12 calendar quarters ending on such June 30.

(4) Reserve ratio

An employer's reserve ratio as of any given June 30 shall be computed by dividing the employer's reserve balance as of such June 30, as computed under paragraph (6), by that employer's 1-year compensation base as of such June 30, as computed under paragraph (5). The employer's reserve ratio may be either a positive or a negative figure, depending upon whether the employer's reserve balance is a positive or negative figure.

(5) 1-year compensation base

An employer's 1-year compensation base as of any given June 30 is the aggregate compensation with respect to which contributions were paid by the employer under this subsection in the 4 calendar quarters ending on such June 30.

(6) Reserve balance

An employer's reserve balance as of any given June 30 shall be determined by subtracting the employer's cumulative benefit balance as of such June 30, computed under paragraph (7), from the employer's net cumulative contribution balance as of such June 30, computed under paragraph (8). An employer's reserve balance may be either positive or negative, depending upon whether or not that employer's net cumulative contribution balance exceeds the employer's cumulative benefit balance.

(7) Cumulative benefit balance

An employer's cumulative benefit balance as of any given June 30 shall be determined by adding—

(A) the net amount of the benefits charged to the employer under paragraph (15) on or after January 1, 1990; and

(B) the cumulative amount of the employer's unallocated charges for the same period, if any, as computed under paragraph (9).

(8) Net cumulative contribution balance

An employer's net cumulative contribution balance as of any given June 30 shall be determined as follows:

(A) Step 1

Compute the sum of

(i) all contributions paid by the employer pursuant to this subsection;

(ii) that portion of the tax imposed under section 3321(a) of title 26 that is attributable to the surtax rate under section 516(b) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988;[2] and

[2] See References in Text note below.

(iii) any taxes paid by the employer pursuant to section 3321(a) of title 26 (after the outstanding balance of loans made under section 360(d) of this title before October 1, 1985, plus interest, have been paid);

on or after January 1, 1990.

(B) Step 2

Subtract an amount equal to the amount of such contributions deposited to the credit of the fund under subsection (i) of this section.

(C) Step 3

Add an amount equal to the aggregate amount by which such contributions were reduced in prior calendar years as a result of pooled credits, if any, under paragraph (1)(C)(iii).

(9) Unallocated charge

An employer's unallocated charge as of any given June 30 is the amount that as of such June 30 bears the same ratio to the system unallocated charge balance, computed under paragraph (10), as the employer's 1-year compensation base, computed under paragraph (5), bears to the system compensation base computed under paragraph (11).

(10) System unallocated charge balance

The system unallocated charge balance as of any given June 30 shall be determined as follows:

(A) Step 1

Compute the aggregate amount of all interest paid by the account on loans from the Railroad Retirement Account after September 30, 1985, pursuant to section 360(d) of this title, during the 4 calendar quarters ending on that June 30.

(B) Step 2

Add the aggregate amount of any additions to the system unallocated charge balance specified in paragraphs (15) and (16), during that period.

(C) Step 3

Add the aggregate amount of any other expenditures by the account during that period not chargeable to any individual employer under paragraph (15) or to the fund under section 361 of this title.

(D) Step 4

Subtract the aggregate amount of all income to the account, under section 360(a)(iv) of this title or section 360(a)(vii) of this title, during that period.

(E) Step 5

Subtract the aggregate amount of all transfers to the account, pursuant to section 361(d) of this title, during that period.

(F) Step 6

Subtract the aggregate amount of all other income and receipts of the account, during that period, which are not assigned to individual employer balances.

(G) Step 7

Subtract the net cumulative contribution balance of each employer whose balance has been cancelled pursuant to paragraph (16), during that period, calculated as of the date of such cancellation.

(11) System compensation base

The system compensation base as of any given June 30 shall be determined by adding together the amounts of the 1-year compensation bases of all employers and employee representatives subject to this chapter, computed in accordance with paragraph (5), as of such June 30.

(12) Pooled credit ratio

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

(A) Step 1

Compute the balance to the credit of the account as of the close of business on the preceding June 30, including any amounts in the account attributable to loans made under section 360(d) of this title before October 1, 1985, but disregarding the obligation to repay such loans and interest thereon. In determining such balance as of June 30 of any year, so much of the balance to the credit of the railroad unemployment insurance administration fund as of the close of business on such date as is in excess of $6,000,000 shall be deemed to be part of the balance to the credit of such account. There will be a pooled credit ratio for the calendar year only if that balance is in excess of the greater of $250,000,000 or of the amount that bears the same ratio to $250,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (11).

(B) Step 2

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

(13) Pooled charge ratio

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

(A) Step 1

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

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

(ii) the maximum contribution limit.

(B) Step 2

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

(C) Step 3

For each employer whose contribution rate as computed through step 3 under para-

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

(D) Step 4

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

(14) Surcharge rate

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

(A) Step 1

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

(B) Step 2

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

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

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

(15) Chargeable benefits

(A) In general

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

(B) Adjustments

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

(C) Multiple employers

(i) In general

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

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

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

(ii) Special rule for employer with cancelled balances

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

(16) Defunct employer

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

(17) Individual employer record

(A) In general

As of January 1, 1990, the Board shall commence maintaining an individual employer

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

(B) Definition

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

(18) Joint employer records

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

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

(A) With other employers

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

(B) With nonemployers

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

(C) Sale of assets

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

(D) Reincorporation

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

(E) Abandonment

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

(20) Maximum contribution limit

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

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

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

(i) beginning on the later of—

(I) January 1, 1990;

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

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

(ii) ending on that June 30.

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

(b) Employee representative contribution

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

(c) Board proclamation of balance

(1) In general

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

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

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

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

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

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

(2) Publication of notice

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

(d) Notifications by Board

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

(2) Not later than October 15, 1990, and October 15 of each year thereafter, the Board shall notify each employer and employee representative of its benefit ratio, reserve ratio, 1-year compensation base, 3-year compensation base, unallocated charge, and reserve balance as of the preceding June 30 as computed in accordance with paragraphs (2), (3), (4), (5), (6), and (9) of subsection (a) of this section, and of the contribution rate applicable to the employer or employee representative in the following calendar year as computed under paragraphs (1)(B), (C), or (D) of that subsection.

(e) Information to verify accuracy to be made available

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

(f) Fractional parts of a cent

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

(g) Adjustments for improper payments

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

(h) Refunding overpayment; collecting underpayment

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

(i) Collection and deposit of contributions

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

(j) Time for payment; failure to pay promptly

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

(k) Application of other laws; authority of Board

All provisions of law, including penalties, applicable with respect to any tax imposed by the provisions of the Railroad Retirement Tax Act [26 U.S.C. 3201 et seq.], insofar as applicable and not inconsistent with the provisions of this chapter, shall be applicable with respect to the contributions required by this chapter: *Provided*, That all authority and functions conferred by or pursuant to such provisions upon any officer or employee of the United States, except the authority to institute and prosecute, and the function of instituting and prosecuting, criminal proceedings, shall, with respect to such contributions, be vested in and exercised by the Board or such officers and employees of the Board as it may designate therefor. The remedies available under the first sentence of this subsection for an employer or employee representative who contests the amount of contributions payable by him shall also apply with respect to a contention that the contribution rate determined by the Board under subsection (a) or (b) of this section to be applicable to such

employer or employee representative is inaccurate or otherwise improper.

(June 25, 1938, ch. 680, § 8, 52 Stat. 1102; July 31, 1946, ch. 709, § 318, 60 Stat. 739; June 23, 1948, ch. 608, §§ 4, 5(a), 6, 62 Stat. 577, 578; Aug. 31, 1954, ch. 1164, pt. III, §§ 305, 306, 68 Stat. 1042; Pub. L. 85–927, pt. II, § 203, Sept. 6, 1958, 72 Stat. 1782; Pub. L. 86–28, pt. III, §§ 306, 307, May 19, 1959, 73 Stat. 32; Pub. L. 88–133, title III, §§ 303(a), 304, Oct. 5, 1963, 77 Stat. 222, 223; Pub. L. 89–700, title II, § 204, title III, § 301(i), (ii), Oct. 30, 1966, 80 Stat. 1087, 1088; Pub. L. 94–92, title I, § 1(g), (h), Aug. 9, 1975, 89 Stat. 463; Pub. L. 97–35, title XI, § 1128(b), Aug. 13, 1981, 95 Stat. 641; Pub. L. 98–76, title V, § 503(a), Aug. 12, 1983, 97 Stat. 440; Pub. L. 100–647, title VII, §§ 7102(a)–(d), 7103(a), Nov. 10, 1988, 102 Stat. 3759–3770; Pub. L. 101–322, § 8(a), July 6, 1990, 104 Stat. 297.)

REFERENCES IN TEXT

Section 516(b) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988, referred to in subsec. (a)(8)(A)(ii), probably means section 7106(b) of Pub. L. 100–647, title VII, Nov. 10, 1988, 102 Stat. 3773, which is set out as a note under section 3321 of Title 26, Internal Revenue Code.

The Railroad Retirement Tax Act, referred to in subsec. (k), is act Aug. 16, 1954, ch. 736, §§ 3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, as amended, which is classified generally to chapter 22 (§ 3201 et seq.) of Title 26. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

AMENDMENTS

1990—Subsec. (a)(1)(B)(vi). Pub. L. 101–322 inserted ''the National Railroad Passenger Corporation and'' after ''the contribution of''.

1988—Subsec. (a). Pub. L. 100–647, § 7102(a), added subsec. (a) and struck out former subsec. (a) which consisted of two undesignated pars.

Subsec. (b). Pub. L. 100–647, § 7102(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Each employee representative shall pay a contribution with respect to so much of the compensation paid to him for services performed as an employee representative during any month as is not, for any such calendar month, in excess of $600, at the rate applicable to employers in accordance with subsection (a) of this section. The compensation of an employee representative and the contribution with respect thereto shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in this chapter.''

Subsecs. (c) to (g). Pub. L. 100–647, § 7102(d), added subsecs. (c) to (e) and redesignated former subsecs. (c) to (g) as (f) to (j), respectively.

Subsec. (h). Pub. L. 100–647, § 7102(d)(1), redesignated former subsec. (e) as (h). Former subsec. (h) redesignated (k).

Pub. L. 100–647, § 7102(c), inserted at end ''The remedies available under the first sentence of this subsection for an employer or employee representative who contests the amount of contributions payable by him shall also apply with respect to a contention that the contribution rate determined by the Board under subsection (a) or (b) of this section to be applicable to such employer or employee representative is inaccurate or otherwise improper.''

Subsec. (i). Pub. L. 100–647, § 7103(a), substituted ''0.65'' for ''0.5''.

Pub. L. 100–647, § 7102(d)(1), redesignated former subsec. (f) as (i).

Subsecs. (j), (k). Pub. L. 100–647, § 7102(d)(1), redesignated former subsecs. (g) and (h) as (j) and (k), respectively.

1983—Subsec. (a). Pub. L. 98–79, § 503(a)(1), amended provisions preceding table generally. Prior to amendment, such provisions read as follows: ''Every employer shall pay a contribution, with respect to having employees in his service, equal to the percentage determined as set forth below of so much of the compensation as is not in excess of $300 for any calendar month paid by him to any employee for services rendered to him after June 30, 1939, and before July 1, 1954, and is not in excess of $350 for any calendar month paid by him to any employee for services rendered to him after June 30, 1954, and before June 1, 1959, and is not in excess of $400 for any calendar month paid by him to any employee for services rendered to him after May 31, 1959: *Provided, however*, That if compensation is paid to an employee by more than one employer with respect to any such calendar month, the contributions required by this subsection shall apply to not more than $300 for any month before July 1, 1954, and to not more than $350 for any month after June 30, 1954, and before June 1, 1959, and to not more than $400 for any month after May 31, 1959, of the aggregate compensation paid to said employee by all said employers with respect to such calendar month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services during any calendar month after 1946 bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300 if such month is before July 1, 1954, or less than $350 if such month is after June 30, 1954, and before June 1, 1959, or less than $400 if such month is after May 31, 1959, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional contribution as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month:

''1. With respect to compensation paid prior to January 1, 1948, the rate shall be 3 per centum;

''2. With respect to compensation paid after the month in which this chapter was amended in 1959, the rate shall be as follows:''.

Subsec. (b). Pub. L. 98–76, § 503(a)(2), struck out ''after December 1975'' after ''during any month'', and substituted ''$600'' for ''$400''.

1981—Subsec. (f). Pub. L. 97–35 substituted ''equals 0.5 per centum'' for ''equals 0.25 per centum''.

1975—Subsec. (a). Pub. L. 94–92, § 1(g), substituted table reading:

''$300,000,000 or more	0.5
$200,000,000 or more but less than $300,000,000	4.0
$100,000,000 or more but less than $200,000,000	5.5
$50,000,000 or more but less than $100,000,000	7.0
Less than $50,000,000	8.0''

for prior provisions reading:

''$450,000,000 or more	1½
$400,000,000 or more but less than $450,000,000	2
$350,000,000 or more but less than $400,000,000	2½
$300,000,000 or more but less than $350,000,000	3
Less than $300,000,000	4''

Subsec. (b). Pub. L. 94–92, § 1(h), substituted ''Each employee representative shall pay a contribution with respect to so much of the compensation paid to him for services performed as an employee representative during any month after December 1975 as is not, for any such calendar month, in excess of $400, at the rate applicable to employers in accordance with subsection (a) of this section.'' for ''Each employee representative shall pay, with respect to his income, a contribution equal to 4 per centum of so much of the compensation

of such employee representative as is not in excess of $300 for any calendar month, paid to him for services performed as an employee representative after June 30, 1939, and before July 1, 1954, and as is not in excess of $350 paid to him for services rendered as an employee representative in any calendar month after June 30, 1954, and before June 1, 1959, and as is not in excess of $400 paid to him for services rendered as an employee representative in any calendar month after May 31, 1959.''

1966—Subsec. (a). Pub. L. 89–700, § 301(i), (ii), substituted ''before June 1, 1959'' for ''before the calendar month next following the month in which this Act was amended in 1959'', and ''after May 31, 1959'' for ''after the month in which this Act was so amended''.

Subsec. (b). Pub. L. 89–700, §§ 204(a), 301(i), (ii), increased contribution rate from 3¾ per centum to 4 per centum, and substituted ''before June 1, 1959'' for ''before the calendar month next following the month in which this Act was amended in 1959'', and ''after May 31, 1959'' for ''after the month in which this Act was so amended''.

Subsec. (h). Pub. L. 89–700, § 204(b), substituted ''the provisions of the Railroad Retirement Tax Act'' for ''section 1800 or 2700 of title 26, and the provisions of section 3661 of title 26''.

1963—Subsec. (a). Pub. L. 88–133, § 303(a), increased contribution rate in table from 3¾ to 4 percent when balance to credit of railroad unemployment insurance account as of close of business on Sept. 30 of any year is less than $300,000,000.

Subsec. (f). Pub. L. 88–133, § 304, increased amount of contributions to be deposited to credit of fund from 0.2 per centum to 0.25 per centum of total compensation on which such contributions are based.

1959—Subsec. (a). Pub. L. 86–28, § 306, increased earnings base from $350 to $400 per month for months after May 1959 for purposes of unemployment insurance contributions, and contribution rates with respect to compensation paid after May 1959 by 1 percent for each of the categories over $300,000,000, by 1¼ percent when the balance was $250,000,000 or more but less than $300,000,000, and by ¾ of 1 percent where the balance was less than $250,000,000.

Subsec. (b). Pub. L. 86–28, § 307, increased contribution rate from 3 to 3¾ per centum and maximum amount of compensation for which contribution is payable from $350 to $400 for services rendered in any calendar month after May 1959.

1958—Subsec. (a). Pub. L. 85–927 inserted provision deeming balance to credit of fund a part of balance to credit of account.

1954—Subsecs. (a), (b). Act Aug. 31, 1954, increased earnings base from $300 to $350 per month after June 30, 1954 for purposes of unemployment insurance contributions.

1948—Subsec. (a). Act June 23, 1948, §§ 4, 5(a), substituted for flat 3 percent contribution rate a sliding scale under which tax rate is automatically adjusted in accordance with amount of reserves in unemployment insurance account as of close of business on Sept. 30 of each year.

Subsec. (f). Act June 23, 1948, § 6, changed rates of credits to account and fund.

1946—Subsec. (a). Act July 31, 1946, § 318(a), changed basis of contributions from compensation payable during a month to compensation paid during the month and inserted provisions relating to proration of contributions where one of the employers is a railway labor organization.

Subsec. (h). Act July 31, 1946, § 318(b), substituted references to sections of the Internal Revenue Code for references to the sections of the Internal Revenue Acts of 1926 and 1934 from which they were derived.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 8(b) of Pub. L. 101–322 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as of January 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7102(e) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall take effect upon the date of the enactment of this Act [Nov. 10, 1988].''

Section 7103(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and sections 360 and 361 of this title] shall apply with respect to compensation paid in months beginning after September 30, 1988.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, see section 503(c) of Pub. L. 98–76, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, and applicable only with respect to annuities awarded on or after that date, see section 1129 of Pub. L. 97–35, set out as a note under section 231 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–92 effective with respect to compensation paid for services rendered after Dec. 31, 1975, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Section 303(a) of Pub. L. 88–133 provided that the amendment made by that section is effective with respect to compensation paid after Dec. 31, 1963.

Section 304 of Pub. L. 88–133 provided that the amendment made by that section is effective with respect to contributions collected by the Railroad Retirement Board after Dec. 31, 1961.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by sections 306(4), (5) and 307(1) of Pub. L. 86–28 effective first day of calendar month next following May 1959, and applicable only with respect to compensation paid for services rendered in calendar months after May 1959, see section 309 of Pub. L. 86–28, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

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

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective July 1, 1954, see section 401 of act Aug. 31, 1954, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act July 31, 1946, effective Jan. 1, 1947, see section 402 of act July 31, 1946.

ADJUSTMENT OR REFUND OF EXCESSIVE CONTRIBUTIONS

Section 5(b) of act June 23, 1948, provided that: ''Contributions paid under subsection (a) of section 8 of the Railroad Unemployment Insurance Act, as amended [subsec. (a) of this section], prior to the enactment of the foregoing amendment thereof [June 23, 1948] which are in excess of those required by said subsection as so amended shall be subject to adjustment or refund in accordance with the provisions of subsections (d) and (e) of said section 8 [subsecs. (d) and (e) of this section].''

§ 359. Penalties

(a) Failure to make report or furnish information; false or fraudulent statement or claim

Any officer or agent of an employer, or any employee representative, or any employee act-

ing in his own behalf, or any person whether or not of the character hereinbefore defined, who shall willfully fail or refuse to make any report or furnish any information required by the Board in the administration of this chapter, or who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or report when a statement or report is required to be made for the purposes of this chapter, or who shall knowingly make or aid in making or cause to be made any false or fraudulent statement or claim for the purpose of causing benefits or other payment to be made or not to be made under this chapter, shall be punished by a fine of not more than $10,000 or by imprisonment not exceeding one year, or both.

(b) Agreement by employee to bear employer's contribution

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

(c) Punishments not specifically provided

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

(d) Payment and disposition of fines or penalties

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

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

§ 360. Railroad unemployment insurance account

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

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

(b) Payment of benefits or refunds

All moneys in the account shall be used solely for the payment of the benefits and refunds provided for by this chapter. The Board shall, from time to time, certify to the Secretary of the Treasury the name and address of each person or company entitled to receive benefits or a refund payment under this chapter, the amount of such payment, and the time at which it shall be made. Prior to audit or settlement by the Government Accountability Office, the Secretary of the Treasury, through the Fiscal Service of the Treasury Department, shall make payments from the account directly to such person or company of the amount of benefits or refund so certified by the Board: *Provided, however*, That if the Board shall so request, the Secretary of the Treasury, through the Fiscal Service of the Treasury Department, shall transmit benefits payments to the Board for distribution by it through employment offices or in such other manner as the Board deems proper.

(c) Annual report to Congress

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

(d) Transfer and retransfer of funds; interest

Whenever the Board finds at any time that the balance in the railroad unemployment insurance account will be insufficient to pay the benefits and refunds which it estimates are due, or will become due, under this chapter, it shall request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the railroad unemployment insurance account such moneys as the Board estimates would be necessary for the payment of such benefits and refunds, and the Secretary shall make such transfer. Whenever the Board finds that the balance in the railroad unemployment insurance account, without regard to the amounts transferred pursuant to the next preceding sentence, is sufficient to pay such benefits and refunds, it shall request the Secretary of the Treasury to retransfer from the railroad unemployment insurance account to the credit of the Railroad Retirement Account such moneys as in its judgment are not needed for the payment of such benefits and refunds, plus interest at a rate for each fiscal year equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the

[1] See References in Text note below.

nearest multiple of one-eighth of 1 per centum, and the Secretary shall make such retransfer. In determining the balance in the railroad unemployment insurance account as of September 30 of any year pursuant to section 358(a) of this title, any moneys transferred from the Railroad Retirement Account to the credit of the railroad unemployment insurance account which have not been retransferred as of such date from the latter account to the credit of the former, plus the interest accrued thereon to that date, shall be disregarded.

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

REFERENCES IN TEXT

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

CODIFICATION

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

AMENDMENTS

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

1988—Subsec. (a). Pub. L. 100–647 substituted ''0.65'' for ''0.5''.

1986—Subsec. (d). Pub. L. 99–272 struck out at end ''No transfer shall be made under this subsection from Railroad Retirement Account after December 19, 1985, and no such transfer shall be made on or before December 19, 1985, for purposes of paying benefits and refunds due after such date.''

1985—Subsec. (d). Pub. L. 99–189 substituted ''December 19, 1985'' for ''December 18, 1985'' wherever appearing.

Pub. L. 99–181 substituted ''December 18, 1985'' for ''December 14, 1985'' wherever appearing.

Pub. L. 99–155 substituted ''December 14, 1985'' for ''November 14, 1985'' wherever appearing.

Pub. L. 99–107 substituted ''November 14, 1985'' for ''September 30, 1985'' wherever appearing.

1983—Subsec. (d). Pub. L. 98–76 inserted provisions that no transfer shall be made under this subsection from Railroad Retirement Account after September 30, 1985, and no such transfer shall be made on or before September 30, 1985, for purposes of paying benefits and refunds due after such date.

1975—Subsec. (a)(i). Pub. L. 94–92, § 1(i)(1), substituted ''0.5'' for ''0.25''.

Subsec. (a)(ii). Pub. L. 94–92, § 1(i)(2), struck out ''and pursuant to subsection (h)[e] of this section''. Congress probably intended to strike out internal reference to subsec. (e) of this section in view of repeal of subsection by section 403 of Pub. L. 93–445 and it being last subsection of section.

1974—Subsec. (e). Pub. L. 93–445 repealed subsec. (e) which was added by Pub. L. 90–257 as subsec. (h) and redesignated (e) for purposes of codification, and which provided for annual adjustment of account and transfer of funds from Railroad Retirement Account.

1968—Subsec. (a)(ii). Pub. L. 90–257 inserted reference to amounts transferred or paid into account pursuant to subsec. (e) of this section.

Subsec. (e). Pub. L. 90–257 added subsec. (e) which was subsec. (h) in original and was redesignated (e) for purposes of codification.

1966—Subsec. (a). Pub. L. 89–700 substituted ''0.25 per centum'' for ''0.2 per centum''.

1963—Subsec. (d). Pub. L. 88–133 substituted ''a rate for each fiscal year equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the nearest multiple of one-eighth of 1 per centum'' for ''the rate of 3 per centum per annum.''

1959—Subsec. (d). Pub. L. 86–28 substituted provisions authorizing Board to request transfer and retransfer of funds for provisions which directed Secretary of the Treasury to advance not more than $25,000,000 for purpose of paying benefits.

1948—Subsec. (a)(i). Act June 23, 1948, changed computation of insurance account.

1939—Subsec. (a). Act June 20, 1939, substituted ''(f)'' for ''(g)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable with respect to compensation paid in months beginning after Sept. 30, 1988, see section 7103(c) of Pub. L. 100–647, set out as a note under section 358 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–92 effective with respect to compensation paid for services rendered after Dec. 31, 1975; and effective Aug. 9, 1975, respectively, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1963 AMENDMENT

Section 305 of Pub. L. 88–133 provided that the amendment made by that section is effective after June 30, 1964.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 308(b) of Pub. L. 86–28 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of enactment of this Act [May 19, 1959].''

TRANSFER OF FUNCTIONS

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

§ 361. Railroad unemployment insurance administration fund

(a) Maintenance of account; amounts constituting fund

The Secretary of the Treasury shall maintain in the unemployment trust fund established pur-

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

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

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

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

(c) Availability for administrative expenses

Notwithstanding any other provision of law, all moneys at any time credited to the fund are permanently appropriated to the Board to be continuously available to the Board without further appropriation for any expenses necessary or incidental to administering this chapter, including personal services in the District of Columbia and elsewhere; travel expenses, including expenses of attendance at meetings when authorized by the Board; actual transportation expenses and not to exceed $10 per diem to cover subsistence and other expenses while in attendance at and en route to and from the place to which he is invited, to any person other than an employee of the Federal Government who may, from time to time, be invited to the city of Washington or elsewhere for conference or advisory purposes in furthering the work of the Board; when found by the Board to be in the interest of the Government, not exceeding 3 per centum, in any fiscal year, of the amounts credited during such year to the fund, for engaging persons or organizations, by contract or otherwise, for any special technical or professional services, determined necessary by the Board, including but not restricted to accounting, actuarial, statistical, and reporting services, without regard to section 5 of title 41 and the provisions of other laws applicable to the employment and compensation of officers and employees of the United States; services; advertising, postage, telephone, telegraph, teletype, and other communication services and tolls; supplies; reproducing, photographing, and all other equipment, office appliances, and laborsaving devices, including devices for internal communication and conveyance; purchase and exchange, operation, maintenance and repair of motor-propelled passenger-carrying vehicles to be used only for official purposes in the District of Columbia and in the field; printing and binding; purchase and exchange of law books, books of reference, and directories; periodicals, newspapers and press clippings, in such amounts as the Board deems necessary, without regard to the provisions of section 192 of the Revised Statutes; manuscripts and special reports; membership fees or dues in organizations which issue publications to members only, or to members at a lower price than to others, payment for which may be made in advance; rentals, including garages, in the District of Columbia or elsewhere; alterations and repairs; if found by the Board to be necessary to expedite the certification to the Board by the Director of the Office of Personnel Management of persons eligible to be employed by the Board, and to the extent that the Board finds such expedition necessary, meeting the expenses of the Director of the Office of Personnel Management in holding examinations for testing the fitness of applicants for admission to the classified service for employment by the Board pursuant to the second paragraph of section 362(*l*) of this title, but not to exceed the additional expenses found by the Board to have been incurred by reason of the holding of such examinations; and miscellaneous items, including those for public instruction and information deemed necessary by the Board: *Provided*, That section 5 of title 41 shall not be construed to apply to any purchase or procurement of supplies or services by the Board from moneys in the fund when the aggregate amount involved does not exceed $300. Determinations of the Board whether the fund or an appropriation for the administration of the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] is properly chargeable with the authorized expenses, or parts thereof, incurred in the administration of such Act, or of this chapter, shall be binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States and shall not be subject to review in any manner.

(d) Transfer of excess to insurance account

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

(June 25, 1938, ch. 680, § 11, 52 Stat. 1105; June 20, 1939, ch. 227, §§ 14, 15, 53 Stat. 848; Oct. 10, 1940,

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

REFERENCES IN TEXT

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

Act of Congress approved August 24, 1937, referred to in subsec. (b), is act Aug. 24, 1937, ch. 755, 50 Stat. 754, which is not classified to the Code.

Section 192 of the Revised Statutes, referred to in subsec. (c), which related to expenditures for newspapers and which was classified to section 102 of former Title 5, was repealed by act Aug. 2, 1946, ch. 744, § 17(a), 60 Stat. 811.

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

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted ''0.65'' for ''0.5''.

1976—Subsec. (d). Pub. L. 94–273 substituted ''September'' for ''June''.

1975—Subsec. (a)(i). Pub. L. 94–92 substituted ''0.5'' for ''0.25''.

1974—Subsec. (c). Pub. L. 93–445 substituted ''Railroad Retirement Act of 1974'' and ''such Act'' for ''Railroad Retirement Act of 1937 and the Railroad Retirement Act of 1935'' and ''such Acts'', respectively.

1966—Subsec. (a). Pub. L. 89–700 substituted ''0.25 per centum'' for ''0.2 per centum''.

1958—Subsec. (a). Pub. L. 85–927 substituted provisions directing Secretary of the Treasury to maintain in unemployment trust fund established pursuant to section 1104 of title 42 an account to be known as the railroad unemployment insurance administration fund, for provisions which established railroad unemployment insurance administration fund in Treasury of United States.

1948—Subsec. (a)(i). Act June 23, 1948, changed computation of administration funds.

1940—Subsec. (d). Act Oct. 10, 1940, substituted provisions relating to transfer of balance remaining in fund in excess of $6,000,000, for provisions relating to lapsing of fund, carryovers to surplus or other fund, and transfers from fund.

1939—Subsec. (b). Act June 20, 1939, § 14, substituted ''. Such advance shall be repaid from the fund at'' for '', including personal services in the District of''.

Subsec. (c). Act June 20, 1939, § 15, substituted '', including personal services in the District of'' for ''. Such advance shall be repaid from the fund at''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable with respect to compensation paid in months beginning after Sept. 30, 1988, see section 7103(c) of Pub. L. 100–647, set out as a note under section 358 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–92 effective with respect to compensation paid for services rendered after Dec. 31, 1975, see section 2 of Pub. L. 94–92, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1958 AMENDMENT

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

EFFECTIVE DATE OF 1940 AMENDMENT

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

TRANSFER OF FUNCTIONS

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

§ 362. Duties and powers of Board

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

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

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

In case of contumacy by, or refusal to obey a subpena lawfully issued to, any person, the

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

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

(d) Information as confidential

Information obtained by the Board in connection with the administration of this chapter shall not be revealed or open to inspection nor be published in any manner revealing an employee's identity: *Provided, however*, That (i) the Board may arrange for the exchange of any information with governmental agencies engaged in functions related to the administration of this chapter; (ii) the Board may disclose such information in cases in which the Board finds that such disclosure is clearly in furtherance of the interest of the employee or his estate; (iii) any claimant of benefits under this chapter shall, upon his request, be supplied with information from the Board's records pertaining to his claim; and (iv) the Board shall disclose to any base-year employer of a claimant for benefits any information, including information as to the claimant's identity, that is necessary or appropriate to notify such employer of the claim for benefits or to full and fair participation by such employer in an appeal, hearing, or other proceeding relative to the claim pursuant to section 355 of this title. Subject to the provisions of this section, the Board may furnish such information to any person or organization upon payment by such person or organization to the Board of the cost incurred by the Board by reason thereof; and the amounts so paid to the Board shall be credited to the railroad unemployment insurance administration fund established pursuant to section 361(a) of this title;

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

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

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

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

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

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

If a State, in determining whether an employee is eligible for unemployment or sickness benefits under an unemployment or sickness

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

(h) Assistance from employers and labor organizations; compensation

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

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

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

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

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

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

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

(j) Advisory councils; members' remuneration

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

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

The Board, with the advice and aid of any advisory council appointed by it, shall take appropriate steps to reduce and prevent unemployment and loss of earnings; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to promote the reemployment of unemployed employees; and to these ends to carry on and publish the results of investigations and research studies.

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

In addition to the powers and duties expressly provided, the Board shall have and exercise all the powers and duties necessary to administer or incidental to administering this chapter, and in connection therewith shall have such of the

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

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

(m) Delegation of powers

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

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

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

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

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

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

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

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

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

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

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

(r) Duty of Board to make certain computations

(1) Compensation base

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

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

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

(2) Maximum daily benefit rate

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

(3) Notice in Federal Register and to employers

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

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

REFERENCES IN TEXT

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

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

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

The civil-service laws, referred to in subsec. (*l*), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsecs. (h) and (n), ''section 209 of title 18'' substituted for reference to the Act of March 3, 1917, 39 Stat. 1106 (5 U.S.C. 66) on authority of (1) act June 25, 1948, ch. 645, 62 Stat. 683, section 1 of which enacted Title 18, Crimes and Criminal Procedure, and which enacted in section 1914 of Title 18 the provisions formerly classified to section 66 of former Title 5; and (2) section 2 of Pub. L. 87–849, Oct. 23, 1962, 76 Stat. 1126, which repealed section 1914 of Title 18 and supplanted it with section 209, and which provided that exemptions from section 1914 shall be deemed exemptions from section 209. For further details, see Exemptions note set out under section 203 of Title 18.

In subsec. (*l*), ''chapter 51 and subchapter III of chapter 53 of title 5'' substituted for ''the Classification Act

of 1949, as amended'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In penultimate sentence of subsec. (*l*), following the first word ''Notwithstanding'', the words ''the provisions of the Act of June 22, 1906 (34 Stat. 449), or'' have been omitted as obsolete. The provisions were enacted as section 3342 of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 425. Section 3342 of Title 5 was repealed by Pub. L. 89–762, § 1(a), Nov. 5, 1966, 80 Stat. 1312.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–647, § 7104(d), added cl. (iv).

Subsec. (n). Pub. L. 100–647, § 7104(e), struck out ''court'' before ''proceeding'' in proviso of second par.

Subsec. (r). Pub. L. 100–647, § 7101(e), added subsec. (r).

1974—Subsec. (*l*). Pub. L. 93–445 substituted ''subdivisions (5), (6), and (9) of section 7(b) of the Railroad Retirement Act of 1974'' for ''section 10(b)(4) of the Railroad Retirement Act of 1937''.

1970—Subsec. (c). Pub. L. 91–452 struck out subsec. (c) which related to immunity from prosecution of any person compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1968—Subsec. (f). Pub. L. 90–257, § 206(a), struck out references to maternity benefits and laws and made changes in punctuation and grammar necessitated thereby.

Subsec. (g). Pub. L. 90–257, § 206(b), struck out references to maternity benefits and maternity compensation laws and made changes in punctuation and grammar necessitated thereby.

Subsec. (i). Pub. L. 90–257, § 206(c), struck out provisions making reference to maternity sickness and to expected and actual date of birth of the child required to be included in report of maternity sickness.

Subsec. (n). Pub. L. 90–257, § 206(d), struck out references to maternity benefits and to services of a doctor as to expected date of birth of a female employee's child, or the birth of such a child.

1966—Subsec. (d). Pub. L. 89–700 authorized Board to furnish such information to any person or organization upon payment of the cost incurred by reason thereof, and requiring amounts so paid to Board to be credited to railroad unemployment insurance administration fund.

Subsec. (g). Pub. L. 89–700 substituted ''section 353 of this title'' for ''section 353(a) of this title''.

1960—Subsec. (a). Pub. L. 86–507 inserted ''or by certified mail'' after ''registered mail''.

1958—Subsec. (*l*). Pub. L. 85–927 struck out ''except that the Board may fix the salary of a director of unemployment insurance at $10,000 per annum'' before first proviso in second paragraph, and substituted ''Classification Act of 1949'' for ''Classification Act of 1923'', immediately preceding such first proviso, which substitution had already been executed in accordance with act Oct. 28, 1949.

1955—Subsec. (*l*). Act Aug. 12, 1955, specifically provided for employees of Railroad Retirement Board to be in and under competitive civil service.

1949—Subsec. (*l*). Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923'' in two places.

1946—Subsec. (b). Act July 31, 1946, § 319, inserted provisions relating to the District Court of the United States for the Northern District of Illinois.

Subsec. (f). Act July 31, 1946, § 320, inserted references to sickness or maternity laws and benefits.

Subsec. (g). Act July 31, 1946, § 321, inserted references to sickness or maternity laws and benefits and struck out phrase limiting second paragraph to eligibility with respect to unemployment after June 30, 1939.

Subsec. (i). Act July 31, 1946, § 322, added third par., providing for form, execution and filing of statements of sickness.

Subsecs. (n) to (q). Act July 31, 1946, § 323, added subsecs. (n) to (q).

1940—Subsec. (*l*). Act Oct. 10, 1940, § 22, inserted provisions relating to acquisition of competitive classified civil-service status by a person in the employ of Board on June 30, 1939, and June 30, 1940.

Act Oct. 10, 1940, § 23, inserted provisos relating to personnel for registering unemployed employees.

1939—Subsec. (g). Act June 20, 1939, inserted '', with respect to unemployment after June 30, 1939'' after ''employee is eligible'' and struck out ''June 30, 1939'' after ''therefor) after''.

CHANGE OF NAME

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

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1970 AMENDMENT

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

EFFECTIVE DATE OF 1968 AMENDMENT

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

EFFECTIVE DATE OF 1958 AMENDMENT

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

EFFECTIVE DATE OF 1946 AMENDMENT

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

EFFECTIVE DATE OF 1940 AMENDMENT

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

REPEALS

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

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec.

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

TERMINATION OF ADVISORY COUNCILS

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

DELEGATION OF FUNCTIONS

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

RAILROAD UNEMPLOYMENT COMPENSATION COMMITTEE

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

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

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

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

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

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

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

''(1) benefit levels,

''(2) experience rating,

''(3) debt repayment and interest on debt,

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

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

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

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

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

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

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

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

(a) Omitted

(b) Effect on State unemployment compensation laws

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

(c) Determination of "preliminary amount" for States

The Social Security Board is directed to determine for each State, after agreement with the Railroad Retirement Board, and after consultation with such State; the total (hereinafter re-

ferred to as the ''preliminary amount'') of (i) the amount remaining as the balances of reserve accounts of employers as of June 30, 1939, if the unemployment compensation law of such State provides for a type of fund known as ''Reserve Accounts,'' plus (ii) if the unemployment compensation law of such State provides for a type of fund known as ''Pooled Fund'' or ''Pooled Account,'' that proportion of the balance of such fund or account of such State as of June 30, 1939, as the amount of taxes or contributions collected from employers and their employees prior to July 1, 1939, pursuant to its unemployment compensation law and credited to such fund or account bears to all such taxes or contributions theretofore collected from all persons subject to its unemployment compensation law and credited to such fund or account; and the additional amounts (hereinafter referred to as the ''liquidating amount'') of taxes or contributions collected from employers and their employees from July 1, 1939 to December 31, 1939, pursuant to its unemployment compensation law.

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

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

The Social Security Board shall withhold from certification to the Secretary of the Treasury for payment the amounts determined by it pursuant to section 502(a) of title 42 to be necessary for the proper administration of each State's unemployment compensation law, until an amount equal to its ''liquidating amount'' plus interest from January 1, 1940, at 2½ per centum per annum on such portion thereof as has not been used as the measure for withholding certification for payment has been so withheld from certification pursuant to this paragraph: *Provided, however*, That if a State shall, prior to whichever is the later of (i) thirty days after the close of the first regular session of its legislature which begins after the approval of this chapter, and (ii) January 1, 1940, authorize and direct the Secretary of the Treasury to transfer from its account in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund an amount equal to its ''liquidating amount'', no amount shall be withheld from certification for payment to such State pursuant to this paragraph.

The withholdings from certification directed in each of the foregoing paragraphs of this subsection shall begin with respect to each State when the Social Security Board finds that such State is unable to avail itself of the condition set forth in the proviso contained in such paragraph: *Provided, however*, That if the Social Security Board finds with respect to any State that such State (1) is unable to avail itself of such conditions solely by reason of prohibitions contained in the constitution of such State, as determined by a decision of the highest court of such State declaring invalid in whole or in part the action of the legislature of the State purporting to provide for transfers from the State's account in the Unemployment Trust Fund to the railroad unemployment insurance account, and (2) for similar reasons is unable to use amounts withdrawn from its account in the Unemployment Trust Fund for the payment of expenses incurred in the administration of its State unemployment compensation law, the Social Security Board shall not begin to withhold from certification to the Secretary of the Treasury for payment to such State the amounts determined by it pursuant to section 502 of title 42 and to certify to the Secretary of the Treasury for payment into the railroad unemployment insurance account the amount so withheld from such State until July 1, 1944, or until a date one hundred and eighty days after the adjournment of the first session of the legislature of such State beginning after July 1, 1942, whichever date is the earlier, and then only if the Social Security Board finds that such State had not prior thereto effectively authorized and directed the Secretary of the Treasury to transfer from such State's account in the Unemployment Trust Fund to the railroad unemployment insurance account amounts equal to such State's ''preliminary amount'' and ''liquidating amount'' less such parts thereof, if any, as the State may have, within the periods set forth in the provisos contained in the first two paragraphs of this subsection, effectively authorized and directed the Secretary of the Treasury so to transfer, plus interest on such difference, if any, with respect to each amount, at 2½ per centum per annum from the date the State's ''preliminary amount'' or ''liquidating amount'', as the case may be, is determined by the Social Security Board; and with respect to any such State the amount withheld shall equal the State's ''preliminary amount'' and ''liquidating amount'' less such parts thereof, if any, as the State may have, within the periods set forth in the provisos contained in the first two paragraphs of this subsection effectively authorized and directed the Secretary of the Treasury to transfer, plus interest from July 1, 1939, at 2½ per centum per annum on so much of the ''preliminary amount'' and ''liquidating amount'', as the case may be, as has not been so transferred or has not been used as the measure for withholding. An enactment of any State legislature providing for the transfer (from the State's ac-

count in the Unemployment Trust Fund to the railroad unemployment insurance account) of all interest earned upon contributions which are collected with respect to employment occurring after such enactment by such State pursuant to its unemployment compensation law and credited to its account in the Unemployment Trust Fund (until the total of such transfers equals the amounts which otherwise would be required to be withheld from certification under this subsection), shall be deemed an effective authorization and direction to the Secretary of the Treasury as required by this subsection; and for purposes of computing the interest to be so transferred, amounts withdrawn by such State from its account in the Unemployment Trust Fund after the date of such State enactment shall be considered to be first charged against the amounts credited to such State's account prior to the date of such State enactment: *Provided, however*, That if at any time after such enactment the provision for transfer therein contained for any reason fails to be operative to effect the transfers of interest as therein prescribed, and such State has not otherwise made an effective authorization and direction to the Secretary of the Treasury as required by this subsection, the Social Security Board shall immediately after such failure or, on the date otherwise provided in this subsection for the beginning of withholdings from certification, whichever is later, begin to make the withholdings from certification provided for in this subsection in the same manner and to the same extent as if such enactment by such State had not been enacted, except that the amounts of the certifications withheld shall be reduced by the total amount, if any, which has been transferred from interest pursuant to such enactment.

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

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

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

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

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

REFERENCES IN TEXT

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

CODIFICATION

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

AMENDMENTS

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

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

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

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

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

EFFECTIVE DATE OF 1968 AMENDMENT

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

EFFECTIVE DATE OF 1946 AMENDMENT

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

TRANSFER OF FUNCTIONS

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

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

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

EFFECT OF SOCIAL SECURITY ACT AMENDMENTS

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

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

KENTUCKY

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

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

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

(b) As used in this section—

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

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

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

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

REFERENCES IN TEXT

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

CODIFICATION

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

AMENDMENTS

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

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

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

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

§ 365. Omitted

CODIFICATION

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

§ 366. Separability

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

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

§ 366a. Effect of Internal Revenue Code

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

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

REFERENCES IN TEXT

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

The Internal Revenue Code, referred to in text, probably means the Internal Revenue Code of 1939, which was classified to former Title 26, Internal Revenue Code, and was generally repealed by section 7851 of the Internal Revenue Code of 1986, Title 26.

CODIFICATION

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

§ 367. Short title

This chapter may be cited as the ''Railroad Unemployment Insurance Act''.

(June 25, 1938, ch. 680, § 17, 52 Stat. 1113.)

CODIFICATION

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

SHORT TITLE OF 1996 AMENDMENT

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

SHORT TITLE OF 1988 AMENDMENT

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

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

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

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

§ 369. Annual report

On or before July 1 of 1989, and of each calendar year thereafter, the Railroad Retirement Board shall submit to the Congress a report on the financial status of the railroad unemployment insurance system under various economic and employment assumptions. Such report shall include any recommendation for financing changes which might be advisable, including any adjustment the Railroad Retirement Board recommends regarding the rates of employer contributions.

(Pub. L. 100–647, title VII, § 7105, Nov. 10, 1988, 102 Stat. 3772.)

CODIFICATION

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

CHAPTER 12—TEMPORARY RAILROAD UNEMPLOYMENT INSURANCE PROGRAM

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

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

An employee as defined in the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] who has, after June 30, 1960, and before April 1,

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

(Pub. L. 87–7, § 2, Mar. 24, 1961, 75 Stat. 16.)

REFERENCES IN TEXT

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

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

SHORT TITLE

Section 1 of Pub. L. 87–7 provided: "That this Act [enacting this chapter] may be cited as the 'Temporary Extended Railroad Unemployment Insurance Benefits Act of 1961'."

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

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

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

REFERENCES IN TEXT

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

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

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

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

AMENDMENTS

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

EFFECTIVE DATE OF 1963 AMENDMENT

Section 303(c) of Pub. L. 88–133 provided that the amendment made by such section 303(c) is effective with respect to contributions collected on compensation paid after Dec. 31, 1963.

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

Section 303(b) of Pub. L. 88–133 provided that: "Effective with respect to contributions collected by the Railroad Retirement Board pursuant to section 8(f) of the Railroad Unemployment Insurance Act [section 358(f) of this title] on compensation paid after December 31, 1963, that part of such contributions equal to one-fourth of 1 per centum of the compensation on which such contributions are based shall, notwithstanding the provisions of section 10(b) of such Act [section 360(b) of this title], be applied by the Board exclusively for transfers from the railroad unemployment insurance account to the general fund of the Treasury

until the full amount advanced from the general fund of the Treasury to the railroad unemployment insurance account pursuant to section 4 of the Temporary Extended Railroad Unemployment Insurance Benefits Act of 1961 [this section] has been repaid.''

§ 404. Temporary increase in employers' contribution rate

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

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

REFERENCES IN TEXT

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

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

CHAPTER 13—RAILROAD SAFETY

SUBCHAPTER I—GENERAL PROVISIONS

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

Section, Pub. L. 91–458, title I, § 101, Oct. 16, 1970, 84 Stat. 971, stated congressional declaration of purpose for this chapter. See section 20101 of Title 49, Transportation.

SUBCHAPTER II—RULES, REGULATIONS, ORDERS, AND STANDARDS

§§ 431 to 447. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 431, Pub. L. 91–458, title II, § 202, Oct. 16, 1970, 84 Stat. 971; Pub. L. 94–348, § 5, July 8, 1976, 90 Stat. 819; Pub. L. 96–423, § 14, Oct. 10, 1980, 94 Stat. 1817; Pub. L. 97–468, title VII, § 702(a), (c), Jan. 14, 1983, 96 Stat. 2579; Pub. L. 100–342, §§ 4(a), 7, 9, 10, 19(a), 21–23, June 22, 1988, 102 Stat. 625, 628, 629, 637–639; Pub. L. 102–143, title V, § 4, Oct. 28, 1991, 105 Stat. 957; Pub. L. 102–365, §§ 2, 5(a)(1), 7, 8, 10, Sept. 3, 1992, 106 Stat. 972, 975, 976, 978; Pub. L. 102–533, § 14, Oct. 27, 1992, 106 Stat. 3522, authorized Secretary of Transportation to promulgate rules, regulations, orders, and standards for all areas of railroad safety. See sections 20102, 20103, 20103 note, 20108, 20110, 20114, 20131 to 20143, and 24902 of Title 49, Transportation.

Section 432, Pub. L. 91–458, title II, § 203, Oct. 16, 1970, 84 Stat. 972; Pub. L. 96–423, § 3, Oct. 10, 1980, 94 Stat. 1811, related to emergency powers of Secretary of Transportation. See section 20104 of Title 49.

Section 433, Pub. L. 91–458, title II, § 204, Oct. 16, 1970, 84 Stat. 972, required Secretary of Transportation to submit comprehensive study and recommendation of means of eliminating and protecting railroad grade crossings and protecting pedestrians. See section 20134 of Title 49.

Section 434, Pub. L. 91–458, title II, § 205, Oct. 16, 1970, 84 Stat. 972, declared that laws, rules, regulations, orders, and standards relating to railroad safety were to be nationally uniform, but permitted more stringent yet compatible State regulation. See section 20106 of Title 49.

Section 435, Pub. L. 91–458, title II, § 206, Oct. 16, 1970, 84 Stat. 972; Pub. L. 96–423, § 4, Oct. 10, 1980, 94 Stat. 1812; Pub. L. 101–615, § 28(a)–(d), Nov. 16, 1990, 104 Stat. 3276, 3277, related to investigative and surveillance activities by State in connection with any rule, regulation, order, or standard related to railroad safety prescribed by Secretary of Transportation. See sections 20105, 20111, and 20117 of Title 49.

Section 436, Pub. L. 91–458, title II, § 207, Oct. 16, 1970, 84 Stat. 974; Pub. L. 95–574, § 8, Nov. 2, 1978, 92 Stat. 2461; Pub. L. 96–423, § 5, Oct. 10, 1980, 94 Stat. 1812; Pub. L. 101–615, § 28(e), Nov. 16, 1990, 104 Stat. 3277, related to actions by State agencies to enforce compliance with Federal railroad safety rules, regulations, orders, and standards. See section 20113 of Title 49.

Section 437, Pub. L. 91–458, title II, § 208, Oct. 16, 1970, 84 Stat. 974; Pub. L. 93–633, title II, § 206, Jan. 3, 1975, 88 Stat. 2166; Pub. L. 95–574, § 9, Nov. 2, 1978, 92 Stat. 2462; Pub. L. 96–423, § 6, Oct. 10, 1980, 94 Stat. 1813; Pub. L. 100–342, § 8, June 22, 1988, 102 Stat. 628, related to general powers of Secretary of Transportation. See section 54a of this title and sections 20107, 20108, 20111, and 20112 of Title 49.

Section 438, Pub. L. 91–458, title II, § 209, Oct. 16, 1970, 84 Stat. 975; Pub. L. 93–633, title II, § 204(a), Jan. 3, 1975, 88 Stat. 2165; Pub. L. 96–423, §§ 7, 8(a), Oct. 10, 1980, 94 Stat. 1814; Pub. L. 97–468, title VII, § 706, Jan. 14, 1983, 96 Stat. 2581; Pub. L. 100–342, § 3(a), June 22, 1988, 102 Stat. 624; Pub. L. 102–365, §§ 4(a)(1), (c)(1), 9(a)(1), Sept. 3, 1992, 106 Stat. 973, 974, 977, related to civil penalties for violations of any railroad safety rule, regulation, order, or standard issued under this subchapter or violations of section 39 of this title. See sections 20111, 20112, 20114, 21301, 21302, 21304, and 21311 of Title 49.

Section 439, Pub. L. 91–458, title II, § 210, Oct. 16, 1970, 84 Stat. 975; Pub. L. 96–423, § 9, Oct. 10, 1980, 94 Stat. 1814; Pub. L. 101–615, § 28(f), Nov. 16, 1990, 104 Stat. 3277, related to restraint of violations of this subchapter and certain other statutes and to enforcement of rules, etc., established under such subchapter or statutes. See sections 20112 to 20114 of Title 49.

Section 440, Pub. L. 91–458, title II, § 211, Oct. 16, 1970, 84 Stat. 976; Pub. L. 93–633, title II, § 203, Jan. 3, 1975, 88 Stat. 2164; Pub. L. 94–56, § 2, July 19, 1975, 89 Stat. 263; Pub. L. 96–470, title II, § 209(a), Oct. 19, 1980, 94 Stat. 2245; Pub. L. 100–342, § 12, June 22, 1988, 102 Stat. 630, related to annual report by Secretary of Transportation on administration of this subchapter. See section 20116 of Title 49.

Section 441, Pub. L. 91–458, title II, § 212, as added Pub. L. 96–423, § 10, Oct. 10, 1980, 94 Stat. 1815; amended Pub. L. 100–342, § 5, June 22, 1988, 102 Stat. 627; Pub. L. 102–365, § 5(b), Sept. 3, 1992, 106 Stat. 975, related to protection and rights of railroad employees. See section 20109 of Title 49.

A prior section 441, Pub. L. 91–458, title II, § 212, Oct. 16, 1970, 84 Stat. 977; Pub. L. 93–90, § 2, Aug. 14, 1973, 87 Stat. 305; Pub. L. 93–633, title II, § 205, Jan. 3, 1975, 88 Stat. 2166; Pub. L. 94–56, § 3, July 19, 1975, 89 Stat. 263; Pub. L. 94–348, § 2(a), July 8, 1976, 90 Stat. 817; Pub. L. 95–574, § 2, Nov. 2, 1978, 92 Stat. 2459, authorized appropriations to carry out this chapter, prior to repeal by Pub. L. 96–423, § 2, Oct. 10, 1980, 94 Stat. 1811.

Section 442, Pub. L. 95–574, § 3, Nov. 2, 1978, 92 Stat. 2459, related to limitations on funding for railroad research and development programs. See section 20117 of Title 49, Transportation.

Section 443, Pub. L. 91–458, title II, § 213, as added Pub. L. 96–423, § 11, Oct. 10, 1980, 94 Stat. 1816, related to pay classifications of railroad safety inspectors and railroad safety specialists. See section 5109(c) of Title 5, Government Organization and Employees.

Section 444, Pub. L. 91–458, title II, § 214, as added Pub. L. 96–423, § 2, Oct. 10, 1980, 94 Stat. 1811; amended Pub. L. 97–35, title XI, § 1195, Aug. 13, 1981, 95 Stat. 702; Pub. L. 97–468, title VII, § 703, Jan. 14, 1983, 96 Stat. 2580; Pub. L. 100–342, § 2, June 22, 1988, 102 Stat. 624; Pub. L. 101–508,

[1] See References in Text note below.

title X, § 10501(b), Nov. 5, 1990, 104 Stat. 1388–400; Pub. L. 102–365, § 12, Sept. 3, 1992, 106 Stat. 980, authorized appropriations to carry out this chapter. See sections 20108 and 20117 of Title 49, Transportation.

Section 445, Pub. L. 91–458, title II, § 215, as added Pub. L. 100–342, § 20, June 22, 1988, 102 Stat. 638, related to grade crossing demonstration projects to reduce accidents involving trains. See sections 20117 and 20134 of Title 49.

Section 446, Pub. L. 101–647, title XVII, § 1704, Nov. 29, 1990, 104 Stat. 4846, related to railroad police officers. See section 26101 of Title 49.

Section 447, Pub. L. 91–458, title II, § 216, as added Pub. L. 101–508, title X, § 10501(a), Nov. 5, 1990, 104 Stat. 1388–399, related to railroad user fees. See section 20115 of Title 49.

CHAPTER 14—RAIL PASSENGER SERVICE

SUBCHAPTER I—GENERAL PROVISIONS

§§ 501 to 502. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 501, Pub. L. 91–518, title I, § 101, Oct. 30, 1970, 84 Stat. 1328; Pub. L. 96–73, title I, § 102, Sept. 29, 1979, 93 Stat. 537; Pub. L. 97–35, title XI, § 1171, Aug. 13, 1981, 95 Stat. 687, related to congressional findings on needs for cost- and energy-efficient intercity rail passenger service. See section 24101 of Title 49, Transportation.

Section 501a, Pub. L. 91–518, title I, § 102, as added Pub. L. 96–73, title I, § 103(a), Sept. 29, 1979, 93 Stat. 537; amended Pub. L. 97–35, title XI, § 1172, Aug. 13, 1981, 95 Stat. 688, enumerated goals established by Congress for Amtrak. See section 24101 of Title 49.

A prior section 102 of Pub. L. 91–518 was renumbered section 103 and classified to section 502 of this title, prior to repeal by Pub. L. 103–272, § 7(b).

Section 502, Pub. L. 91–518, title I, § 103, formerly § 102, Oct. 30, 1970, 84 Stat. 1328; Pub. L. 93–146, § 2, Nov. 3, 1973, 87 Stat. 548; renumbered § 103 and amended Pub. L. 96–73, title I, §§ 103(a), 104, Sept. 29, 1979, 93 Stat. 537, 538; Pub. L. 97–35, title XI, § 1173, Aug. 13, 1981, 95 Stat. 689; Pub. L. 99–272, title IV, § 4012, Apr. 7, 1986, 100 Stat. 109; Pub. L. 102–533, § 8, Oct. 27, 1992, 106 Stat. 3519, defined terms for purposes of this chapter. See section 24102 of Title 49, Transportation.

SHORT TITLE

Section 1 of Pub. L. 91–518, as amended by Pub. L. 93–496, § 12, Oct. 28, 1974, 88 Stat. 1531, provided that Pub. L. 91–518 (enacting this chapter and section 250 of Title 26, Internal Revenue Code, amending section 856 of former Title 31, Money and Finance, and enacting provision set out as a note under section 250 of Title 26) could be cited as the ''Rail Passenger Service Act'', prior to repeal by Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379.

SUBCHAPTER II—BASIC NATIONAL RAIL PASSENGER SYSTEM

§§ 521, 522. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 521, Pub. L. 91–518, title II, § 201, Oct. 30, 1970, 84 Stat. 1329, authorized report designating routes and basic service on intercity passenger system.

Section 522, Pub. L. 91–518, title II, § 202, Oct. 30, 1970, 84 Stat. 1329, directed review of preliminary report of Secretary designating the basic system.

SUBCHAPTER III—NATIONAL RAILROAD PASSENGER CORPORATION

§§ 541 to 548. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 541, Pub. L. 91–518, title III, § 301, Oct. 30, 1970, 84 Stat. 1330; Pub. L. 95–421, § 11, Oct. 5, 1978, 92 Stat. 928; Pub. L. 97–35, title XI, § 1188(a), Aug. 13, 1981, 95 Stat. 699; Pub. L. 100–342, § 18(a), June 22, 1988, 102 Stat. 636, authorized establishment of National Railroad Passenger Corporation. See sections 24101 and 24301 of Title 49, Transportation.

Section 542, Pub. L. 91–518, title III, § 302, Oct. 30, 1970, 84 Stat. 1330, related to Presidential appointment of incorporators to establish National Railroad Passenger Corporation.

Section 543, Pub. L. 91–518, title III, § 303, Oct. 30, 1970, 84 Stat. 1330; Pub. L. 92–316, § 1(a), June 22, 1972, 86 Stat. 227; Pub. L. 93–146, § 3(a), Nov. 3, 1973, 87 Stat. 548; Pub. L. 94–25, § 2, May 26, 1975, 89 Stat. 90; Pub. L. 94–210, title VII, § 706(f), formerly § 705(f), Feb. 5, 1976, 90 Stat. 124, renumbered Pub. L. 96–254, title II, § 206(a), May 30, 1980, 94 Stat. 412; Pub. L. 94–555, title I, § 103, Oct. 19, 1976, 90 Stat. 2615; Pub. L. 97–35, title XI, § 1174(a), Aug. 13, 1981, 95 Stat. 689; Pub. L. 97–216, title I, § 101, July 18, 1982, 96 Stat. 187; Pub. L. 100–342, § 18(b), (c), June 22, 1988, 102 Stat. 636, related to board of directors, officers, bylaws, and stock voting rights of National Railroad Passenger Corporation. See sections 24302 and 24303 of Title 49, Transportation.

Section 544, Pub. L. 91–518, title III, § 304, Oct. 30, 1970, 84 Stat. 1331; Pub. L. 93–496, § 2, Oct. 28, 1974, 88 Stat. 1526; Pub. L. 97–35, title XI, § 1175, Aug. 13, 1981, 95 Stat. 691; Pub. L. 99–272, title IV, § 4003, Apr. 7, 1986, 100 Stat. 107; Pub. L. 102–533, § 5, Oct. 27, 1992, 106 Stat. 3517, related to issuance by National Railroad Passenger Corporation of stock, bonds, and other certificates of indebtedness. See section 24304 of Title 49.

Section 545, Pub. L. 91–518, title III, § 305, Oct. 30, 1970, 84 Stat. 1332; Pub. L. 92–316, § 2, June 22, 1972, 86 Stat. 228; Pub. L. 93–146, §§ 4–6, Nov. 3, 1973, 87 Stat. 549, 550; Pub. L. 93–496, §§ 3, 4, 6, Oct. 28, 1974, 88 Stat. 1527, 1528; Pub. L. 94–25, § 3, May 26, 1975, 89 Stat. 90; Pub. L. 94–210, title VII, § 706(g), formerly § 705(g), Feb. 5, 1976, 90 Stat. 125, renumbered Pub. L. 96–254, title II, § 206(a), May 30, 1980, 94 Stat. 412; Pub. L. 94–555, title I, § 104, Oct. 19, 1976, 90 Stat. 2615; Pub. L. 95–421, § 10, Oct. 5, 1978, 92 Stat. 928; Pub. L. 96–73, title I, §§ 105–111(a), Sept. 29, 1979, 93 Stat. 539–541; Pub. L. 97–35, title XI, §§ 1176, 1177(a), 1188(b), Aug. 13, 1981, 95 Stat. 692, 699; Pub. L. 99–272, title IV, § 4007(e), title XIII, § 13031(h)(1), Apr. 7, 1986, 100 Stat. 108, 310, enumerated general powers of National Railroad Passenger Corporation. See sections 24301, 24305 to 24307, 24311, 24702, 24707, 24709, and 24902 of Title 49.

Section 545a, Pub. L. 95–421, § 19, Oct. 5, 1978, 92 Stat. 930, directed National Railroad Passenger Corporation to attract and serve bulk mail needs of Postal Service. See section 24305 of Title 49.

Section 546, Pub. L. 91–518, title III, § 306, Oct. 30, 1970, 84 Stat. 1332; Pub. L. 92–316, § 3, June 22, 1972, 86 Stat. 228; Pub. L. 93–146, § 7, Nov. 3, 1973, 87 Stat. 551; Pub. L. 94–210, title VII, § 706(e), formerly § 705(e), Feb. 5, 1976, 90 Stat. 124, renumbered Pub. L. 96–254, title II, § 206(a), May 30, 1980, 94 Stat. 412; Pub. L. 94–555, title I, §§ 105, 106, Oct. 19, 1976, 90 Stat. 2615, 2616; Pub. L. 96–73, title I, § 112, Sept. 29, 1979, 93 Stat. 541; Pub. L. 97–35, title XI, § 1178, Aug. 13, 1981, 95 Stat. 692; Pub. L. 99–272, title IV, §§ 4004, 4007(b), 4013, 4015, Apr. 7, 1986, 100 Stat. 107–110; Pub. L. 101–610, title VI, § 601(a), Nov. 16, 1990, 104 Stat. 3185; Pub. L. 102–533, § 6, Oct. 27, 1992, 106 Stat. 3517, related to laws applicable to National Railroad Passenger Corporation. See sections 24301, 24305, and 24306 of Title 49.

Section 546a, Pub. L. 95–421, § 7, Oct. 5, 1978, 92 Stat. 927, related to jurisdiction of Interstate Commerce Commission over rate, fare, charge, and marketing practices of National Railroad Passenger Corporation. See section 24301 of Title 49.

Section 546b, Pub. L. 97–257, title I, Sept. 10, 1982, 96 Stat. 852, exempted National Railroad Passenger Corporation from taxes or other fees imposed by any State, political subdivision, or local taxing authority levied on Corporation or any railroad subsidiary and provided United States district courts with jurisdiction to enforce exemption. See section 24301 of Title 49.

Section 547, Pub. L. 91–518, title III, § 307, Oct. 30, 1970, 84 Stat. 1333; Pub. L. 97–35, title XI, § 1179, Aug. 13, 1981,

95 Stat. 693, related to jurisdiction of United States district courts to impose sanctions. See section 24103 of Title 49.

Section 548, Pub. L. 91–518, title III, § 308, Oct. 30, 1970, 84 Stat. 1333; Pub. L. 92–316, § 4, June 22, 1972, 86 Stat. 228; Pub. L. 93–146, § 8, Nov. 3, 1973, 87 Stat. 551; Pub. L. 94–25, § 4, May 26, 1975, 89 Stat. 90; Pub. L. 96–73, title I, § 113, Sept. 29, 1979, 93 Stat. 542; Pub. L. 97–35, title XI, § 1180, Aug. 13, 1981, 95 Stat. 693; Pub. L. 99–272, title IV, § 4005, Apr. 7, 1986, 100 Stat. 107; Pub. L. 100–342, § 18(d), June 22, 1988, 102 Stat. 637, related to reports by National Railroad Passenger Corporation to President and Congress. See section 24315 of Title 49.

SUBCHAPTER IV—PROVISION OF RAIL PASSENGER SERVICES

§§ 561 to 563. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 561, Pub. L. 91–518, title IV, § 401, Oct. 30, 1970, 84 Stat. 1334; Pub. L. 93–146, § 9, Nov. 3, 1973, 87 Stat. 551, related to assumption of intercity rail passenger service by National Railroad Passenger Corporation. See section 24701 of Title 49, Transportation.

Section 562, Pub. L. 91–518, title IV, § 402, Oct. 30, 1970, 84 Stat. 1335; Pub. L. 92–316, § 5, June 22, 1972, 86 Stat. 229; Pub. L. 93–146, § 10, Nov. 3, 1973, 87 Stat. 552; Pub. L. 94–210, title VII, § 706(a), (h), formerly § 705(a), (h), Feb. 5, 1976, 90 Stat. 123, 125, renumbered Pub. L. 96–254, title II, § 206(a), May 30, 1980, 94 Stat. 412; Pub. L. 95–421, § 15, Oct. 5, 1978, 92 Stat. 929; Pub. L. 96–73, title I, § 114, Sept. 29, 1979, 93 Stat. 542; Pub. L. 96–254, title II, § 216, May 30, 1980, 94 Stat. 418; Pub. L. 97–35, title XI, §§ 1181, 1188(c), Aug. 13, 1981, 95 Stat. 693, 699; Pub. L. 99–272, title IV, §§ 4006, 4017(b), Apr. 7, 1986, 100 Stat. 107, 110; Pub. L. 101–641, § 9(a), Nov. 28, 1990, 104 Stat. 4658, related to facilities and service agreements. See sections 24308, 24311, and 24904 of Title 49.

Section 563, Pub. L. 91–518, title IV, § 403, Oct. 30, 1970, 84 Stat. 1335; Pub. L. 92–316, § 6, June 22, 1972, 86 Stat. 229; Pub. L. 93–146, § 11(a), Nov. 3, 1973, 87 Stat. 553; Pub. L. 93–496, § 5, Oct. 28, 1974, 88 Stat. 1527; Pub. L. 94–25, §§ 5, 6, May 26, 1975, 89 Stat. 90; Pub. L. 94–210, title VII, § 706(c), (i), formerly § 705(c), (i), Feb. 5, 1976, 90 Stat. 124, 125, renumbered Pub. L. 96–254, title II, § 206(a), May 30, 1980, 94 Stat. 412; Pub. L. 94–555, title I, § 107, Oct. 19, 1976, 90 Stat. 2616; Pub. L. 95–421, §§ 16–18, Oct. 5, 1978, 92 Stat. 929, 930; Pub. L. 96–73, title I, § 115, Sept. 29, 1979, 93 Stat. 542; Pub. L. 96–254, title II, § 213, May 30, 1980, 94 Stat. 417; Pub. L. 96–448, title V, § 508(f), Oct. 14, 1980, 94 Stat. 1958; Pub. L. 97–35, title XI, §§ 1182(a), 1183(e), Aug. 13, 1981, 95 Stat. 693, 697; Pub. L. 99–272, title IV, § 4014(a)(1), Apr. 7, 1986, 100 Stat. 109; Pub. L. 102–533, §§ 7(b), 10, Oct. 27, 1992, 106 Stat. 3519, 3520, related to State supported institution or retention of rail passenger service. See sections 24703, 24704, and 24708 of Title 49.

§ 564. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379; Pub. L. 103–429, § 8(6), Oct. 31, 1994, 108 Stat. 4390

Section, Pub. L. 91–518, title IV, § 404, Oct. 30, 1970, 84 Stat. 1336; Pub. L. 93–146, § 11(b), Nov. 3, 1973, 87 Stat. 553; Pub. L. 93–496, § 7, Oct. 28, 1974, 88 Stat. 1530; Pub. L. 94–25, §§ 7, 8, May 26, 1975, 89 Stat. 90; Pub. L. 94–210, title VII, § 706(d), formerly § 705(d), Feb. 5, 1976, 90 Stat. 124, renumbered Pub. L. 96–254, title II, § 206(a), May 30, 1980, 94 Stat. 412; Pub. L. 96–73, title I, §§ 116(a), 117–119, Sept. 29, 1979, 93 Stat. 545, 546; Pub. L. 97–35, title XI, § 1183(a)–(d), Aug. 13, 1981, 95 Stat. 695–697; Pub. L. 99–272, title IV, §§ 4008, 4014(a)(2)–(7), Apr. 7, 1986, 100 Stat. 108–110; Pub. L. 104–287, § 7(1), Oct. 11, 1996, 110 Stat. 3400, related to addition to or discontinuance of routes and services. See sections 24703 and 24705 to 24707 of Title 49, Transportation.

§§ 565, 566. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 565, Pub. L. 91–518, title IV, § 405, Oct. 30, 1970, 84 Stat. 1337; Pub. L. 92–316, §§ 7, 8, June 22, 1972, 86 Stat. 230; Pub. L. 96–73, title I, § 120(a), Sept. 29, 1979, 93 Stat. 547; Pub. L. 97–35, title XI, §§ 1177(b), 1184, 1188(d), Aug. 13, 1981, 95 Stat. 692, 697, 699; Pub. L. 99–272, title IV, § 4016, Apr. 7, 1986, 100 Stat. 110, related to protective arrangements for railroad employees. See sections 24307, 24312, and 24706 of Title 49, Transportation.

Section 566, Pub. L. 91–518, title IV, § 406, as added Pub. L. 96–73, title I, § 121, Sept. 29, 1979, 93 Stat. 548, related to retention and maintenance of facilities. See section 24309 of Title 49.

SUBCHAPTER V—AMTRAK COMMUTER SERVICES

§§ 581 to 591. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 581, Pub. L. 91–518, title V, § 501, as added Pub. L. 97–35, title XI, § 1137, Aug. 13, 1981, 95 Stat. 647; amended Pub. L. 100–457, title III, § 336, Sept. 30, 1988, 102 Stat. 2153, related to establishment and incorporation of Amtrak Commuter Services Corporation. See section 24501 of Title 49, Transportation.

A prior section 581, Pub. L. 91–518, title V, § 501, Oct. 30, 1970, 84 Stat. 1338, provided for appointment of a fifteen-man financial advisory panel by President, prior to repeal by Pub. L. 94–25, § 9, May 26, 1975, 89 Stat. 92.

Section 582, Pub. L. 91–518, title V, § 502, as added Pub. L. 97–35, title XI, § 1137, Aug. 13, 1981, 95 Stat. 648, related to Board of Directors and officers of Amtrak Commuter Services Corporation. See sections 24502 and 24503 of Title 49, Transportation.

A prior section 582, Pub. L. 91–518, title V, § 502, Oct. 30, 1970, 84 Stat. 1338, directed advisory panel to advise directors of Corporation on ways and means of increasing capitalization of Corporation, prior to repeal by Pub. L. 94–25, § 9, May 26, 1975, 89 Stat. 92.

Section 583, Pub. L. 91–518, title V, § 503, as added Pub. L. 97–35, title XI, § 1137, Aug. 13, 1981, 95 Stat. 648, enumerated general powers of Amtrak Commuter Services Corporation. See sections 24501 and 24504 of Title 49, Transportation.

A prior section 583, Pub. L. 91–518, title V, § 503, Oct. 30, 1970, 84 Stat. 1338, provided for a report to Congress by advisory panel, evaluating initial capitalization of Corporation, and prospects for increasing its capitalization, prior to repeal by Pub. L. 94–25, § 9, May 26, 1975, 89 Stat. 92.

Section 584, Pub. L. 91–518, title V, § 504, as added Pub. L. 97–35, title XI, § 1137, Aug. 13, 1981, 95 Stat. 648, related to commuter services provided by Amtrak Commuter Services Corporation. See sections 24501, 24504, and 24505 of Title 49, Transportation.

Section 585, Pub. L. 91–518, title V, § 505, as added Pub. L. 97–35, title XI, § 1137, Aug. 13, 1981, 95 Stat. 650; amended Pub. L. 97–468, title V, § 508, Jan. 14, 1983, 96 Stat. 2554, related to duties and composition of Northeast Corridor Coordination Board. See section 24905 of Title 49.

Section 586, Pub. L. 91–518, title V, § 506, as added Pub. L. 97–35, title XI, § 1137, Aug. 13, 1981, 95 Stat. 650, related to transfers of property and commuter service to Amtrak Commuter Services Corporation and commuter authorities. See section 24506 of Title 49.

Section 587, Pub. L. 91–518, title V, § 507, as added Pub. L. 97–35, title XI, § 1137, Aug. 13, 1981, 95 Stat. 652, exempted transfers of property and assumptions of service responsibilities pursuant to section 586 of this title from judicial review.

Section 588, Pub. L. 91–518, title V, § 508, as added Pub. L. 97–35, title XI, § 1145, Aug. 13, 1981, 95 Stat. 669, related to negotiations for implementing agreement governing transfer of Conrail employees.

Section 589, Pub. L. 91–518, title V, § 509, as added Pub. L. 97–35, title XI, § 1145, Aug. 13, 1981, 95 Stat. 671, estab-

lished factfinding panel to recommend changes in operating practices to maximize productivity.

Section 590, Pub. L. 91–518, title V, § 510, as added Pub. L. 97–35, title XI, § 1145, Aug. 13, 1981, 95 Stat. 671, related to collective bargaining agreements for Amtrak Commuter Services Corporation or commuter authorities, contingency emergency boards, and dispute resolution procedures.

Section 591, Pub. L. 91–518, title V, § 511, as added Pub. L. 97–468, title V, § 509, Jan. 14, 1983, 96 Stat. 2554, provided for applicability of laws to commuter authorities operating commuter services under this subchapter. See section 24505 of Title 49, Transportation.

SUBCHAPTER VI—FEDERAL FINANCIAL ASSISTANCE

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

Section, Pub. L. 91–518, title VI, § 601, Oct. 30, 1970, 84 Stat. 1338; Pub. L. 92–316, § 9, June 22, 1972, 86 Stat. 231; Pub. L. 93–146, § 12, Nov. 3, 1973, 87 Stat. 553; Pub. L. 93–496, § 8, Oct. 28, 1974, 88 Stat. 1530; Pub. L. 94–25, § 10, May 26, 1975, 89 Stat. 92; Pub. L. 94–555, title I, § 102(a), (b), Oct. 19, 1976, 90 Stat. 2613, 2614; Pub. L. 95–421, §§ 2(a), (b)(1), 3, Oct. 5, 1978, 92 Stat. 923; Pub. L. 96–73, title I, § 122(a), (b)(1), Sept. 29, 1979, 93 Stat. 550, 551; Pub. L. 96–254, title II, §§ 208, 211, May 30, 1980, 94 Stat. 414, 415; Pub. L. 97–35, title XI, §§ 1138, 1139(a), 1185, Aug. 13, 1981, 95 Stat. 652, 697; Pub. L. 97–468, title III, § 302(c), Jan. 14, 1983, 96 Stat. 2550; Pub. L. 99–272, title IV, § 4002, Apr. 7, 1986, 100 Stat. 106; Pub. L. 101–322, § 2, July 6, 1990, 104 Stat. 295; Pub. L. 102–533, § 7(a), Oct. 27, 1992, 106 Stat. 3517, related to authorization and administration of appropriations for capital expenditures, new corridor development, operating expenses, and mandatory payments. See section 24104 of Title 49, Transportation.

§ 602. Repealed. Pub. L. 102–533, § 7(c), Oct. 27, 1992, 106 Stat. 3519

Section, Pub. 91–518, title VI, § 602, Oct. 30, 1970, 84 Stat. 1338; Pub. L. 92–316, § 10(a), June 22, 1972, 86 Stat. 231; Pub. L. 93–146, § 13, Nov. 3, 1973, 87 Stat. 553; Pub. L. 93–496, § 9, Oct. 28, 1974, 88 Stat. 1531; Pub. L. 94–25, § 11, May 26, 1975, 89 Stat. 92; Pub. L. 94–555, title I, § 102(c), Oct. 19, 1976, 90 Stat. 2614; Pub. L. 95–421, § 2(b)(2), Oct. 5, 1978, 92 Stat. 923; Pub. L. 96–73, title I, § 122(b)(2), Sept. 29, 1979, 93 Stat. 551; Pub. L. 97–35, title XI, § 1186, Aug. 13, 1981, 95 Stat. 698; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–342, § 18(e), June 22, 1988, 102 Stat. 637, related to authority of Secretary of Transportation to guarantee any lender or lessor against loss of principal or interest on loans issued to improve rail passenger service.

SUBCHAPTER VII—EMERGENCY FINANCIAL ASSISTANCE

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

Section 621, Pub. L. 91–518, title VII, § 701, Oct. 30, 1970, 84 Stat. 1339; Pub. L. 94–25, § 12, May 26, 1975, 89 Stat. 93, provided for interim authority to provide emergency financial assistance for railroads operating passenger service.

Section 622, Pub. L. 91–518, title VII, § 702, Oct. 30, 1970, 84 Stat. 1339, authorized appropriations for this subchapter.

SUBCHAPTER VIII—MISCELLANEOUS PROVISIONS

§ 641. Repealed. Pub. L. 96–73, title I, § 111(b), Sept. 29, 1979, 93 Stat. 541

Section, Pub. L. 91–518, title VIII, § 801, Oct. 30, 1970, 84 Stat. 1339; Pub. L. 93–146, § 14, Nov. 3, 1973, 87 Stat. 554; Pub. L. 93–496, § 10, Oct. 28, 1974, 88 Stat. 1531; Pub. L. 94–555, title I, § 108, Oct. 19, 1976, 90 Stat. 2616, provided for promulgation and revision of regulations for adequacy of service and for maintenance of civil actions for enforcement of provisions.

EFFECTIVE DATE OF REPEAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 650a, Pub. L. 100–342, § 18(g), June 22, 1988, 102 Stat. 637, related to petitions by National Railroad Passenger Corporation seeking relocation or other remedial assistance for dangerous conditions, and recommendations by Secretary to Congress to fund such measures. See section 24310 of Title 49, Transportation.

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

Section 650c, Pub. L. 91–518, title VIII, § 813, as added Pub. L. 102–533, § 9, Oct. 27, 1992, 106 Stat. 3520, directed National Railroad Passenger Corporation to assist in and report to Congress on high-speed rail corridor development outside the Northeast Corridor. See section 24702 of Title 49.

§§ 650d, 650e. Repealed. Pub. L. 103–429, § 8(6), Oct. 31, 1994, 108 Stat. 4390

Section 650d, Pub. L. 91–518, title VIII, § 814, as added Pub. L. 102–533, § 11, Oct. 27, 1992, 106 Stat. 3520, related to formation of task force to consider recommendations on emergency training and response and to report to Congress not later than June 1, 1993.

Section 650e, Pub. L. 91–518, title VIII, § 815, as added Pub. L. 102–533, § 13, Oct. 27, 1992, 106 Stat. 3522, directed National Railroad Passenger Corporation to develop comprehensive plan for New York City station facilities.

SUBCHAPTER IX—RAIL PASSENGER CORRIDORS

§§ 651 to 658. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section 651, Pub. L. 91–518, title X, § 1001, as added Pub. L. 96–254, title II, § 212, May 30, 1980, 94 Stat. 415; amended H. Res. 549, Mar. 25, 1980, required Secretary to develop and submit to Congress a proposed method for evaluating rail passenger corridors, ranking those with greatest potential.

Section 652, Pub. L. 91–518, title X, § 1002, as added Pub. L. 96–254, title II, § 212, May 30, 1980, 94 Stat. 415, directed National Railroad Passenger Corporation to develop design and engineering plans for rail corridors in consultation with Secretary and rail carriers owning facilities to be used in the corridors.

Section 653, Pub. L. 91–518, title X, § 1003, as added Pub. L. 96–254, title II, § 212, May 30, 1980, 94 Stat. 416; amended H. Res. 549, Mar. 25, 1980, provided for submission of final corridor evaluation to Congress.

Section 654, Pub. L. 91–518, title X, § 1004, as added Pub. L. 96–254, title II, § 212, May 30, 1980, 94 Stat. 416, directed National Railroad Passenger Corporation to acquire equipment necessary to provide service in rail passenger corridors.

Section 655, Pub. L. 91–518, title X, § 1005, as added Pub. L. 96–254, title II, § 212, May 30, 1980, 94 Stat. 416, directed Secretary to encourage private sector development of potential rail passenger corridors by removing institutional barriers and coordinating funding.

Section 656, Pub. L. 91–518, title X, § 1006, as added Pub. L. 96–254, title II, § 212, May 30, 1980, 94 Stat. 417, related to speed restrictions imposed on Amtrak trains by State or local governments. See section 24702 of Title 49, Transportation.

Section 657, Pub. L. 91–518, title X, § 1007, as added Pub. L. 96–254, title II, § 212, May 30, 1980, 94 Stat. 417, related to provision of service between corridors to increase ridership. See section 24702 of Title 49.

Section 658, Pub. L. 91–518, title X, § 1008, as added Pub. L. 96–254, title II, § 212, May 30, 1980, 94 Stat. 417, authorized appropriations for evaluation of corridors, acquisition of equipment, and private sector development.

CHAPTER 15—EMERGENCY RAIL SERVICES

Sec.
661. Definitions.
662. Guarantee of certificates.
663. Inspection of accounts, books, etc., of railroad receiving financial assistance.
664. Issuance of obligations to Secretary of the Treasury.
665. Utilization of services and facilities of Federal departments and agencies; reimbursement; consultation with Board; coordination of activities with Federal departments and agencies.
666. Court supervision of expenditures; findings; report to Secretary.
667. Audit by Comptroller General; report to Congress.
668. Guarantee fees; amount; deposit.
669. Repealed.

§ 661. Definitions

For the purposes of this chapter—

(1) ''Secretary'' means the Secretary of Transportation.

(2) ''Board'' means the Surface Transportation Board.

(3) ''Railroad'' means any rail carrier subject to part A of subtitle IV of title 49.

(4) ''Certificate'' means certificates issued by trustees of a railroad pursuant to subsection 77(c)(3) of the Bankruptcy Act, as amended.

(Pub. L. 91–663, § 2, Jan. 8, 1971, 84 Stat. 1975; Pub. L. 104–88, title III, § 325(1), Dec. 29, 1995, 109 Stat. 951.)

REFERENCES IN TEXT

Section 77(c)(3) of the Bankruptcy Act, referred to in par. (4), was classified to section 205(c)(3) of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§ 1161 et seq.) of chapter 11 of Title 11.

AMENDMENTS

1995—Par. (2). Pub. L. 104–88, § 325(1)(A), added par. (2) and struck out former par. (2) which read as follows: '''Commission' means the Interstate Commerce Commission.''

Par. (3). Pub. L. 104–88, § 325(1)(B), substituted ''rail carrier subject to part A of subtitle IV of title 49'' for ''common carrier by railroad subject to part I of the Interstate Commerce Act (49 U.S.C. 1–27)''.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

SHORT TITLE

Section 1 of Pub. L. 91–663 provided: ''That this Act [enacting this chapter] may be cited as the 'Emergency Rail Services Act of 1970'.''

§ 662. Guarantee of certificates

(a) Authority of Secretary; prerequisites; procedures; waiver

The trustees of any railroad undergoing reorganization under section 77 of the Bankruptcy Act, as amended, upon approval of the court, may apply to the Secretary for the guarantee of certificates. The Secretary, after consultation with the Board, is authorized to guarantee such certificates upon findings in writing that—

(1) cessation of essential transportation services by the railroad would endanger the public welfare;

(2) cessation of such services is imminent;

(3) there is no other practicable means of obtaining funds to meet payroll and other expenses necessary to provide such services than the issuance of such certificates;

(4) such certificates cannot be sold without a guarantee;

(5) the railroad can reasonably be expected to become self-sustaining; and

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

The Secretary shall publish notice of his intention to make such finding in the Federal Register not less than fifteen days prior to such finding, give interested persons, including agencies of the Federal Government, an opportunity to submit written data, views, or arguments (with or without opportunity for oral presentation), and give consideration to the relevant matter presented. The Secretary for good cause shown and upon a finding that extraordinary circumstances warrant doing so may waive the requirements of the preceding sentence. Notwithstanding any other provision of this section, the Secretary, in guaranteeing certificates under this section, is authorized to waive the findings required by paragraphs (1), (5), and (6) of this subsection.

(b) Conditions to guarantee

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

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

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

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

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

(c) Certificate as administrative expense; priority of certificate

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

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

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

(e) Maximum aggregate principal amount outstanding

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

(f) Rules and regulations

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

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

REFERENCES IN TEXT

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

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–88, § 325(2)(B), substituted ''Board'' for ''Commission'' in introductory provisions.

Subsec. (b). Pub. L. 104–88 substituted ''Board'' for ''Commission'' wherever appearing and ''subchapter II of chapter 113 of title 49'' for ''the provisions of section 5 of the Interstate Commerce Act'' in par. (4).

1979—Subsec. (a). Pub. L. 96–101, § 7(a), struck out ''upon a finding that the guarantee of certificates is necessary in order for a railroad which has received continued loan advances, pursuant to section 721(d)(1) of this title, to maintain rail services in the region (as such term is defined in section 702(15) of this title)'' after ''of this subsection'' and provision requiring that Secretary not make any waiver under preceding sentence after Dec. 31, 1979.

Subsec. (c). Pub. L. 96–101, § 7(b), added subsec. (c). Former subsec. (c) was repealed by Pub. L. 95–598. See 1978 Amendment note below.

Subsec. (e). Pub. L. 96–101, § 7(c), substituted ''$200,000,000'' for ''$125,000,000'' and struck out provision requiring that with respect to a railroad which filed a petition for reorganization during fiscal year 1978, during period Oct. 1, 1979, through Nov. 30, 1979, certificates be issued without regard to limitations of subsec. (a) of this section and with such priority in payment as Secretary deems appropriate to secure repayment, for purpose of continuing service on railroad system at level in effect on Oct. 1, 1979.

Pub. L. 96–86 provided that, with respect to a railroad which filed a petition for reorganization during fiscal year 1978, during period Oct. 1, 1979, through Nov. 30, 1979, certificates shall be issued without regard to limitations of subsec. (a) of this section and with such priority in payment as Secretary deems appropriate to secure repayment, for purpose of continuing service on railroad system at level in effect on Oct. 1, 1979.

1978—Subsec. (a). Pub. L. 95–611 inserted provision authorizing Secretary to waive requirements of paragraphs (1), (5), and (6) of subsec. (a) until Dec. 31, 1979.

Subsec. (c). Pub. L. 95–598 struck out subsec. (c) which related to treatment of a certificate as an administrative expense and priority of the certificate.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 663. Inspection of accounts, books, etc., of railroad receiving financial assistance

The Secretary is authorized to, and shall as necessary, inspect and copy all accounts, books, records, memorandums, correspondence, and other documents of any railroad which has received financial assistance under this chapter concerning any matter which may bear upon (1) the ability of such railroad to repay the loan within the time fixed therefor, (2) the interest of the United States in the property of such railroad, and (3) to insure that the purpose of this chapter is being carried out.

(Pub. L. 91–663, § 4, Jan. 8, 1971, 84 Stat. 1976.)

§ 664. Issuance of obligations to Secretary of the Treasury

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

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

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

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

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

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

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

CODIFICATION

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

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

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

(b) Departments, agencies, and instrumentalities of the Federal Government shall exercise

their powers, duties, and functions in such manner as will assist in carrying out the provisions of this chapter.

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

AMENDMENTS

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

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

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

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

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

REFERENCES IN TEXT

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

§ 667. Audit by Comptroller General; report to Congress

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

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

§ 668. Guarantee fees; amount; deposit

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

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

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

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

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SUBCHAPTER I—GENERAL PROVISIONS

§ 701. Congressional declaration of policy

(a) Findings

The Congress finds and declares that—

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

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

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

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

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

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

(b) Purposes

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

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

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

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

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

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

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

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

REFERENCES IN TEXT

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

SHORT TITLE OF 1978 AMENDMENT

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

SHORT TITLE OF 1976 AMENDMENT

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

SHORT TITLE OF 1975 AMENDMENT

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

SHORT TITLE

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

SEPARABILITY

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

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

See section 1341 of this title.

§ 702. Definitions

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

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

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

(3) ''Commuter authority'' means any State, local, or regional authority, corporation, or other entity established for purposes of providing commuter service, and includes the Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Cor-

poration, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, any successor agencies, and any entity created by one or more such agencies for the purpose of operating, or contracting for the operation of, commuter service;

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) ''Region'' means the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan, and Illinois; the District of Columbia; and those portions of contiguous States in which are located rail properties owned or operated by railroads doing business primarily in the aforementioned jurisdictions (as determined by the Commission by order);

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

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

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

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

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

(Pub. L. 93–236, title I, § 102, Jan. 2, 1974, 87 Stat. 986; Pub. L. 94–210, title VI, §§ 601(f), (g), 603(c), 607(t), 610(a), Feb. 5, 1976, 90 Stat. 86, 88, 98, 100; Pub. L. 94–248, § 1, Mar. 25, 1976, 90 Stat. 286; Pub. L. 94–555, title II, § 211(a), Oct. 19, 1976, 90 Stat.

[1] See References in Text note below.

[2] So in original. The period probably should be a semicolon.

2624; Pub. L. 96–448, title V, § 508(b), title VI, § 601(b), Oct. 14, 1980, 94 Stat. 1957, 1958; Pub. L. 97–35, title XI, § 1135(b), Aug. 13, 1981, 95 Stat. 646; Pub. L. 99–509, title IV, § 4033(b)(1), Oct. 21, 1986, 100 Stat. 1908; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–88, title III, § 327(1), Dec. 29, 1995, 109 Stat. 951.)

REFERENCES IN TEXT

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

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

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

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

CODIFICATION

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

AMENDMENTS

1995—Par. (15). Pub. L. 104–88 substituted ''rail carrier subject to part A of subtitle IV of title 49'' for ''common carrier by railroad as defined in section 1(3) of part I of the Interstate Commerce Act (49 U.S.C. 1(3))''.

1986—Par. (7). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Par. (17A). Pub. L. 99–509 added par. (17A).

1981—Pub. L. 97–35 added pars. (3) and (4). Former pars. (3) to (19) redesignated (5) to (21), respectively.

1980—Par. (16). Pub. L. 96–448, § 508(b), substituted ''or the designated representative of the Secretary'' for ''or the person at the time performing the duties of the Office of the Secretary of Transportation in accordance with law, or, in his absence, the Deputy Secretary of Transportation''.

Par. (19). Pub. L. 96–448, § 601(b), struck out '', within 6 years after the date on which the special court orders conveyances of rail properties to the Corporation'' after ''section 745 of this title''. See Codification note above.

1976—Par. (3). Pub. L. 94–248 inserted provision relating to successor by merger, consolidation, etc., of the Corporation

Par. (7). Pub. L. 94–210, § 603(c), added par. (7). Former par. (7) redesignated (8).

Par. (8). Pub. L. 94–210, §§ 601(g), 603(c), redesignated former par. (7) as (8). Former par. (8) redesignated (10).

Pars. (9) to (11). Pub. L. 94–210, § 601(g), added par. (9) and redesignated former pars. (8) and (9) as (10) and (11), respectively. Former pars. (10) and (11) redesignated (12) and (13), respectively.

Par. (12). Pub. L. 94–210, §§ 601(g), 607(t), redesignated former par. (10) as (12), inserted ''(or a person owned, leased, or otherwise controlled by a railroad)'' before ''which are used or useful'', and substituted ''phrase'' for ''phase''. Former par. (12) redesignated (14).

Pars. (13) to (15). Pub. L. 94–210, § 601(g), redesignated former pars. (11) to (13) as (13) to (15) respectively. Former pars. (13) to (15) redesignated (15) to (17) respectively.

Par. (16). Pub. L. 94–555 substituted '', in his absence, the Deputy Secretary of Transportation'' for ''the duly authorized representative of either of them'' after ''accordance with law, or''.

Pub. L. 94–210, §§ 601(f), (g), 610(a)(1), redesignated former par. (14) as (16) and substituted provisions relating to the person at the time performing the duties of the Office in accordance with the law, or the duly authorized representative of such person or the Secretary, for provisions relating to the delegate of the Secretary, unless the context indicated otherwise.

Par. (17). Pub. L. 94–210, §§ 601(g), 610(a)(2), redesignated former par. (15) as (17) and substituted a semicolon for a period.

Pars. (18), (19). Pub. L. 94–210, § 610(a)(3), added pars. (18) and (19).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

Section 303 of Pub. L. 94–555 provided that: ''The provisions of this Act and the amendments made by this Act [amending this section, sections 543, 545, 546, 563, 601, 602, 641, 711, 716, 720, 721, 743, 744, 771, 774, 775, 779, 823, 824, 825, 826, 829, 831, and 854 of this title, section 960 of Title 20, Education, and sections 1a, 5, 5c, 13, 15, 17, 22, 26c, and 1653 of former Title 49, Transportation, and enacting provisions set out as notes under sections 501, 641, 701, and 714 of this title, section 80a–3 of Title 15, Commerce and Trade, and sections 1a and 1654 of former Title 49] shall take effect on October 1, 1976.''

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

SUBCHAPTER II—UNITED STATES RAILWAY ASSOCIATION

§ 711. Formation and structure

(a) Establishment

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

(b) Administration

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

(c) Status

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

(d) Board of Directors

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

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

(B) The Secretary of Transportation.

(C) The Comptroller General of the United States.

(D) The Chairman of the Commission.

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

(2) The Chairman may not have any employment or other direct financial relationship with any freight railroad. The Chairman shall receive $300 per diem when engaged in the actual performance of his duties plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(e) Term of office

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

(f) Quorum

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

(g) Assumption of Finance Committee functions

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

(h) Representation at meetings

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

(i) Miscellaneous [1]

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

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

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

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

(j) Use of names [1]

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

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

[1] See Codification note below.

99–190, §101(e) [title III, §332], Dec. 19, 1985, 99 Stat. 1267, 1290.)

REFERENCES IN TEXT

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

CODIFICATION

Section 1147 of Pub. L. 97–35 directed that subsecs. (d) to (i) be struck out and replaced by new subsecs. (d) to (h), and that subsecs. (j) and (k) be redesignated (g) and (h), respectively. Because a literal execution of the amendment would result in two subsections designated (g) and two subsections designated (h), and to reflect the probable intent of Congress, subsecs. (j) and (k) have been editorially redesignated (i) and (j), respectively.

AMENDMENTS

1985—Subsec. (d)(2). Pub. L. 99–190, §101(e) [title III, §332(1)], inserted ''freight'' before ''railroad''.

Subsec. (e). Pub. L. 99–190, §101(e) [title III, §332(2)], substituted ''1987'' for ''1985''.

1983—Subsec. (e). Pub. L. 98–181 substituted ''1985'' for ''1983''.

1981—Subsec. (d). Pub. L. 97–35 substituted provisions respecting a five-member board for provisions respecting an eleven-member board.

Subsec. (e). Pub. L. 97–35 substituted provisions respecting term of office and reappointment of Chairman for provisions respecting term of office of Chairman and nongovernmental members, reappointment of members, and vacancies.

Subsec. (f). Pub. L. 97–35 substituted provisions respecting three-member quorum requirement for provisions respecting six-member quorum requirement.

Subsec. (g). Pub. L. 97–35 substituted provisions relating to assumption of Finance Committee functions for provisions relating to appointment of the President of the Association. See Codification note above.

Subsec. (h). Pub. L. 97–35 substituted provisions relating to representation at meetings for provisions relating to the executive committee of the Board of Directors. See Codification note above.

Subsec. (i). Pub. L. 97–35 redesignated subsec. (j) as (i). Former subsec. (i), which related to membership, functions, etc., of the Finance Committee, was struck out. See Codification note above.

Subsecs. (j), (k). Pub. L. 97–35 redesignated former subsecs. (j) relating to miscellaneous provisions, and (k) relating to use of names, as (i) and (j), respectively. See Codification note above.

1980—Subsec. (d)(2). Pub. L. 96–448, §508(c)(1), inserted provision authorizing Secretary of Transportation to act directly or through the General Counsel of Department of Transportation, the Federal Railroad Administrator, or the Deputy Administrator of the Federal Railroad Administration and substituted provision authorizing Secretary of the Treasury to act directly or through an officer of Department of the Treasury who has been appointed with the advice and consent of the Senate for provision authorizing Secretary of the Treasury to act directly or through Deputy Secretary of the Treasury.

Subsec. (i). Pub. L. 96–448, §508(c)(2), substituted ''in the case of the Secretary, through the Deputy Secretary of Transportation, the General Counsel of the Department of Transportation, the Federal Railroad Administrator, or the Deputy Administrator of the Federal Railroad Administration, and, in the case of the Secretary of the Treasury, through an officer of the Department of the Treasury who has been appointed with the advice and consent of the Senate'' for ''through their respective Deputy Secretaries''.

Subsec. (j)(4). Pub. L. 96–448, §508(c)(3), struck out provision that any reference in this chapter to Secretary of the Treasury is to Secretary of the Treasury or person who is at time performing duties of the Office of Secretary of the Treasury or, in his absence, Deputy Secretary of the Treasury.

1978—Subsec. (e). Pub. L. 95–611 inserted provision that members of Board shall continue to serve until their successors have been appointed and qualified.

1976—Subsec. (d)(2). Pub. L. 94–555, §211(b), substituted ''the Deputy Secretary of Transportation, the Vice Chairman of the Commission, or the Deputy Secretary of the Treasury, as the case may be'' for ''their duly authorized representatives'' after ''at any time through''.

Pub. L. 94–210, §603(b)(2), substituted ''acting directly or at any time through'' for ''or''.

Subsec. (h). Pub. L. 94–555, §211(c), struck out ''The Secretary and the Chairman of the Commission may act in such capacity directly or at any time through their duly authorized representatives'' after ''members of the Board''.

Pub. L. 94–210, §603(b)(1), inserted provision authorizing Secretary and Chairman to act directly or through their duly authorized representatives.

Subsec. (i). Pub. L. 94–555, §211(d), substituted ''Deputy Secretaries'' for ''duly authorized representatives'' after ''through their respective''.

Pub. L. 94–210, §603(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 94–210, §§603(a), 607(a), redesignated former subsec. (i) as (j) and added par. (4). Former subsec. (j) redesignated (k).

Subsec. (j)(4). Pub. L. 94–555, §211(e), inserted ''who is'' after ''Treasury or the person'' and ''Commission or the person'', and substituted ''in his absence, the Deputy Secretary of the Treasury'' for ''the duly authorized representatives of either of them'' after ''Treasury in accordance with law''.

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub.

L. 94–210, see section 619 of Pub. L. 94–210, set out as a note under section 791 of this title.

§ 712. Functions of Association

(a) General

The Association is authorized to—

(1) monitor the financial performance of the Corporation;

(2) review whether the goals and requirements of this chapter are met;

(3) purchase or otherwise acquire or receive, and hold and dispose of securities (whether debt or equity) of the Corporation under sections 726 and 727 of this title and exercise all of the rights, privileges, and powers of a holder of any such securities;

(4) purchase accounts receivable of the Corporation in accordance with section 727 of this title;

(5) appoint and fix the compensation of such personnel as the Association considers necessary and appropriate; and

(11)[1] determine the value of the Alaska Railroad, as required by section 1204 of this title.

(b) Investment of funds

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

(c) Exemption from taxation

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

(d) Reports

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

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

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

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

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

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

(e) Budget

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

(f) Accountability

The Chairman of the Association shall transmit annually to the Office of Management and Budget a budget for administrative expenses of the Association. Whenever the Association submits any budget estimate or request to the Office of Management and Budget, it shall concurrently transmit a copy of the estimate or request to the Congress. Within budgetary constraints of the Congress, the maximum feasible and prudent budgetary flexibility shall be provided to the Association to permit effective operations.

[1] So in original. Probably should be ''(6)''.

[2] Par. ''(1)'' designation supplied editorially.

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

(g) Transfer of litigation

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

(h) Transfer of other functions

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

(i) Monitoring of contractors

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

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

CODIFICATION

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1979 AMENDMENT

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

TERMINATION OF REPORTING REQUIREMENTS

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

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

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

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 713. Access to information

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

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

AMENDMENTS

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

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

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 714. Omitted

CODIFICATION

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

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

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

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

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

§ 716. Final system plan

(a) Goals

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

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

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

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

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

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

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

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

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

(b) Factors

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

(c) Designations

The final system plan shall designate—

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

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

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

(C) shall be purchased, leased, or otherwise acquired from the Corporation by the Na-

[1] See References in Text note below.

tional Railroad Passenger Corporation in accordance with the exercise of its option under section 791(d) of this title for improvement to achieve the goal set forth in subsection (a)(3) of this section;

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

(E) if not otherwise required to be operated by the Corporation, a government entity, or a responsible person, are suitable for use for other public purposes, including highways, other forms of transportation, conservation, energy transmission, education or health care facilities, or recreation. In carrying out this subparagraph, the Association shall solicit the views and recommendations of the Secretary, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and other agencies of the Federal Government and of the States and political subdivisions thereof within the region, and the general public; and

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

(d) Transfers

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

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

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

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

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

(5) All properties—

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

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

(C) transferred by the Corporation to any State, local or regional transportation authority, or the National Railroad Passenger Corporation, within 3 years after the date of

[2] See References in Text note below.

conveyance, pursuant to section 743(b)(1) of this title, to meet the needs of commuter or intercity rail passenger service,

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

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

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

(e) Corporation features

The final system plan shall set forth—

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

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

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

(f) Value

The final system plan shall designate the value of all rail properties to be transferred under the final system plan and the value of the securities and other benefits to be received for transferring those rail properties to the Corporation in accordance with the final system plan.

(g) Other provisions

The final system plan may recommend arrangements among various railroads for joint use or operation of rail properties on a shared ownership, cooperative, pooled, or condominium-type basis, subject to such terms and conditions as may be specified in the final system plan. The final system plan shall also make such designations as are determined to be necessary in accordance with the provisions of section 762 or 763[3] of this title.

(h) Obligational authority

The final system plan shall recommend the amount of obligations of the Association which are necessary to enable it to implement the final system plan.

(i) Terms and conditions for securities

The final system plan may include terms and conditions for any securities to be issued by the Corporation in exchange for the conveyance of rail properties under the final system plan which in the judgement of the Association will minimize any actual or potential debt burden on the Corporation. Any such terms and conditions for securities of the Corporation which purport to directly obligate the Association shall not become effective without affirmative approval, with or without modification by a joint resolution of the Congress.

(j) Additional properties deemed designated

Any rail properties over which rail service was being provided as of February 5, 1976, 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

[3] See References in Text note below.

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.

(Pub. L. 93–236, title II, § 206, Jan. 2, 1974, 87 Stat. 994; Pub. L. 94–5, § 2(b), Feb. 28, 1975, 89 Stat. 7; Pub. L. 94–210, title VI, § 607(e)–(j), (*o*)–(q), title VIII, § 807, Feb. 5, 1976, 90 Stat. 96–98, 143; Pub. L. 94–436, §§ 2, 4, Sept. 30, 1976, 90 Stat. 1398; Pub. L. 94–555, title II, § 202(a), (c), Oct. 19, 1976, 90 Stat. 2616, 2617; Pub. L. 95–611, § 4(a), Nov. 8, 1978, 92 Stat. 3090.)

REFERENCES IN TEXT

Clean Air Act Amendments of 1970, referred to in subsec. (a)(6), mean Pub. L. 91–604, Dec. 31, 1970, 84 Stat. 1676. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 7401 of Title 42, The Public Health and Welfare, and Tables.

Section 712(b) of this title, referred to in subsec. (b), which related to additional duties of the Association, was repealed and section 712(c) of this title was redesignated section 712(b) by Pub. L. 97–35, title XI, § 1148(a), Aug. 13, 1981, 95 Stat. 674.

Section 714 of this title, referred to in subsec. (b), was omitted from the Code.

Subchapter III of chapter 113 of title 49, referred to in subsec. (d)(3), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804. Previously, in subsec. (d)(3), ''subchapter III of chapter 113 of title 49'' was substituted for ''section 5 of part I of the Interstate Commerce Act (49 U.S.C. 5)'' on authority of Pub. L. 95–473, § 3(b), Oct. 17, 1978, 92 Stat. 1446, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49.

Sections 762 and 763 of this title, referred to in subsec. (g), were repealed by Pub. L. 94–210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

AMENDMENTS

1978—Subsec. (d)(5)(C). Pub. L. 95–611 substituted ''3 years'' for ''900 days''.

1976—Subsec. (c)(1)(A). Pub. L. 94–210, § 607(g), inserted proviso relating to notice by the Corporation to the Association.

Subsec. (c)(1)(B). Pub. L. 94–210, § 607(f), inserted provision relating to alternative designations to be made under this paragraph.

Subsec. (c)(1)(D). Pub. L. 94–210, § 607(j), designated existing provision as cl. (i) and added cl. (ii).

Subsec. (c)(2). Pub. L. 94–210, § 607(h), inserted provision relating to sale of designated properties to a subsidiary of the Corporation.

Subsec. (d)(1). Pub. L. 94–210, § 607(i), inserted ''or any subsidiary thereof'' after ''Corporation'' wherever appearing.

Subsec. (d)(3). Pub. L. 94–210, § 607(e), inserted provisions relating to correction to the preliminary system plan published in 40 Fed. Reg. 16377, determinations made with respect to such correction by the Commission, and determinations made with respect to acquisitions referred to in any supplement to the preliminary system plan.

Subsec. (d)(4). Pub. L. 94–210, § 607(*o*), inserted provision relating to modification of offer until the date of acceptance, and substituted ''95'' for ''60'' and ''7 days after February 5, 1976,'' for ''30 days after the effective date of the final system plan''.

Subsec. (d)(5). Pub. L. 94–555, § 202(a), inserted ''or for purposes of providing rail marine freight floating service'' after ''intercity rail passenger service''.

Pub. L. 94–436, § 2, inserted provision relieving the Corporation, its Board of Directors, and its individual directors from liability to any party by reason of the fact that the Corporation transferred property pursuant to section 743 of this title.

Pub. L. 94–210, § 807, restructured provisions and substituted provisions relating to valuation of transferred properties transferred by the Corporation and adjustment of such valuation, for provisions relating to valuation of transferred properties sold by the Corporation.

Subsec. (d)(6). Pub. L. 94–210, § 607(p), added par. (6).

Subsec. (d)(7). Pub. L. 94–555, § 202(c), inserted ''by the Corporation pursuant to the final system plan'' after ''with respect to the acquisition''.

Pub. L. 94–436, § 4, added par. (7).

Subsec. (j). Pub. L. 94–210, § 607(q), added subsec. (j).

1975—Subsec. (a)(1). Pub. L. 94–5 inserted ''and express'' after ''rail''.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(b) of Pub. L. 95–611 provided that: ''The amendment made by this Act [probably meaning this section 4, which amended section 716 of this title] shall be effective on January 2, 1974.''

EFFECTIVE DATE OF 1976 AMENDMENT

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

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 717. Adoption of final system plan

(a) Preliminary system plan

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

The Association shall invite and afford interested persons an opportunity to submit comments on the preliminary system plan to the Association within 60 days after the date of its release.

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

(b) Approval

(1) Within 120 days after January 2, 1974, each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act and that the public interest would be better served by continuing the present reorganization proceedings than by a reorganization under this chapter. Within 60 days after the submission of the report by the Office, under section 715(d)(1) of this title, on the Secretary's report on rail services in the region, each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether or not such railroad shall be reorganized by means of transferring some of its rail properties to the Corporation pursuant to the provisions of this chapter. Because of the strong public interest in the continuance of rail transportation in the region pursuant to a system plan devised under the provisions of this chapter, each such court shall order that the reorganization be proceeded with pursuant to this chapter unless it (1) has found that the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act and that the public interest would be better served by such a reorganization than by a reorganization under this chapter, or (2) finds that this chapter does not provide a process which would be fair and equitable to the estate of the railroad in reorganization in which case it shall dismiss the reorganization proceeding. If a court does not enter an order or make a finding as required by this subsection, the reorganization shall be proceeded with pursuant to this chapter. An appeal from an order made under this section may be made only to the special court. Appeal to the special court shall be taken within 10 days following entry of an order pursuant to this subsection, and the special court shall complete its review and render its decision within 80 days after such appeal is taken. There shall be no review of the decision of the special court.

(2) Whenever it has been finally determined pursuant to the procedures of paragraph (1) of this subsection, that the reorganization of a railroad subject to reorganization under section 77 of the Bankruptcy Act shall not be proceeded with pursuant to this chapter, the court having jurisdiction over such railroad may, upon a petition which is filed within 10 days after February 28, 1975, by the trustees of such railroad, reconsider such order. Such reorganization court shall (i) affirm its previous order or (ii) issue an order that the reorganization of such railroad be proceeded with pursuant to this chapter unless it finds that this chapter does not provide a process which would be fair and equitable. The provisions of paragraph (1) of this subsection are applicable in such reconsideration, except that (A) such reorganization court shall make its decision within 30 days after such petition is filed, and (B) any decision by the special court on appeal from such a decision shall be rendered within 30 days after such reorganization court decision is made. There shall be no review of the decision of the special court. The Association shall take any steps it finds necessary, consistent with time limitations and other provisions of this chapter, to effectuate the consequences of such a revised order, including the preparation and submission of any necessary or appropriate supplements to the preliminary system plan.

(c) Adoption

Within 540 days after January 2, 1974, the executive committee of the Association shall prepare and submit a final system plan for the approval of the Board of Directors of the Association. A copy of such submission shall be simultaneously presented to the Commission. The submission shall reflect evaluation of all responses and summaries of responses received, testimony at any public hearings, and the results of additional study and review. Within 30 days thereafter, the Board of Directors of the Association shall by a majority vote of all its members approve a final system plan which meets all of the requirements of section 716 of this title.

(d) Review of Commission

Within 30 days following the adoption of the final system plan by the Association under subsection (c) of this section and the submission of such plan to Congress under section 718(a) of this title, the Commission shall submit to the Congress an evaluation of the final system plan delivered to both Houses of Congress.

(Pub. L. 93–236, title II, § 207, Jan. 2, 1974, 87 Stat. 998; Pub. L. 93–488, § 1(a), (b), Oct. 26, 1974, 88 Stat. 1464; Pub. L. 94–5, § 4, Feb. 28, 1975, 89 Stat. 7.)

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in subsec. (b)(1), (2), was classified to section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§ 1161 et seq.) of chapter 11 of Title 11.

Section 715(d)(1) of this title, referred to in subsec. (b)(1), is a reference to section 715(d)(1) prior to amendment by Pub. L. 94–210. Section 715 was repealed by Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49, Transportation.

AMENDMENTS

1975—Subsec. (a)(2). Pub. L. 94–5, § 4(b), inserted provisions authorizing the Office to hold public hearings on supplements to the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the supplement not later than 30 days after the release of the supplement.

Subsec. (b). Pub. L. 94–5, § 4(a), designated existing provisions as par. (1) and added par. (2).

1974—Subsec. (a)(1). Pub. L. 93–488, § 1(a), substituted ''420'' for ''300''.

Subsec. (c). Pub. L. 93–488, § 1(b), substituted ''540'' for ''420''.

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

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

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

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

See section 1341 of this title.

§ 718. Review by Congress

(a) General

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

(b) Revised plan

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

(c) Computation

For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(d) Additions

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

(2) The Association may, upon petition of any State, modify the final system plan to make further designations with respect to rail properties of railroads in reorganization in the region designated for transfer to the Corporation under such plan, if such designations (A) are likely to result in improved rail service on such rail properties and connecting rail properties, and (B) would not materially impair the profitability of the Corporation. Such designations, including designations of such rail properties to a State, a profitable railroad, or a responsible person, may be made at any time prior to delivery of the final system plan to the special court under section 719(c) of this title. Such further designations shall be treated for all purposes as if they had been included in the final system plan adopted by the Association and reviewed by the Congress, and the final system plan shall for all purposes be deemed to be approved as modified by such designations. Any action of the Association with respect to any such petition shall not be subject to review by any court.

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

(i) achieve the efficient implementation of the final system plan, or

(ii) provide for the offer to profitable railroads of rail properties designated in the final system plan to the Corporation, if such properties are not essential in the operation of other rail properties of the Corporation but are or would be integrally related to the operation of rail properties of (or which are offered pursuant to the final system plan to) such profitable railroad, or

(iii) provide for the designation of additional rail properties to the Corporation or to a subsidiary thereof to enable the Corporation to serve efficiently a line of railroad designated to the Corporation in the final system plan if such line does not connect with any other line of railroad so designated to the Corporation or if such line would be served more efficiently as a consequence of such designation.

Any designation to a profitable railroad pursuant to this paragraph shall comply with the second sentence of section 716(d)(4) of this title, and shall only be made upon a finding by the Association that such designation is integrally related to an offer of rail properties to a profitable railroad in the final system plan, that the goals of the final system plan require that the rail

properties be operated as a part of the rail properties included in such offer, and that the implementation of such designation will not materially and adversely affect the impact of such offer on the profitability of the Corporation or any profitable railroad operating in the region. Any designation to a profitable railroad pursuant to this subsection, which amends any prior offer, shall terminate 30 days after February 5, 1976, unless, prior to such date, such profitable railroad has notified the Association in writing of its acceptance of such amendment to the prior offer.

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

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

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

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

REFERENCES IN TEXT

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

AMENDMENTS

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

CHANGE OF NAME

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

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

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

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

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 719. Judicial review

(a) General

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

(b) Special court

(1) Within 30 days after January 2, 1974, the Association shall make application to the judicial panel on multi-district litigation authorized by section 1407 of title 28 for the consolidation in a single, three-judge district court of the United States of all judicial proceedings with respect to the final system plan. Within 30 days after such application is received, the panel shall make the consolidation in a district court (cited herein as the ''special court'') which the panel determines to be convenient to the parties and the one most likely to be able to conduct any proceedings under this section with the least delay and the greatest possible fairness and ability. Such proceedings shall be conducted by the special court which shall be composed of three Federal judges who shall be selected by the panel, except that none of the judges selected may be a judge assigned to a proceeding involving any railroad in reorganization in the region under section 77 of the Bankruptcy Act. The special court is authorized to exercise the powers of a district judge in any judicial district with respect to such proceedings and such powers shall include those of a reorganization court. The special court shall have the power to order the conveyance of rail properties of railroads leased, operated, or controlled by a railroad in reorganization in the region. The special court may issue rules for the conduct of any proceedings under this section and under section 745 of this title, including rules with respect to the time within which motions may be filed, and with respect to appropriate representation of interests not otherwise represented (including the Secretary with respect to a petition by the Association in the case of a proposal developed by the Secretary, under such section 745 of this title). No determination by the panel under this subsection may be reviewed in any court.

(2) The special court referred to in paragraph (1) of this subsection is abolished effective 90 days after October 19, 1996. On such effective date, all jurisdiction and other functions of the special court shall be assumed by the United

[1] See References in Text note below.

States District Court for the District of Columbia. With respect to any proceedings that arise or continue after the date on which the special court is abolished, the references in the following provisions to the special court established under this subsection shall be deemed to refer to the United States District Court for the District of Columbia:

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

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

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

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

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

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

(c) Delivery of plan to special court

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

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

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

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

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

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

(d) Bankruptcy courts

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

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

(2) which rail properties of that railroad in reorganization, if any, are to be conveyed to profitable railroads operating in the region, under the final system plan.

(e) Original and exclusive jurisdiction

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

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

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

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

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

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

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

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

(2) The original and exclusive jurisdiction of the special court shall include any action, whether filed by any interested person or initiated by the special court itself, to interpret, alter, amend, modify, or implement any of the orders entered by such court pursuant to section 743(b) of this title in order to effect the purposes of this chapter or the goals of the final system plan. During the pendency of any proceeding de-

[1] See Codification note below.

scribed in this paragraph, the special court may enter such orders as it determines to be appropriate, including orders enjoining, restraining, conditioning, or limiting any conveyance, transfer, or use of any asset or right which is subject to such an order or which is at issue in such a proceeding, or which involves the enforcement of any liens or encumbrances upon such assets or rights. Any orders pursuant to this paragraph which interpret, alter, amend, modify, or implement orders entered by the special court shall be final and shall not be restrained or enjoined by any court.

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

(f) Disposition of cash deposits

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

(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 or Court of Appeals for the District of Columbia Circuit if such action or proceeding is contrary to any provision of this chapter, impairs the effective implementation of this chapter, or interferes with the execution of any order of the special court pursuant to this chapter.

(Pub. L. 93–236, title II, § 209, Jan. 2, 1974, 87 Stat. 999; Pub. L. 94–210, title VI, §§ 602(a), (b), 607(i), (*l*), (r), (s), Feb. 5, 1976, 90 Stat. 86, 97, 98; Pub. L. 94–216, § 2, Feb. 17, 1976, 90 Stat. 191; Pub. L. 95–199, § 3, Nov. 23, 1977, 91 Stat. 1423; Pub. L. 100–352, § 6(d), June 27, 1988, 102 Stat. 663; Pub. L. 104–317, title VI, § 605(a), (b)(1), (c)(1), Oct. 19, 1996, 110 Stat. 3858, 3859.)

REFERENCES IN TEXT

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

Section 605 of the Federal Courts Improvement Act of 1996, referred to in subsec. (b)(2)(F), is section 605 of Pub. L. 104–317, title VI, Oct. 19, 1996, 110 Stat. 3858, which amended this section and sections 743, 745, 1104, and 1105 of this title and enacted provisions set out as notes under this section.

CODIFICATION

Amendment of subsec. (c)(2) by section 607(s) of Pub. L. 94–210 was executed by substituting ''person leased'' for ''railroads leased'' to reflect the probable intent of Congress, notwithstanding such section 607(s) requiring substitution of ''person leased'' for ''railroad leased''.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–317, § 605(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (e)(3). Pub. L. 104–317, § 605(b)(1), added par. (3) and struck out former par. (3) which read as follows: ''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. Such review is exclusive and any such petition shall be filed in the Supreme Court not more than 20 days after entry of such order or judgment.''

Subsec. (g). Pub. L. 104–317, § 605(c)(1)(A), inserted ''or Court of Appeals for the District of Columbia Circuit'' after ''Supreme Court''.

Subsec. (h). Pub. L. 104–317, § 605(c)(1)(B), struck out subsec. (h) relating to special masters.

1988—Subsec. (e)(3). Pub. L. 100–352 struck out '', except that any order or judgment enjoining the enforcement, or declaring or determining the unconstitutionality or invalidity, of this chapter, in whole or in part, or of any action taken under this chapter, 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'' before the period at end of first sentence and substituted ''such petition shall be filed in the Supreme Court'' for ''petition or appeal shall be filed'' in second sentence.

1977—Subsec. (h). Pub. L. 95–199 added subsec. (h).

1976—Subsec. (b). Pub. L. 94–210, § 602(a), substituted provisions relating to issuance of rules by special court for conduct of proceedings under this section and section 745 of this title, for provisions relating to issuance of rules by panel for conduct of its functions under this provision.

Subsec. (c). Pub. L. 94–210, § 607(i), (*l*), (r), (s), inserted ''or any subsidiary thereof'' after ''Corporation'' wherever appearing, substituted ''certificates of value'' for ''obligations'' wherever appearing, inserted provisions at end relating to the time for the delivery of the final system plan on March 12, 1976, and conditions for extension of such date, and substituted references to person leased for references to railroad leased wherever appearing in pars. (1) and (2). See Codification note above.

Subsec. (d)(1). Pub. L. 94–210, § 607(i), inserted ''or any subsidiary thereof'' after ''Corporation''.

Subsecs. (e) to (g). Pub. L. 94–210, § 602(b), added subsecs. (e) to (g).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 605(e) of Pub. L. 104–317 provided that: ''The amendments made by subsections (b) and (c) of this

section [amending this section and sections 743, 745, 1104, and 1105 of this title] shall take effect 90 days after the date of enactment of this Act [Oct. 19, 1996] and, except as provided in subsection (d) [enacting provisions set out as a note below], shall apply with respect to proceedings that arise or continue after such effective date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of Title 28, Judiciary and Judicial Procedure.

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

See section 1341 of this title.

CASES PENDING IN SPECIAL COURT

Section 605(d) of Pub. L. 104–317 provided that: ''Effective 90 days after the date of enactment of this Act [Oct. 19, 1996], any case pending in the special court established under section 209(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719(b)) shall be assigned to the United States District Court for the District of Columbia as though the case had originally been filed in that court. The amendments made by subsection (b) of this section [amending this section and sections 743 and 1105 of this title] shall not apply to any final order or judgment entered by the special court for which—

''(1) a petition for writ of certiorari has been filed before the date on which the special court is abolished; or

''(2) the time for filing a petition for writ of certiorari has not expired before that date.''

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

RULES OF THE SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973

Rules of the Special Court, Regional Rail Reorganization Act of 1973, formerly set out under this section, were omitted because the Special Court was abolished effective 90 days after Oct. 19, 1996. See subsec. (b)(2) of this section.

§ 720. Obligations of Association

(a) General

To carry out the purposes of this chapter, the Association is authorized to issue bonds, debentures, trust certificates, securities, or other obligations (herein cited as ''obligations'') in accordance with this section. Such obligations shall have such maturities and bear such rate or rates of interest as are determined by the Association with the approval of the Secretary of the Treasury. Such obligations shall be redeemable at the option of the Association prior to maturity in the manner stipulated in each such obligation, and may be purchased by the Association in the open market at a price which is reasonable.

(b) Maximum obligational authority

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

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

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

(c) Guarantees

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

(d) Validity

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

(e) The Secretary of the Treasury

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

(f) Authorization for appropriations

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

(g) Lawful investments

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

(Pub. L. 93–236, title II, § 210, Jan. 2, 1974, 87 Stat. 1000; Pub. L. 94–210, title VI, §§ 604, 607(k), Feb. 5, 1976, 90 Stat. 88, 97; Pub. L. 94–555, title II, § 203(e), Oct. 19, 1976, 90 Stat. 2620; Pub. L. 96–448, title VII, § 703(f)(3), Oct. 14, 1980, 94 Stat. 1965.)

CODIFICATION

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

AMENDMENTS

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

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

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

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

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

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 721. Loans

(a) General

The Association is authorized, in accordance with the provisions of this section and such rules and regulations as it shall prescribe, to make loans to the Corporation, the National Railroad Passenger Corporation, and other railroads (including a railroad in reorganization which has been found to be reorganizable under section 77 of the Bankruptcy Act pursuant to section 717(b) of this title) in the region, for purposes of achieving the goals of this chapter; to a State or local or regional transportation authority pursuant to section 763[1] of this title; and to provide assistance in the form of loans to any railroad which (A) connects with a railroad in reorganization, and (B) is in need of financial assistance to avoid reorganization proceedings under section 77 of the Bankruptcy Act. No such loan shall be made by the Association to a railroad unless such loans shall, where applicable, be treated as an expense of administration. The rights referred to in the last sentence of section 77(j) of the Bankruptcy Act shall in no way be affected by this chapter.

(b) Applications

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

(c) Terms and conditions

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

(d) Modifications

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

[1] See References in Text note below.

the findings with respect to subsections (e)(3) and (f) of this section and may, upon the request of such railroad—

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

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

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

(e) Prerequisites

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

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

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

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

(f) Policy

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

(g) Pre-conveyance loans to Corporation

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

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

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

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

(h) Loans for payment of obligations

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

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

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

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

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

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

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

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

[2] See References in Text note below.

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

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

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

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

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

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

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

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

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

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

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

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

(2) The trustees of each railroad in reorganization in the region shall attempt to negotiate agency agreements with the Corporation, the National Railroad Passenger Corporation, or a profitable railroad for the processing of all accounts receivable and accounts payable attributable to operations prior to the conveyance of property pursuant to section 743(b)(1) of this title and for the payment of only those accounts payable which relate to obligations of the estates identified in paragraph (1) of this subsection. If any railroad in reorganization in the region fails to conclude such an agreement within a reasonable time prior to such conveyance, the applicable reorganization courts, after giving all parties an opportunity to be heard, shall prescribe the terms of such an agency arrangement by order, giving due consideration to the need, wherever possible, to make such agreements uniform among the various estates. Nothing in this subsection shall be construed as permitting any district court of the United States having jurisdiction over the reorganization of a railroad in reorganization in the region to enjoin, restrain, or limit the Corporation, the National Railroad Passenger Corporation, or a profitable railroad from applying, to payment of the obligations of the estates identified in paragraph (1) of this subsection, amounts collected as (A) accounts receivable pursuant to this paragraph, (B) cash or other current assets identified pursuant to paragraph (3) of this subsection, or (C) proceeds of loans pursuant to paragraph (1) of this subsection. Any agency agreement executed prior to October 19, 1976, shall be deemed amended to the extent necessary to conform such agreement or order to the provisions of this paragraph. Nothing in this paragraph shall be construed to affect any payment made prior to October 19, 1976, with respect to obligations other than those identified in paragraph (1) of this subsection.

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

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

[3] So in original. The period probably should be a semicolon.

[4] So in original. Should be "Corporation,".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The direct claim of the Association under this paragraph, and any direct claim authorized under paragraph (4) of this subsection, shall be prior to all other administrative claims of the estate of a railroad in reorganization, except claims arising under trustee's certificates or from default on the payment of such certificates. The Corporation, the National Rail Passenger Corporation, or a profitable railroad, as the case may be, shall, with respect to each direct claim for reimbursement pursuant to paragraph (4) of this subsection, file a proof of ad-

ministrative expense claim with the trustees of the railroad in reorganization from whom reimbursement is sought. Each such proof of administrative expense claim shall set forth, by category and amount, the obligations of such railroad in reorganization which were paid pursuant to such paragraph (4).

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

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

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

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

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

(iii) 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 688 of title 2. For purposes of this paragraph, continuity of session of Congress is broken only in the circumstances described in section 682(5) of title 2.

(B) The Association shall have a direct claim, as a current expense of administration of the estate of the railroad in reorganization whose obligations were paid with the proceeds of loans forgiven under this paragraph, equal to the amount by which the loans, plus interest, have been forgiven. Such direct claim shall not be subject to any reduction by way of setoff, crossclaim, or counterclaim 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. The direct claim of the Association under this paragraph shall be prior to all other administrative claims of the estate of the railroad in reorganization, except claims arising under trustee's certificates or from default on the payment of such certificates.

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

(Pub. L. 93–236, title II, § 211, Jan. 2, 1974, 87 Stat. 1001; Pub. L. 94–5, § 5, Feb. 28, 1975, 89 Stat. 8; Pub. L. 94–210, title VI, § 606, Feb. 5, 1976, 90 Stat. 92; Pub. L. 94–555, title II, §§ 203(a)–(d), 220(a), Oct. 19, 1976, 90 Stat. 2617, 2619, 2620, 2629; Pub. L. 95–611, § 3(a), Nov. 8, 1978, 92 Stat. 3089; Pub. L. 96–73, title II, § 204(b), Sept. 29, 1979, 93 Stat. 556; Pub. L. 96–101, § 23, Nov. 4, 1979, 93 Stat. 746; Pub. L. 96–448, title IV, §§ 407, 408, Oct. 14, 1980, 94 Stat. 1948; Pub. L. 105–178, title VII, § 7203(b)(3), June 9, 1998, 112 Stat. 477.)

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in subsecs. (a) and (h)(3)(B), was classified to section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§ 1161 et seq.) of chapter 11 of Title 11.

Section 763 of this title, referred to in subsec. (a), was repealed by Pub. L. 94–210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

The Employers' Liability Act (45 U.S.C. 51–60), referred to in subsec. (h)(1)(A)(v), is act Apr. 22, 1908, ch. 149, 35 Stat. 65, as amended, and is classified generally to chapter 2 (§ 51 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 51 of this title and Tables.

Sections 774 and 775 of this title, referred to in subsec. (h)(1)(A)(vi), (B), were repealed by Pub. L. 97–35, title XI, § 1144(a)(1), Aug. 13, 1981, 95 Stat. 669.

CODIFICATION

In the closing par. of subsec. (h)(6)(A), ''section 688 of title 2'' and ''section 682(5) of title 2'' substituted for ''section 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407)'' and ''section 1011(5) of that Act (31 U.S.C. 1401(5))'', respectively, to reflect the transfer of sections 1407 and 1401 of former Title 31, Money and Finance, to sections 688 and 682 of Title 2, the Congress.

AMENDMENTS

1998—Subsec. (i). Pub. L. 105–178 struck out heading and text of subsec. (i). Text read as follows: ''Upon application by the Corporation or any other railroad, the Secretary shall, pursuant to the provisions of and within the obligational limitations contained in sections 831 through 833 of this title, guarantee obligations of the Corporation or such railroad 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 or such railroad and will facilitate compatibility with existing or renewed electrification systems. Upon application by the Corporation or by any railroad in reorganization in the region which receives a loan under subsection (a) of this section, the Secretary shall, pursuant to the provisions of and within the obligational limitations contained in sections 831 through 833 of this title, guarantee obligations of the Corporation or such railroad for purposes of making capital improvements to coal export facilities. 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.''

1980—Subsec. (d). Pub. L. 96–448, § 408, substituted ''Association is not required to make the findings with respect to subsections (e)(3) and (f) of this section and

may'' for ''Association may'' in provision preceding par. (1), ''$7,500,000'' for ''$4,000,000'' in par. (2), and ''December 31, 1981'' for ''December 31, 1980'' in provision following par. (2).

Subsec. (i). Pub. L. 96–448, § 407, substituted ''Corporation or any other railroad, the Secretary'' for ''Corporation, the Secretary'', ''Corporation or such railroad for the purpose'' for ''Corporation for the purpose'', and ''Corporation or such railroad and will facilitate'' for ''Corporation and will facilitate'' and inserted provision authorizing the Secretary, upon application and with regard to obligational limitations, to guarantee obligations of the Corporation or such railroad for the purposes of making capital improvements to coal export facilities.

1979—Subsec. (d)(2). Pub. L. 96–101 substituted ''$4,000,000'' for ''$2,000,000'', ''and determines that such railroad is making a good faith effort to establish an employee stock ownership plan for review and approval by the Association'' for ''and such railroad has in effect an employee stock ownership plan which has been approved by the Association'', and ''December 31, 1980'' for ''December 31, 1979'' and inserted provision requiring that any such approval be conditioned upon a written commitment that by December 31, 1980, the railroad will adopt an employee stock ownership plan which will acquire qualifying employer securities with a fair market value of $250,000.

Subsec. (h)(1)(A)(viii). Pub. L. 96–73, § 204(b)(1), substituted ''funding for continuation, by the Corporation, of medical and life insurance coverage and benefits for retired employees of railroads in reorganization as required and limited by section 743(b)(6)(B) of this title'' for ''funding for payment, when due, of medical and life insurance benefits for employees (whether or not their employment was governed by a collective bargaining agreement) on account of their service with a railroad in reorganization prior to the date of conveyance pursuant to section 743(b)(1) of this title, and for individuals who retired, prior to such date of conveyance, from service with a railroad in reorganization''.

Subsec. (h)(6). Pub. L. 96–73, § 204(b)(2)(A)–(C), redesignated existing provisions as subpar. (A), and in subpar. (A) as so redesignated, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and former cls. (i) and (ii) of former subpar. (A) as subcls. (I) and (II) of cl. (i), respectively, and added subpar. (B).

1978—Subsec. (d). Pub. L. 95–611 inserted provision authorizing increase of loans to railroads until Dec. 31, 1979.

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

Subsec. (h). Pub. L. 94–210 added subsec. (h).

Subsec. (h)(1). Pub. L. 94–555, § 203(a), increased aggregate principal amount of loan agreements, at any given time, to $350,000,000; substituted ''such railroads in reorganization'' for ''the transferors'' after ''railroad, in behalf of''; struck out ''and obligations'' after ''all other current accounts''; inserted ''(including claims for accrued vacation and wages and similar claims arising in connection with labor and services performed)'' after ''section 153 of this title''; added clauses (vii) to (x) to subpar. (A); authorized Association to make loans pursuant to subpar. (A), as amended, and inserted reference to section 743(b)(6) of this title; inserted provisions that claim arising prior to conveyance of rail properties must be presented to a railroad in reorganization in the region, or the Corporation within 2 years after Oct. 19, 1976, and that loan requested is for direct payment made for services or materials, the furnishing of which avoided disruption of ordinary business relationships prior to date of conveyance or made to avoid postconveyance disruptions; and added subcls. (I) and (II) to cl. (V) relating to provisions to be included in joint agreement between Finance Committee and the Corporation.

Subsec. (h)(2). Pub. L. 94–555, § 203(b), inserted ''and for the payment of only those accounts payable which relate to the obligations of the estates identified in paragraph (1) of this subsection'' after ''section 743(b)(1) of this title'', and inserted provisions relating to the jurisdiction of district courts in railroad reorganization proceedings.

Subsec. (h)(4)(D). Pub. L. 94–555, § 203(c), added subpar. (D).

Subsec. (h)(5)(B). Pub. L. 94–555, § 203(d), inserted provisions relating to filing proof of claim for administrative expense.

Subsec. (h)(6)(A)(i). Pub. L. 94–555, § 220(a), substituted ''paragraph (1)(B)(v)'' for ''paragraph (1)(E)''.

Subsec. (i). Pub. L. 94–210 added subsec. (i).

1975—Subsec. (a). Pub. L. 94–5, § 5(a), substituted ''for purposes of achieving the goals of this chapter'' for ''for purposes of assisting in the implementation of the final system plan''.

Subsec. (e)(1). Pub. L. 94–5, § 5(b), substituted ''achieve the goals of this chapter'' for ''carry out the final system plan''.

Subsec. (f). Pub. L. 94–5, § 5(c), substituted ''goals of this chapter'' for ''goals of the final system plan''.

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–73 effective Nov. 4, 1978, see section 501(b) of Pub. L. 96–73, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 722. Records, audit, and examination

(a) Records

Each recipient of financial assistance under this subchapter, whether in the form of loans, obligations, or other arrangements, shall keep such records as the Association or the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance and such other records as will facilitate an effective audit.

(b) Audit and examination

The Association, the Secretary, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of 3 years after the implementation of the final system plan, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Association, the Secretary, or the Comptroller General may be related or pertinent to the loans, obligations or other arrangements referred to in subsection (a) of this section. The Association or any of its duly authorized representatives shall, until any financial assistance received under this subchapter has been repaid to the Association, have access to any such materials which concern any matter that may bear upon—

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

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

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

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

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

See section 1341 of this title.

§ 723. Emergency assistance pending implementation

(a) Emergency assistance

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

(b) Authorization of appropriations

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

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

AMENDMENTS

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

Subsec. (b). Pub. L. 94–5, § 6(b), substituted "$282,000,000" for "$85,000,000" and inserted provision that, of amounts authorized to be appropriated under this subsection $50,000,000 be available solely to pay to trustees of railroads in reorganization sums necessary to provide railroads with amounts equal to revenues attributable to tariff increases proposed by railroads and suspended by Interstate Commerce Commission during calendar year 1975, if Secretary determines that payments are necessary to carry out this section.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 724. Authorization of appropriations

(a) Secretary

There are authorized to be appropriated to the Secretary for purposes of preparing the reports and exercising other functions to be performed by him under this chapter such sums as are necessary, not to exceed $12,500,000, to remain available until expended. 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 743(c)(5) of this title.

(b) Office

There are authorized to be appropriated to the Commission for the use of the Office in carrying out its functions under this chapter such sums as are necessary, not to exceed $7,000,000, to remain available until expended. The budget for the Office shall be submitted by the Commission directly to the Congress and shall not be subject to review of any kind by any other agency or official of the United States. Moneys appropriated for the Office shall not be withheld by any agency or official of the United States or used by the Commission for any purpose other than the use of the Office. No part of any other moneys appropriated to the Commission shall be withheld by any other agency or official of the United States to offset any moneys appropriated pursuant to this subsection.

(c) Association

There are authorized to be appropriated to the Association for purposes of carrying out its administrative expenses under this chapter not to exceed $13,000,000 for the fiscal year ending September 30, 1982, and not to exceed $4,000,000 for the fiscal year ending September 30, 1983. Sums appropriated under this subsection are authorized to remain available until expended.

(Pub. L. 93–236, title II, § 214, Jan. 2, 1974, 87 Stat. 1003; Pub. L. 93–488, § 1(c), Oct. 26, 1974, 88 Stat. 1464; Pub. L. 94–210, title VI, § 607(m), (n), Feb. 5, 1976, 90 Stat. 97; Pub. L. 94–436, § 1, Sept. 30, 1976, 90 Stat. 1398; Pub. L. 95–199, § 1, Nov. 23, 1977, 91 Stat. 1423; Pub. L. 95–611, § 1, Nov. 8, 1978, 92 Stat. 3089; Pub. L. 96–73, title II, § 201, Sept. 29, 1979, 93 Stat. 555; Pub. L. 96–448, title VII, § 704, Oct. 14, 1980, 94 Stat. 1965; Pub. L. 97–35, title XI, § 1151, Aug. 13, 1981, 95 Stat. 676.)

AMENDMENTS

1981—Subsec. (c). Pub. L. 97–35 substituted provisions relating to authorization of appropriations for fiscal years ending Sept. 30, 1982, and 1983, for provisions relating to authorization of appropriations for fiscal year ending Sept. 30, 1981.

1980—Subsec. (c). Pub. L. 96–448 substituted provision authorizing appropriations of not to exceed $30,000,000 for fiscal year ending Sept. 30, 1981, for provision authorizing appropriations of not to exceed $28,500,000 for fiscal year ending Sept. 30, 1980.

1979—Subsec. (c). Pub. L. 96–73 substituted appropriations authorization of $28,500,000 for fiscal year ending Sept. 30, 1980 for $27,200,000 for fiscal year ending Sept. 30, 1979.

1978—Subsec. (c). Pub. L. 95–611 substituted provision authorizing appropriations of $27,200,000 for fiscal year ending Sept. 30, 1979, to remain available until expended, for provision authorizing appropriations of $23,000,000 for fiscal year ending Sept. 30, 1978, to remain available until Sept. 30, 1979.

1977—Subsec. (c). Pub. L. 95–199 substituted provisions authorizing appropriations for fiscal year ending Sept. 30, 1978, of not to exceed $23,000,000 and authorizing availability of sums to Sept. 30, 1979, for provisions authorizing appropriations for the period beginning May 1, 1976, and ending Sept. 30, 1977, of not to exceed $20,000,000 and authorizing availability of sums to Sept. 30, 1978.

1976—Subsec. (a). Pub. L. 94–210, § 607(n), inserted provision authorizing appropriation of sums to discharge the obligation of the United States under section 743(c)(5) of this title.

Subsec. (b). Pub. L. 94–210, § 607(m)(1), substituted ''$7,000,000'' for ''$5,000,000''.

Subsec. (c). Pub. L. 94–436 substituted provisions authorizing appropriations of such sums as are necessary not to exceed $20,000,000 for the period beginning May 1, 1976, and ending Sept. 30, 1977 to remain available until Sept. 30, 1978 for provisions authorizing appropriations of such sums as are necessary not to exceed $40,000,000 to remain available until expended.

Pub. L. 94–210, § 607(m)(2), authorized appropriation of not to exceed $14,000,000 for fiscal period which includes fiscal period ending Sept. 30, 1977.

1974—Subsec. (c). Pub. L. 93–488 substituted ''$40,000,000'' for ''$26,000,000''.

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1979 AMENDMENT

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

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 725. Interim agreements

(a) Purposes

Prior to the date upon which rail properties are conveyed to the Corporation under this chapter, the Secretary, with the approval of the Association, is authorized to enter into agreements with the trustees of the railroads in reorganization in the region (or railroads leased, operated, or controlled by railroads in reorganization)—

(1) to perform the program maintenance on designated rail properties of such railroads until the date rail properties are conveyed under this chapter;

(2) to improve rail properties of such railroads; and

(3) to acquire rail properties for lease or loan to any such railroads until the date such rail properties are conveyed under this chapter, and subsequently for conveyance pursuant to the final system plan, or to acquire interests in such rail properties owned by or leased to any such railroads or in purchase money obligations therefor.

(b) Conditions

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

(1) to the extent that physical condition is used as a basis for determining, under section 716(f) or 743(c) of this title, the value of properties subject to such an agreement and designated for transfer to the Corporation under the final system plan, the physical condition of the properties on the effective date of the agreement shall be used; and

(2) in the event that property subject to the agreement is sold, leased, or transferred to an entity other than the Corporation, the trustees or railroad shall pay or assign to the Secretary that portion of the proceeds of such sale, lease, or transfer which reflects value attributable to the maintenance and improvement provided pursuant to the agreement.

(c) Obligations

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

(d) Conveyance

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

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

AMENDMENTS

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

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

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 726. Debentures and series A preferred stock

(a) General

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

(b) Purposes and procedure for investment

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

(A) for the modernization, rehabilitation and maintenance of rail properties of the Corporation;

(B) for the acquisition of equipment and other capital needs;

(C) for the refinancing of indebtedness which was incurred by the Corporation under section 721 of this title or which was incurred under section 725 of this title and assumed by the Corporation; or

(D) working capital as contemplated by the final system plan.

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

(A) the Corporation has failed in any material respect to comply with any covenants or undertakings made to the Association and such failure remains uncorrected;

(B) the Corporation has failed substantially (as determined by performance within the margins prescribed by the Board of Directors) to attain the overall operating (including rehabilitation) and financial results projected for the Corporation in the final system plan (including any modifications of such projected results and of the performance margins applicable to such projected results which are jointly approved by the Finance Committee and the Board of Directors and which would improve the possibility that the Corporation will attain such projected results and perform within such margins, as modified); or

(C) it is not reasonably likely, taking into consideration all relevant factors including the overall operating (including rehabilitation) and financial results achieved by the Corporation, that the Corporation will be able to become financially self-sustaining without requiring Federal financial assistance substantially in excess of the amounts authorized in this section.

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

(B) An employee who ceases to be an employee as a result of the reduction of work force under a program implemented pursuant to this paragraph shall not, by reason of so ceasing to be an employee, or by reason of any work or employment entered into after so ceasing to be an employee, lose such employee's current connection with the railroad industry for the purposes of the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

(4) Purchases of up to $329,000,000 of a series A preferred stock shall be made by the Association, subject to the availability of appropriations, as required and requested by the Corporation, if the Finance Committee makes an affirmative finding that the Corporation has

[1] See References in Text note below.

taken appropriate action to eliminate losses on light density lines and other lines which are unprofitable. Such action shall include the imposition of surcharges on such lines, the abandonment of such lines, and the transfer of such lines.

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

(c) Finding, direction, and review by Congress

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

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

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

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

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

(4) Notwithstanding any other provision of this section, or any terms and conditions governing its purchase of securities of the Corporation, the Association shall, upon written application by the Corporation at least 30 days prior to such investment, make an initial investment in debentures of the Corporation within 60 days after the date of conveyance of rail properties pursuant to section 743(b)(1) of this title. Such initial investment shall be limited to such amounts as the Association and Finance Committee, acting jointly, determine are necessary for the continued and orderly operations of the Corporation prior to any additional investment.

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

(d) Terms and conditions

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

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

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

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

(4) If the Board of Directors of the Association and the Finance Committee, acting jointly, modify the terms or conditions governing the purchase of debentures or series A preferred stock of the Corporation pursuant to subsection (e)(1) of this section, or if the Finance Committee waives compliance with any

term, condition, provision, or covenant of such securities pursuant to subsection (e)(2) of this section, the Finance Committee may require the Corporation to issue contingent interest notes in such amount as, in the determination of the Finance Committee, will provide protection for the United States, in the event of bankruptcy, reorganization, or receivership of the Corporation, equal to the protection the United States would have had in the absence of such modification or waiver.

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

(e) Modifications, waivers, and conversions

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

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

(3) Notwithstanding any provision of State law, there shall be no conversion of the debentures of the Corporation into series A preferred stock of the Corporation, as provided in the terms and conditions of the debentures and pursuant to the final system plan, unless the Board of Directors of the Association and the Finance Committee jointly determine to effect such conversion.

(f) Employee stock ownership plan

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

(2) The employee stock ownership plan shall:

(A) provide:

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

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

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

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

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

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

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

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

(B) no amount shall be allocated to any participant under the plan in excess of the amount which might be allocated if the plan

met the requirements of section 401 of title 26; and

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

(4) The Corporation shall adopt such terms and conditions governing the securities of interests therein to be transferred to the plan (including limitations on voting rights) as the Association, with the concurrence of the Finance Committee, determines are necessary to protect reasonably the interests of the United States in the litigation pursuant to section 743(c) of this title and in the event of any action to further reorganize or restructure the Corporation's assets or capital structure.

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

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

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

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

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

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

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

[2] So in original.

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

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

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

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

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

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

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

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

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

(g) Authorization of appropriations; reappropriation of funds

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

(2) To the extent provided in appropriation Acts, any funds appropriated under the authority of paragraph (1) of this subsection prior to January 14, 1983, may be reappropriated to the Secretary, to facilitate the transfer of rail commuter services from the Corporation to other operators, for distribution under the statutory provisions of section 1139(b) of the Northeast Rail Service Act of 1981.

(Pub. L. 93–236, title II, § 216, as added Pub. L. 94–210, title VI, § 605, Feb. 5, 1976, 90 Stat. 89; amended Pub. L. 95–565, §§ 2, 3, Nov. 1, 1978, 92 Stat. 2397; Pub. L. 96–254, title I, § 118, May 30, 1980, 94 Stat. 406; Pub. L. 96–448, title IV, § 405(b)(2), title VII, § 703(e), (f)(1), (2), Oct. 14, 1980, 94 Stat. 1946, 1964, 1965; Pub. L. 97–468, title V, § 504(b), Jan. 14, 1983, 96 Stat. 2552; Pub. L. 99–509, title IV, § 4011(d), Oct. 21, 1986, 100 Stat. 1896; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976, referred to in subsec. (b)(3)(A), was classified to section 829 of this title prior to repeal by Pub. L. 105–178, title VII, § 7203(a)(2), June 9, 1998, 112 Stat. 477.

The Railroad Retirement Act of 1974, referred to in subsec. (b)(3)(B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

The Regional Rail Reorganization Act Amendments of 1978, referred to in subsec. (f)(1), probably means Pub. L. 95–565, Nov. 1, 1978, 92 Stat. 2397, as amended, known as the United States Railway Association Amendments Act of 1978, which amended sections 726, 747, and 825 of this title and section 975 of Title 43, Public Lands, and enacted a provision set out as a note under section 975 of Title 43. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 701 of this title and Tables.

Public Law 94–210, referred to in subsec. (f)(2)(A)(i), is Pub. L. 94–210, Feb. 5, 1976, 90 Stat. 31, as amended, known as the Railroad Revitalization and Regulatory Reform Act of 1976. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

The Railway Labor Act, referred to in subsec. (f)(5), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

Section 11301(b) of title 49, referred to in subsec. (f)(10), was omitted and a new section 11301 enacted in the general amendment of subtitle IV of Title 49,

[3] So in original. Probably should be ''or''.

[4] See References in Text note below.

Transportation, by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, 837. The new section 11301 does not relate to issuance of securities.

Section 1139(b) of the Northeast Rail Service Act of 1981, referred to in subsec. (g)(2), is section 1139(b) of Pub. L. 97–35, title XI, Aug. 13, 1981, 95 Stat. 652, which is set out as a note under section 744a of this title.

CODIFICATION

In subsec. (c)(2), ''section 688 of title 2'' and ''section 682(5) of title 2'' substituted for ''section 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407)'' and ''section 1011(5) of that Act (31 U.S.C. 1401(5))'', respectively, to reflect the transfer of sections 1407 and 1401 of former Title 31, Money and Finance, to sections 688 and 682 of Title 2, The Congress.

AMENDMENTS

1986—Subsec. (b)(5). Pub. L. 99–509 added par. (5).

Subsec. (f)(2)(C), (3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1983—Subsec. (g). Pub. L. 97–468 designated existing provisions as par. (1) and added par. (2).

1980—Subsec. (a). Pub. L. 96–448, § 703(f)(1), substituted ''$2,629,000,000'' for ''$2,300,000,000''.

Subsec. (b)(3). Pub. L. 96–448, § 405(b)(2), added par. (3).

Subsec. (b)(4). Pub. L. 96–448, § 703(e), added par. (4).

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

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

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

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

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

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 727. Additional purchases of Series A preferred stock

(a) Federal investment

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

(b) Accounts receivable

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

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

(c) States and localities

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

(d) Debentures

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

(e) Rights retained

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

(f) Authorization of appropriations

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

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

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

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

(D) of which not to exceed $15,000,000 shall be appropriated to the Secretary to facilitate the transfer of rail commuter services from railroads that entered reorganization after calendar year 1974 to any commuter authority that was providing commuter service, oper-

[1] See References in Text note below.

ated by a railroad that entered reorganization after calendar year 1974, as of January 1, 1979.

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

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

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

REFERENCES IN TEXT

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

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

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

AMENDMENTS

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

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

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

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

EFFECTIVE DATE

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

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

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

See section 1341 of this title.

§ 728. Reports to Congress

(a) Progress and evaluation

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

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

(b) Transfer agreements

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

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

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

REFERENCES IN TEXT

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

EFFECTIVE DATE

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

TERMINATION OF REPORTING REQUIREMENTS

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

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

See section 1341 of this title.

§ 729. Advisory Board

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

[1] See References in Text note below.

sociation with a representative from the group which had a representative in the vacant position.

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

EFFECTIVE DATE

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

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

See section 1341 of this title.

TERMINATION OF ADVISORY BOARDS

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

SUBCHAPTER III—CONSOLIDATED RAIL CORPORATION

§ 741. Formation and structure

(a) Establishment

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

(b) Status

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

(c) Incorporators

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

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

(d) Board of Directors

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

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

(B) three individuals selected by the holders of the Corporation's series B preferred stock; and

(C) two individuals selected by the holders of the Corporation's common stock.

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

(e) Initial capitalization

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

(2) Debentures and series A preferred stock shall be issued initially to the Association. Series B preferred stock and common stock shall be issued initially to the estates of railroads in reorganization in the region, to railroads leased, operated, and controlled by railroads in reorganization in the region, and to other persons leased, operated or controlled by a railroad in reorganization who are transferors of rail properties in exchange for rail properties transferred to the Corporation pursuant to the final system plan. Notwithstanding any other provisions of State or Federal law, the series B preferred stock and common stock shall have terms and conditions not inconsistent with the final system plan. As a condition of its investment in the Corporation, the Association may require that the Corporation adopt limitations consistent with the final system plan on the circumstances under which dividends on the series B preferred stock and common stock are payable so long as any of the debentures or series A preferred stock are outstanding. Notwithstanding anything to the contrary in the final system plan, the initial authorized number of shares of series B preferred stock may be 35,000,000, and the Corporation may issue initially for the purpose of the deposit required under section 743(a)(1) of this

title such numbers of shares of series B preferred and common stock as the Association shall certify to the Special Court pursuant to section 719(c)(1)(3)[1] of this title, including any modifications in such numbers of shares as may be ordered by the Special Court for the purpose of, and in connection with, such deposit and certification.

(f) Officers

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

(g) Voting trustees

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

(h) Annual report

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

(i) Liability of directors

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

(j) Signal systems

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

(k) Governing provisions after sale

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

(1) section 702 of this title;

(2) section 711(d) of this title;

(3) section 713 of this title, but only with respect to information relating to proceedings before the special court established under section 719(b) of this title;

(4) section 719 of this title, other than subsection (f) thereof;

(5) section 726(f)(8) of this title, but only as such authority applies to activities related to the ESOP and related trust before the sale date;

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

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

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

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

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

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

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

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

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

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

[1] So in original. Probably should be section ''719(c)(3)''.

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

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

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

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

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

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

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

(23) section 797b of this title;

(24) section 797c of this title;

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

(26) section 797h of this title;

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

(28) section 797j of this title; and

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

(Pub. L. 93–236, title III, §301, Jan. 2, 1974, 87 Stat. 1004; Pub. L. 94–210, title VI, §§608, 611, 612(j)(1), (3), (m), Feb. 5, 1976, 90 Stat. 99, 105, 109, 110; Pub. L. 94–216, §§1, 3, Feb. 17, 1976, 90 Stat. 191; Pub. L. 94–248, §4, Mar. 25, 1976, 90 Stat. 286; Pub. L. 97–35, title XI, §1141, Aug. 13, 1981, 95 Stat. 653; Pub. L. 99–509, title IV, §4032, Oct. 21, 1986, 100 Stat. 1906; Pub. L. 104–88, title III, §327(2), Dec. 29, 1995, 109 Stat. 951.)

REFERENCES IN TEXT

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

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

CODIFICATION

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

Subsec. (f). Pub. L. 94–210, §611(c), added subsec. (f). Former subsec. (f), which related to a Federal Government audit of the Corporation, was struck out.

Subsec. (g). Pub. L. 94–210, §611(c), added subsec. (g). Former subsec. (g) redesignated (h) ''Annual report''.

Subsec. (h). Pub. L. 94–216, §1, redesignated subsec. (h) ''Liability of directors'' as (i).

Pub. L. 94–210, §§611(c), 612(m), redesignated former subsec. (g) as (h) ''Annual report'' and added subsec. (h) ''Liability of directors''.

Subsec. (i). Pub. L. 94–216, §§1, 3, redesignated former subsec. (h) ''Liability of directors'' as (i) and substituted ''a director of the Association'' for ''a director of the Corporation''. Former subsec. (i) redesignated (j).

Pub. L. 94–210, §612(m), added subsec. (i) ''Corporate simplification''.

Subsec. (j). Pub. L. 94–216, §1, redesignated former subsec. (i) ''Corporate simplification'' as (j).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1981 AMENDMENT

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

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (h) of this section relating to the requirement that the Corporation transmit an annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 7th item on page 199 of House Document No. 103–7.

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

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

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 742. Powers and duties of Corporation

The Corporation shall have all of the powers and is subject to all of the duties vested in it under this chapter, in addition to the powers conferred upon it under the laws of the State or States in which it is incorporated and the powers of a railroad in any State in which it operates. The Corporation is authorized and directed to—

(a) acquire rail properties designated in the final system plan to be transferred or conveyed to it;

(b) operate rail service over such rail properties except as provided under sections 744(e) and 791(d)(3) of this title;

(c) rehabilitate, improve, and modernize such rail properties; and

(d) maintain adequate and efficient rail services.

So long as 50 per centum or more, as determined by the Secretary of the Treasury, of the outstanding indebtedness of the Corporation consists of obligations of the Association or other debts owing to or guaranteed by the United States, the Corporation shall not engage in activities which are not related to transportation.

(Pub. L. 93–236, title III, § 302, Jan. 2, 1974, 87 Stat. 1005.)

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

See section 1341 of this title.

§ 743. Valuation and conveyance of rail properties

(a) Deposit with court

Within 10 days after delivery of a certified copy of a final system plan pursuant to section 719(c) of this title—

(1) the Corporation, in exchange for the rail properties of the railroads in reorganization in the region and of railroads leased, operated, or controlled by railroads in reorganization in the region to be transferred to the Corporation or any subsidiary thereof, shall deposit with the special court all of the stock and other securities of the Corporation and certificates of value issued by the Association designated in the final system plan to be exchanged for such rail properties;

(2) each profitable railroad operating in the region and each state or responsible person (including a government entity) purchasing rail properties from a railroad in reorganization in the region, or from a railroad leased, operated, or controlled by a railroad in reorganization in the region, as provided in the final system plan shall deposit with the special court the compensation to be paid for such rail properties.

(b) Conveyance of rail properties

(1) The special court shall, within 10 days after deposit under subsection (a) of this section of the securities of the Corporation, certificates of value issued by the Association, and compensation from the profitable railroads operating in the region, States, and responsible persons, order the trustee or trustees of each railroad in reorganization in the region to convey forthwith to the Corporation or any subsidiary thereof, the respective profitable railroads operating in the region, States, and responsible persons all right, title, and interest in the rail properties of such railroad in reorganization and shall itself order the conveyance of all right, title, and interest in the rail properties of any person leased, operated, or controlled by such railroad in reorganization that are to be conveyed to them under the final system plan as certified to such court under section 719(d) of this title. In any case where the special court orders the trustee or trustees of a railroad in reorganization in the region to execute and deliver deeds or other instruments conveying rail properties to the Corporation or a subsidiary thereof or to a profitable railroad operating in the region or a State or responsible person, those deeds or other instruments may be executed, acknowledged, and delivered on behalf of the trustee or trustees by any person or persons who have been duly authorized to perform such acts on behalf of the trustee or trustees by the district court of the United States or any other court having jurisdiction over the respective railroad in reorganization in the region. Notwithstanding any provision of State or local law, in any case where deeds or other instruments have been executed, acknowledged, or delivered by a representative of the trustee or trustees of a railroad in reorganization in the region in accordance with the previous sentence, such execution, acknowledgment, and delivery, and the deeds or other instruments to which they pertain, shall have the same legal effect as they would have had if the trustee or trustees had themselves executed, acknowledged and delivered such deeds or other instruments.

(2) All rail properties conveyed to the Corporation or any subsidiary thereof the respective profitable railroads operating in the region, States, and responsible persons under this section shall be conveyed free and clear of any liens or encumbrances, but subject to such leases and agreements as shall have previously burdened such properties or bound the owner or operator thereof in pursuance of an arrangement with any State, or local or regional transportation authority under which financial support from such State, or local or regional transportation authority was being provided on January 2, 1974, for the continuance of rail passenger service or any lien or encumbrance of no greater than 5 years' duration which is necessary for the con-

tractual performance by any person of duties related to public health or sanitation. Such conveyances shall not be restrained or enjoined by any court.

(3)(A)(i) Notwithstanding any other provision of this chapter, if an interest in railroad rolling stock is included in the rail properties conveyed pursuant to subsection (b)(1) of this section, and if such conveyance is in accordance with the requirements of clause (ii) of this subparagraph, the conveyance of such properties shall be deemed an assignment. Any such assignment shall relieve the assignor of liability for any breach which occurs after the date of such conveyance, except that such assignor shall remain liable for any breach, event of default, or violation of covenant which occurred (and any charges or obligations which accrued) prior to the date of such conveyance, regardless of whether the assignee thereof assumes such liabilities, charges or obligations. If any such liabilities, charges, or obligations (accrued prior to the date of such conveyance) are paid by or on behalf of any person or entity other than such assignor, such person or entity shall have a claim to direct reimbursement, as a current expense of administration, from such assignor, together with interest on the amount so paid.

(ii) A conveyance referred to in clause (i) of this subparagraph may be effected only if—

(I) the Corporation or a subsidiary thereof, the profitable railroad operating in the region, or the State or responsible person to whom such conveyance is made assumes all of the obligations under any applicable conditional sale agreement, equipment trust agreement, or lease with respect to such rolling stock (including any obligations which accrued prior to the date on which such properties are conveyed), and

(II) such conveyance is made subject to such obligations.

As used in this subparagraph, the term ''railroad rolling stock'' means assets which could be carried in Interstate Commerce Commission account numbers 52, 53, 54, and 57.

(B) Subject to the provisions of this paragraph, the provisions of this chapter shall not affect the title and interests of any lessor, equipment trust trustee, or conditional sale vendor under any conditional sale agreement, equipment trust agreement, or lease under section 77(j) of the Bankruptcy Act. A profitable railroad operating in the region, the Corporation or a subsidiary thereof, or a State or responsible person, to whom such a conveyance is made as assignee or as lessee, shall assume all liability under such conditional sale agreement, equipment trust agreement, or lease. Such an assignment or conveyance to, and such an assumption of liability by, such a profitable railroad, Corporation, subsidiary, State, or responsible person shall not be deemed a breach, an event of default, or a violation of any covenant of any such conditional sale agreement, equipment trust agreement, or lease so assigned or conveyed, notwithstanding any provisions of any such agreement or lease.

(4) Notwithstanding anything to the contrary contained in this chapter, if a railroad in reorganization has leased rail properties from a lessor that is neither a railroad nor controlled by or affiliated with a railroad, and such lease has been approved by the lessee railroad's reorganization court prior to January 2, 1974, conveyance of such lease may only be effected if the Corporation, profitable railroad, State, or responsible person to whom the conveyance is made assumes all future liability under such lease and all of the terms and conditions specified in the lease, including the obligation to pay the specified rent to the non-railroad lessor.

(5) Notwithstanding any covenant, undertaking, condition, or provision of any sort in any lease, agreement, or contract, the conveyance, transfer, assignment, or other disposition of such lease, agreement, or contract or of any interest therein to, or the assumption by, the Corporation or any subsidiary thereof, or a profitable railroad of obligations thereunder, shall not be deemed a breach, an event of default, or a violation of any covenant of such lease, agreement, or contract.

(6)(A) Notwithstanding anything to the contrary contained in this chapter or any other other[1] provision of law, the special court shall include in its order such further directions as may be necessary to assure (i) that the operation and administration of the employee pension benefit plans described in section 775(a)[2] of this title shall be continued, without termination or interruption, by the Corporation until such time as the Corporation elects to amend or terminate any such plan, in whole or in part; and (ii) that appropriate transfers and assignments with respect to all rights and obligations relating to such plans shall be made to the Corporation for such purposes, without prejudice to payment of consideration for whatever rights any railroad in reorganization may have in any residual assets under any such employee pension benefit plan. No court shall enter any judgment against the Corporation with respect to any such rights, except that the special court may enter such a judgment in an order issued by it pursuant to subsection (c) of this section, after taking into consideration the rights and obligations transferred pursuant to this paragraph. All liabilities as an employer shall be imposed solely upon the railroad in reorganization in the event such plan is terminated, in whole or in part, by the Corporation within 1 year after the date of such transfer or assignment (except liabilities as an employer under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] for benefits accruing during such period), except that in any case in which the Corporation, on or after the date of transfer or assignment as provided by this paragraph, terminates in whole or in part any such plan, the benefits under which are not guaranteed under title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], the Corporation shall guarantee the payment when due of the accrued pension benefits provided for thereunder at the time of termination. The Corporation shall be entitled to a loan pursuant to section 721(h) of this title in an amount required for the adequate funding of accrued pension benefits

[1] So in original.

[2] See References in Text note below.

under all plans transferred or assigned to the Corporation in accordance with this paragraph (whether or not terminated by the Corporation). For purposes of such section 721(h) and notwithstanding any other provision of Federal or State law, amounts required for such adequate funding shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization, due and payable as of the date of transfer or assignment of the plans to the Corporation.

(B) The Corporation shall, through the purchase of insurance or otherwise, maintain in effect any medical insurance coverage or so much of any life insurance coverage that does not exceed in death benefits an amount equal to twice the employee's annual salary at the time of retirement or $60,000, whichever is lower, which coverage was maintained by a railroad in reorganization in the region immediately prior to April 1, 1976, and which provides insurance benefits to employees who retired, prior to April 1, 1976, from service with such a railroad. With respect to any such employee whose medical or life insurance coverage lapsed after April 1, 1976, due to nonpayment of premiums, the Corporation shall—

(i) through the purchase of insurance or otherwise, provide medical insurance benefits or life insurance benefits at the same level as were provided by the employer railroad in reorganization and in effect with respect to such employees immediately prior to April 1, 1976, except that the life insurance benefits so provided shall not exceed in death benefits an amount equal to twice the employee's annual salary at the time of retirement or $60,000, whichever is lower; and

(ii) assume and pay any claim for such employee (or his personal representative) for any such insurance benefits, if—

(I) such claim arose during the period beginning April 1, 1976, and ending on the date insurance coverage is provided pursuant to clause (i) of this subparagraph;

(II) such benefits were not paid by an insurer solely because of the lapse of the insurance coverage during such period,

except that such death benefits shall not be paid for any such employee in excess of an amount equal to twice the employee's annual salary at the time of retirement or $60,000, whichever is lower.

The Corporation shall be entitled to a loan pursuant to section 721(h) of this title in an amount required for the payment of insurance premiums and benefits described in this subparagraph. For purposes of section 721(h)(4)(A)(iii) of this title, amounts required for the payment of such premiums and benefits shall be deemed to be valid administrative claims against the respective estates of the railroads in reorganization, due and payable as of April 1, 1976, or, in the case of a railroad in reorganization which is not subject to a bankruptcy proceeding, such amounts shall be deemed to be obligations of such railroad, due and payable as of such date, and shall be reimbursable in accordance with the procedures set forth in paragraphs (4) and (5) of such section 721(h) of this title. As used in this subparagraph, the term ''railroad in reorganization'' includes any railroad which is controlled by a railroad in reorganization but is not itself subject to a bankruptcy proceeding, if such railroad conveyed substantially all of its rail properties to the Corporation pursuant to paragraph (1) of this subsection and conducted operations over such rail properties prior to the date of such conveyance.

(c) Findings and distribution

(1) After the rail properties have been conveyed to the Corporation or any subsidiary thereof, profitable railroads operating in the region, States, and responsible persons under subsection (b) of this section, the special court, giving due consideration to the findings contained in the final system plan, shall decide—

(A) whether the transfers or conveyances—

(i) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to the Corporation or any subsidiary thereof in exchange for the certificates of value and the other benefits accruing to such railroad as a result of such exchange (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad) as provided in the final system plan and this chapter, and

(ii) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to a profitable railroad operating in the region in exchange for compensation and other benefits accruing to such transferor as a result of such exchange (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad) State, or responsible person in accordance with the final system plan,

are in the public interest and are fair and equitable to the estate of each railroad in reorganization in accordance with the standard of fairness and equity applicable to the approval of a plan of reorganization or a step in such a plan under section 77 of the Bankruptcy Act, or fair and equitable to a railroad that is not itself in reorganization but which is leased, operated, or controlled by a railroad in reorganization;

(B) whether the transfers or conveyances are more fair and equitable than is required as a constitutional minimum; and

(C) what portion of the proceeds received by a railroad in reorganization from an entity other than the Corporation or any subsidiary thereof for the sale, lease, or transfer of property subject to an agreement under section 723 or section 725(a)(1) or (2) of this title reflects value attributable to the maintenance or improvement provided pursuant to the agreement.

(2) If the special court finds that the terms of one or more exchanges for certificates of value

and other benefits are not fair and equitable to an estate of a railroad in reorganization, or to a railroad leased, operated, or controlled by a railroad in reorganization (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad), which has transferred rail properties pursuant to the final system plan, it may—

(A) enter a judgment reallocating the certificates of value in a fair and equitable manner if they have not been fairly allocated among the railroads transferring rail properties to the Corporation or any subsidiary thereof, except that one certificate of value shall be allocated to each such railroad; and

(B) if the lack of fairness and equity cannot be completely cured by a reallocation of the certificates of value, order the Corporation to provide for the transfer to the railroad of certificates of value issued by the Association as designated in the final system plan in such nature and amount as would make the exchange or exchanges fair and equitable; and

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

(3) If the special court finds that the terms of one or more conveyances of rail properties to a profitable railroad operating in the region, State, or responsible person in accordance with the final system plan are not fair and equitable, it shall enter a judgment against such profitable railroad, State, or responsible person. If the special court finds that the terms of one or more conveyances or exchanges for certificates of value or other benefits are fairer and more equitable than is required as a constitutional minimum, then it shall order the return of any excess certificates of value, or compensation to the Corporation or a profitable railroad, State, or responsible person so as not to exceed the constitutional minimum standard of fairness and equity. The special court shall also find the amount of the payments, if any, which each profitable railroad has made on behalf of a transferor railroad in reorganization in accordance with section 721(h) of this title, for which payment the profitable railroad has not been reimbursed, as provided in section 721(h) of this title. Notwithstanding any other provision of this paragraph or of paragraph (4), the special court shall order the return to any such profitable railroad from compensation deposited by such profitable railroad pursuant to subsection (a)(2) of this section, of any such amount so found together with interest at the rate provided in section 721(h) of this title. In making any finding under this paragraph, the special court shall take into consideration compensable unconstitutional erosion, if any, which it finds to have occurred in the estate of a railroad in reorganization in the region, or of a railroad leased, operated, or controlled by such a railroad, during the bankruptcy proceeding with respect to such railroad.

(4) Upon making the findings referred to in this subsection, the special court shall order distribution of the certificates of value and compensation deposited with it under subsection (a) of this section to the trustee or trustees of each railroad in reorganization in the region and to persons leased, operated, or controlled by such railroads who so transferred or conveyed rail properties who conveyed right, title, and interest in rail properties to the Corporation and the respective profitable railroads, States, and responsible persons under such subsection.

(5) Whenever the special court, pursuant to subsection (b)(1) of this section, orders the transfer or conveyance of rail properties—

(A) designated under section 716(c)(1)(C) or (D) of this title, to the Corporation or any subsidiary thereof, the United States shall indemnify the Corporation against any costs or liabilities imposed on the Corporation as the result of any judgment entered against the Corporation, with respect to such properties, under paragraph (2) of this subsection; and

(B) to the National Railroad Passenger Corporation, a profitable railroad operating in the region, a State, or any other responsible person (including a governmental entity), the United States shall indemnify such Corporation, railroad, State, or person against any costs or liabilities imposed thereon as the result of any judgment entered against such Corporation, railroad, State, or person under paragraph (3) of this subsection;

plus interest on the amount of such judgment at such rate as is constitutionally required. The United States may, in its discretion, represent the Corporation or the National Railroad Passenger Corporation, such profitable railroad, State or responsible person, in any proceedings before the special court that could result in such a judgment against the Corporation under paragraph (2) of this subsection or against the National Railroad Passenger Corporation, such profitable railroad, State or responsible person, under paragraph (3) of this subsection. The Corporation, the National Railroad Passenger Corporation, any profitable railroad, State, or responsible person, which is represented by the United States of America shall cooperate diligently in whatever manner the United States shall reasonably request of it in connection with such proceedings. Neither the Corporation, or its subsidiaries, nor the National Railroad Passenger Corporation, any profitable railroad, State or responsible person, shall be obligated to reimburse the United States for any moneys paid by the United States pursuant to this section.

(6) Whenever the Corporation exercises an option to acquire, or acquires, interests in rail marine freight floating equipment pursuant to the recommendations of the final system plan, and the Corporation thereafter makes such floating equipment available to a profitable railroad operating in the region, a State, or a responsible person including[3] a government entity), the United States shall indemnify—

(A) the Corporation against any costs or liabilities imposed on the Corporation as the result of any judgment entered against it, with respect to such equipment, under paragraph (2) of this subsection; and

[3] So in original. Probably should be ''(including''.

(B) such profitable railroad, State, or responsible person against any costs or liabilities imposed thereon as the result of any judgment entered against such profitable railroads, State, or responsible person under paragraph (3) of this subsection,

plus interest on the amount of such judgment at such rate as is constitutionally required.

(d) Appeal

An order or judgment entered by the United States District Court for the District of Columbia pursuant to subsection (c) of this section or section 746 of this title shall be reviewable in accordance with sections 1291, 1292, and 1294 of title 28.

(e) Transfer and other taxes and recording fees

All transfers or conveyances of rail properties (whether real, personal, or mixed) which are made under this chapter (including transfers and conveyances which are made in accordance with a supplemental transaction pursuant to section 745 of this title or which are made at any time to carry out the purposes of section 791(d) of this title) shall be exempt from any taxes, imposts, or levies now or hereafter imposed, by the United States or by any State or any political subdivision of a State, on or in connection with such transfers or conveyances or on the recording of deeds, bills of sale, liens, encumbrances, or other instruments evidencing, effectuating, or incident to any such transfers or conveyances, whether imposed on the transferor or on the transferee. Such transferors and transferees shall be entitled to record any such deeds, bills of sale, liens, encumbrances, or other instruments and, consistent with the designations and applicable principles in the final system plan, to record the release or removal of any pre-existing liens or encumbrances of record with respect to properties so transferred or conveyed, upon payment of any appropriate and generally applicable charges to compensate for the cost of the service performed.

(Pub. L. 93–236, title III, § 303, Jan. 2, 1974, 87 Stat. 1005; Pub. L. 94–5, § 8, Feb. 28, 1975, 89 Stat. 9; Pub. L. 94–210, title VI §§ 601(d), 612(a), (c)–(i), (k), (*l*), (n)–(q), Feb. 5, 1976, 90 Stat. 84, 107–111; Pub. L. 94–436, §§ 3, 5, Sept. 30, 1976, 90 Stat. 1398, 1399; Pub. L. 94–555, title II, §§ 202(b), 204, 220(b), Oct. 19, 1976, 90 Stat. 2616, 2620, 2629; Pub. L. 95–199, § 4, Nov. 23, 1977, 91 Stat. 1424; Pub. L. 95–597, § 1, Nov. 4, 1978, 92 Stat. 2547; Pub. L. 96–73, title II, § 204(a), Sept. 29, 1979, 93 Stat. 556; Pub. L. 97–35, title XI, § 1167(a), Aug. 13, 1981, 95 Stat. 686; Pub. L. 100–352, § 6(e), June 27, 1988, 102 Stat. 664; Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379; Pub. L. 104–317, title VI, § 605(b)(2), Oct. 19, 1996, 110 Stat. 3858.)

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in subsecs. (b)(3)(B) and (c)(1)(A)(ii), was classified to section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§ 1161 et seq.) of chapter 11 of Title 11.

Section 775 of this title, referred to in subsec. (b)(6)(A), was repealed by Pub. L. 97–35, title XI, § 1144(a)(1), Aug. 13, 1981, 95 Stat. 669.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(6)(A), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title IV of the Employee Retirement Income Security Act of 1974 is classified principally to subchapter III (§ 1301 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

CODIFICATION

The amendments made by section 612(i)(4) of Pub. L. 94–210 could be read as substituting ''certificates of value'' for ''obligations'' in subsecs. (b)(3)(A), (b)(5), and (b)(6), as added by section 612(a) and (*l*) of Pub. L. 94–210. However, this substitution is not appropriate in the context of the new subsecs. (b)(3)(A), (b)(5), and (b)(6).

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–317 substituted ''Appeal'' for ''Review'' in heading and amended text generally. Prior to amendment, text read as follows: ''A finding or determination entered by the special court pursuant to subsection (c) of this section or section 746 of this title shall be reviewable only upon petition for a writ of certiorari to the Supreme Court of the United States. Such review is exclusive and any such petition shall be filed in the Supreme Court not more than 20 days after entry of such finding or determination.''

1994—Subsec. (e). Pub. L. 103–272 struck out ''title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 or of'' before ''section 791(d)''.

1988—Subsec. (d). Pub. L. 100–352 substituted ''Review'' for ''Appeal'' in heading and amended text generally. Prior to amendment, text read as follows: ''A finding or determination entered by the special court pursuant to subsection (c) of this section or section 746 of this title may be appealed directly to the Supreme Court of the United States in the same manner that an injunction order may be appealed under section 1253 of title 28: *Provided*, That such appeal is exclusive and shall be filed in the Supreme Court not more than 20 days after such finding or determination is entered by the special court. The Supreme Court shall dismiss any such appeal within 7 days after the entry of such an appeal if it determines that such an appeal would not be in the interest of an expeditious conclusion of the proceedings and shall grant the highest priority to the determination of any such appeals which it determines not to dismiss.''

1981—Subsec. (c). Pub. L. 97–35 struck out all references to securities wherever appearing in text, and reference to share of series B preferred stock.

1979—Subsec. (b)(6)(B). Pub. L. 96–73 inserted provisions which limited coverage to amount that does not exceed in death benefits amount equal to twice the employee's annual salary at time of retirement or $60,000, whichever is lower, provided for maintenance of regional coverage, and in cases of lapsed coverage due to nonpayment of premiums prescribed the same limitation for claims arising during the lapsed period or thereafter.

1978—Subsec. (b)(6). Pub. L. 95–597 redesignated existing provisions as subpar. (A), redesignated clauses (A) and (B) as (i) and (ii), respectively, and added subpar. (B).

1977—Subsec. (d). Pub. L. 95–199 substituted ''entered by the special court pursuant to subsection (c) of this section or section 746 of this title'' for ''entered pursuant to subsection (c) of this section''.

1976—Subsec. (a)(1). Pub. L. 94–210, § 612(c)(1), (i), inserted ''or any subsidiary thereof'' before '', shall deposit'', and substituted ''certificates of value issued by'' for ''obligations of''.

Subsec. (a)(2). Pub. L. 94–210, § 612(d)(1), inserted reference to each State or responsible person (including a governmental entity).

Subsec. (b)(1). Pub. L. 94–210, § 612(c)(2), (d)(2), (i), (*o*), (p), inserted ''or any subsidiary thereof'' after ''to the

Corporation'', ''States, and responsible persons'' before ''order the trustee'', and provisions relating to orders of the trustee or trustees to execute and deliver deeds or other instruments conveying rail properties, and substituted ''person leased'' for ''railroad leased'', '', the respective profitable railroads operating in the region, States, and responsible persons'' for ''and the respective profitable railroads operating in the region'', and ''certificates of value issued by'' for ''obligations of''.

Subsec. (b)(2). Pub. L. 94–210, § 612(c)(2), (d)(3), inserted ''or any subsidiary thereof'' after ''Corporation'' and reference to States and responsible persons.

Subsec. (b)(3). Pub. L. 94–210, § 612(a), redesignated existing provisions as subpar. (A)(ii), made changes in phraseology, inserted definition of ''railroad rolling stock'' and struck out provisions relating to affect of chapter on title and interests of any lessor, etc., and added subpar. (A)(i) and (B).

Subsec. (b)(4). Pub. L. 94–210, § 612(d)(4), (k), inserted ''all future liability under such lease and'' after ''is made assumes'', and substituted '', profitable railroad, State, or responsible person'' for ''or the profitable railroad''.

Subsec. (b)(5), (6). Pub. L. 94–210, § 612(*l*), added pars. (5) and (6).

Subsec. (b)(6). Pub. L. 94–555, § 204, inserted provisions entitling the Corporation to a loan to fund accrued, non-guaranteed pension benefits under all plans transferred or assigned to the Corporation, whether terminated or not, and such loan is to be charged to the estate of railroad in reorganization as an administrative expense.

Subsec. (c)(1). Pub. L. 94–210, § 612(c)(3), (d)(5), (6), (i), (q)(1), (2), in introductory text inserted ''or any subsidiary thereof'' after ''Corporation'' and inserted reference to States and responsible persons, in subpar. (A)(i) inserted ''or any subsidiary thereof'' after ''Corporation'' and '', certificates of value'' after ''securities'', and inserted provision relating to consideration of compensable unconstitutional erosion, in subpar. (A)(ii) inserted reference to State or responsible person, and provision relating to compensation and other benefits accruing to such transferor as a result of the exchange, and in subpar. (C) inserted ''or any subsidiary thereof'' after ''Corporation''.

Subsec. (c)(2). Pub. L. 94–210, § 612(c)(4), (e), (i), (q)(3), in introductory text inserted reference to certificates of value and provision relating to consideration of compensable unconstitutional erosion, and substituted ''may'' for ''shall'', in subpar. (A) inserted reference to any subsidiary of a Corporation, exception relating to allocation to each such railroad of preferred stock, etc., '', certificates of value'' after ''securities'' and ''and certificates of value'' after ''of the Corporation'', in subpar. (B) inserted ''and certificates of value'' after ''Corporation's securities'' and '', certificates of value'' after ''other securities'', and substituted ''certificates of value issued by the Association'' for ''obligations of the Association'', and in subpar. (C) generally revised criteria for entering a judgment against the Corporation.

Subsec. (c)(2)(A). Pub. L. 94–555, § 220(b)(1), (2), substituted ''securities and certificates of value'' for ''securities and certificates of value of the Corporation and certificates of value'' after ''reallocating the'' and ''they have'' for ''it has'' after ''equitable manner''.

Subsec. (c)(2)(B). Pub. L. 94–555, § 220(b)(3), (4), substituted ''securities and certificates of value'' for ''Corporation's securities, certificates of value'' after ''reallocation of'', and substituted ''other securities'' for ''other securities and certificates of value'' after ''the railroad of''.

Subsec. (c)(3). Pub. L. 94–555, § 220(b)(5), substituted ''subsection (a)(2) of this section'' for ''section 303(a)(2)'', in the original, necessitating no change in text.

Pub. L. 94–210, § 612(d)(7), (i), (n), (q)(4), inserted references to States or responsible persons wherever appearing, provisions relating to unreimbursed payments made by the profitable railroad on behalf of the transferor railroad in reorganization, provisions relating to consideration by the special court of compensable unconstitutional erosion, and ''certificates of value'' after ''securities'', and substituted ''certificates of value'' for ''obligations''.

Subsec. (c)(4). Pub. L. 94–210, § 612(d)(8), (h), (i), inserted '', States, and responsible persons'' after ''profitable railroads'' and ''and to persons leased, operated, or controlled by such railroads who so transferred or conveyed rail properties'' after ''region'', and substituted ''(a)'' for ''(b)'' and ''certificates of value'' for ''obligations''.

Subsec. (c)(5). Pub. L. 94–436, § 3, restructured first sentence limiting indemnification of United States to judgments against Corporation or any subsidiary entered pursuant to par. (2) and to judgments against the National Railroad Passenger Corporation, profitable railroads, a State, or any responsible person entered pursuant to par. (3).

Pub. L. 94–210, § 612(f), added par. (5).

Subsec. (c)(6). Pub. L. 94–555, § 202(b), added par. (6).

Subsec. (d). Pub. L. 94–210, § 612(g), substituted ''20'' for ''5''.

Subsec. (e). Pub. L. 94–436, § 5, inserted, after ''section 745 of this title'' in second parenthetical expression, ''or which are made at any time to carry out the purposes of title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 or section 791 of this title''.

Pub. L. 94–210, § 601(d), added subsec. (e).

1975—Subsec. (c)(1)(C). Pub. L. 94–5 added subpar. (C).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–317 effective 90 days after Oct. 19, 1996, and except as otherwise provided, applicable to proceedings that arise or continue after such effective date, see section 605(e) of Pub. L. 104–317, set out as a note under section 719 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1979 AMENDMENT

Section 501(b) of Pub. L. 96–73 provided that: ''The amendments made by section 204 of this Act [enacting subsec. (b)(6)(B) of this section and section 721(h)(1)(A)(viii), (6) of this title] shall be effective as of the date of enactment [Nov. 4, 1978] of Pub. L. 95–597.''

EFFECTIVE DATE OF 1976 AMENDMENT

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

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

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

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation

Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

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

See section 1341 of this title.

CASES PENDING IN SPECIAL COURT

For applicability of amendment by Pub. L. 104–317 to cases pending in special court established under section 719(b) of this title, see section 605(d) of Pub. L. 104–317, set out as a note under section 719 of this title.

ADMINISTRATIVE CLAIM STATUS

Section 2 of Pub. L. 95–597 provided that: ''The conferring of administrative claim status on amounts paid for the insurance premiums and benefits described in the amendment made by the first section of this Act [amending this section] shall be effective solely for purposes of meeting the conditions set forth in section 211(h)(4)(A)(iii) of the Regional Rail Reorganization Act of 1973 [section 721(h)(4)(A)(iii) of this title] with respect to which obligations of the estate of a railroad in reorganization may be paid pursuant to such section 211(h) [section 721(h) of this title], and shall not be construed—

''(1) as affecting the jurisdiction of the district court having jurisdiction over such a railroad in reorganization to determine whether such insurance premiums and benefits constitute enforceable contractual obligations of the estate of such a railroad for purposes of reimbursement under such section 211(h) [section 721(h) of this title]; or

''(2) as establishing or reordering any priority which a claim against the estate of such a railroad for reimbursement for the amounts paid for such insurance premiums and benefits may or may not have under the provisions of the Bankruptcy Act [section 1 et seq. of former Title 11, Bankruptcy] or any other law.''

CORPORATION AS SUCCESSOR IN INTEREST

Section 3 of Pub. L. 95–597 provided that: ''Notwithstanding any other provision of law, any corporation which, pursuant to a plan of reorganization under section 77 of the Bankruptcy Act [section 205 of former Title 11, Bankruptcy], is the successor in interest to a railroad in reorganization shall have standing to assert, in any judicial or administrative proceeding, any claim or defense available to such railroad in reorganization with respect to whether the insurance benefits and premiums described in the amendment made by the first section of this Act [amending this section] constitute enforceable contractual obligations of the estate of such railroad in reorganization. For purposes of this section, the term 'railroad in reorganization' has the meaning given such term in paragraph (14) of section 102 of the Regional Rail Reorganization Act of 1973 [section 702(14) of this title].''

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 744. Termination and continuation of rail services

(a) Discontinuance

(1) Except as provided in subsections (c) and (f) of this section, rail service on rail properties of a railroad in reorganization in the region, or of a person leased, operated, or controlled by such a railroad, which transfers to the Corporation or to profitable railroads operating in the region all or substantially all of its rail properties designated for such conveyance in the final system plan, and rail service on rail properties of a profitable railroad operating in the region which transfers substantially all of its rail properties to the Corporation or to other railroads pursuant to the final system plan, may be discontinued, to the extent such discontinuance is not precluded by the terms of the leases and agreements referred to in section 743(b)(2) of this title, if—

(A) the final system plan does not designate rail service to be operated over such rail properties;

(B) not sooner than 30 days following the effective date of the final system plan, the trustee or trustees of the applicable railroad in reorganization or a profitable railroad give notice in writing of intent to discontinue such service on a date certain which is not less than 60 days after the date of such notice or on the date of any conveyance ordered by the special court pursuant to section 743(b)(1) of this title, whichever is later; and

(C) the notice required by subparagraph (B) of this paragraph is sent by certified mail to the Commission; to the chief executive officer, the transportation agencies, and the government of each political subdivision of each State in which such rail properties are located; and to each shipper who has used such rail service during the previous 12 months.

(2)(A) If rail properties are not, in accordance with the designations in the final system plan, required to be operated, as a consequence of a recommended arrangement for joint use or operation of rail properties (under section 716(g) of this title) or as part of a coordination project (under sections 716(c) and (g) of this title), rail service on such properties may be discontinued, subsequent to the date of conveyance of rail properties pursuant to such section 743(b)(1) of this title, if the Commission determines that such rail service on such rail properties is not compensatory and if—

(i) the petitioner and any other railroad involved in such arrangement or coordination project have, prior to filing an application for such discontinuance, entered into a binding agreement (effective on or before the effective date of such discontinuance) to carry out such arrangement or project;

(ii) such application is filed with the Commission not later than 1 year after the effective date of the final system plan; and

(iii) such discontinuance is not precluded by the terms of the leases and agreements referred to in such section 743(b)(2).

(B) For purposes of this paragraph, rail service on rail properties is compensatory if the revenue attributable to such properties from such service equals or exceeds the sum of the avoidable costs of providing such service on such properties plus a reasonable return on the value of such rail properties, as determined in accord-

ance with the standards developed pursuant to section 10362(b)(6)[1] of title 49.

(C) The Commission shall make its final determination, with respect to any discontinuance requested under this paragraph, not later than 120 days after the date of filing of an application therefor. The applicant shall have the burden of proving that the service involved is not compensatory. If the Commission fails to make a final determination within such time, the application shall be deemed to be granted.

(D) The Commission may issue such rules, regulations, and procedures as it deems necessary for the conduct of its functions under this paragraph.

(b) Abandonment

(1) Except as provided in subsections (c) and (f) of this section, rail properties over which rail service has been discontinued under subsection (a) of this section may not be abandoned sooner than 120 days after the effective date of the discontinuance. Thereafter, except as provided in subsection (c) of this section, such rail properties may be abandoned upon 30 days' notice in writing to any person (including a government entity) required to receive notice under subsection (a)(1)(C) of this section.

(2) In any case in which rail properties proposed to be abandoned under this section are designated by the final system plan as rail properties which are suitable for use for other public purposes (including roads or highways, other forms of mass transportation, conservation, and recreation), such rail properties shall not be sold, leased, exchanged, or otherwise disposed of during the 240-day period beginning on the date of notice of proposed abandonment under this section unless such rail properties have first been offered, upon reasonable terms, for acquisition for public purposes.

(3) Rail service may be discontinued, under subsection (a) of this section, and rail properties may be abandoned, under this section, notwithstanding any provision of part A of subtitle IV of title 49, the constitution or law of any State, or the decision of any court or administrative agency of the United States or of any State.

(c) Continuation of rail services

No rail service may be discontinued and no rail properties may be abandoned, pursuant to this section—

(1) in the case of service and properties referred to in subsections (a)(1) and (b)(1) of this section, after 2 years from the effective date of the final system plan or more than 2 years after the date on which the final rail service continuation payment is received, whichever is later; or

(2) if a financially responsible person (including a government entity) offers—

(A) to provide a rail service continuation payment which is designed to cover the difference between the revenue attributable to such rail properties and the avoidable costs of providing rail service on such properties, together with a reasonable return on the value of such properties;

(B) to provide a rail service continuation payment which is payable pursuant to a lease or agreement with a State or with a local or regional transportation authority under which financial support was being provided on January 2, 1974 for the continuation of rail passenger service; or

(C) to purchase, pursuant to subsection (f) of this section, such rail properties in order to operate rail services thereon.

If a rail service continuation payment is offered, pursuant to paragraph (2)(A) of this subsection, for both freight and passenger service on the same rail properties, the owner of such properties may not be entitled to more than one payment of a reasonable return on the value of such properties.

(d) Rail freight service

(1) If a rail service continuation payment is offered, pursuant to subsection (c)(2)(A) of this section, for rail freight service, the person offering such payment shall designate the operator of such service and enter into an operating agreement with such operator. The person offering such payment shall designate as the operator of such service—

(A) the Corporation, if rail properties of the Corporation connect with the line of railroad involved, unless the Commission determines that such rail service continuation could be performed more efficiently and economically by another railroad;

(B) any other railroad whose rail properties connect with such line, if the Corporation's rail properties do not so connect or if the Commission makes a determination in accordance with subparagraph (A) of this paragraph; or

(C) any responsible person (including a government entity) which is willing to operate rail service over such rail properties.

A designated railroad may refuse to enter into such an operating agreement only if the Commission determines, on petition by any affected party, that the agreement would substantially impair such railroad's ability to serve adequately its own patrons or to meet its outstanding common carrier obligations. The designated operator shall, pursuant to each such operating agreement (i) be obligated to operate rail freight service on such rail properties, and (ii) be entitled to receive, from the person offering such payment, the difference between the revenue attributable to such properties and the avoidable costs of providing service on such rail properties, together with a reasonable management fee, as determined by the Office.

(2) The trustees of a railroad in reorganization shall permit rail service to be continued on any rail properties with respect to which a rail service continuation payment operating agreement has been entered into under this subsection. Such trustees shall receive a reasonable return on the value of such properties, as determined in accordance with the standards developed pursuant to section 10362(b)(6)[1] of title 49.

(3) If necessary to prevent any disruption or loss of rail service, at any time after the date of conveyance, pursuant to section 743(b)(1) of this title, the Commission shall take such action as may be appropriate under its existing authority

[1] See References in Text note below.

(including the enforcement of common carrier requirements applicable to railroads in reorganization in the region) to ensure compliance with obligations imposed under this subsection. The district courts of the United States shall have jurisdiction, upon petition by the Commission or any interested person (including a government entity), to enforce any order of the Commission issued pursuant to the exercise of its authority under this subsection, or to enjoin any designated entity or the trustees of a railroad in reorganization in the region from refusing to comply with the provisions of this subsection.

(4) No determination of reasonable payment for the use of rail properties of a railroad in reorganization in the region, and no determination of value of rail properties of such a railroad (including supporting or related documents or reports of any kind) which is made in connection with any lease agreement, contract of sale, or other agreement or understanding which is entered into after October 19, 1976—

(A) pursuant to this section; or

(B) pursuant to section 762[1] of this title or section 17[1] of the Federal Transit Act (49 U.S.C. 1613),

shall be admitted as evidence, or used for any other purpose, in any civil action, or any other proceeding for damages or compensation, arising under this chapter.

(e) Rail passenger service

(1) The Corporation (or a profitable railroad) shall provide rail passenger service for a period of 180 days immediately following the date of conveyance (pursuant to section 743(b)(1) of this title), with respect to any rail properties over which a railroad in reorganization in the region, or a person leased, operated, or controlled by such a railroad, was providing rail passenger service immediately prior to such date of conveyance. Such service shall be provided on such properties regardless of whether or not such properties are designated in the final system plan as rail properties over which rail service is required to be operated, except with respect to properties over which such service is provided by the National Railroad Passenger Corporation.

(2) If a State (or a local or regional transportation authority) was providing financial assistance to support the operation of rail passenger service, pursuant to a lease or agreement which was in effect immediately prior to the date of conveyance (pursuant to such section 743(b)(1) of this title), the Corporation (or a profitable railroad) shall be bound by the service provisions of such lease or agreement for the duration of the 180-day mandatory operation period specified in paragraph (1) of this subsection. If a State or such an authority was providing financial assistance for the continuation of rail passenger service on rail properties immediately prior to such date of conveyance, it shall provide the same level of financial assistance during such 180-day mandatory operation period. If no such financial assistance was being provided or if no such lease or agreement was in effect immediately prior to such date of conveyance, with respect to any such rail properties, the Corporation (or a profitable railroad) shall provide the same level of rail passenger service, for the duration of such 180-day mandatory operation period, that was provided prior to such date by the applicable railroad. If—

(A) such financial assistance is not provided;

(B) a State (or a local or regional transportation authority) has not, by the end of such 180-day mandatory operation period, offered a rail service continuation payment pursuant to subsection (c)(2)(A) of this section;

(C) an applicable rail service continuation payment pursuant to such subsection (c)(2)(A) of this section is not paid when it is due; or

(D) a payment required under a lease or agreement, pursuant to section 743(b)(2) of this title or subsection (c)(2)(B) of this section, is not paid when it is due,

the Corporation (or, where applicable, the National Railroad Passenger Corporation, a profitable railroad, or the trustee or trustees of a railroad in reorganization in the region) may (i) discontinue such rail passenger service, and (ii) with respect to rail properties not designated for inclusion in the final system plan, abandon such properties pursuant to subsections (a) and (b) of this section.

(3) Nothing in this subsection shall be construed to affect the obligation of the Corporation (or a profitable railroad), or of the trustees of the railroads in reorganization in the region, to provide rail passenger service pursuant to section 743(b)(2) of this title or subsection (c)(2)(B) of this section.

(4) If a State (or a local or regional transportation authority)—

(A) offers a rail service continuation payment, pursuant to subsection (c)(2)(A) of the[2] section, for the operation of rail passenger service after the 180-day mandatory operation period, and

(B) provides compensation, pursuant to paragraph (2) of this subsection, for operations conducted during the 180-day mandatory operation period; or

(C) offers a rail service continuation payment, pursuant to subsection (c)(2)(A) of this section, for the operation of rail passenger service provided under an agreement or lease pursuant to section 743(b)(2) of this title or subsection (c)(2)(B) of this section where such offer is made for the continuation of the service beyond the period required by such agreement or lease, except that such services shall not be eligible for assistance under section 17(a)(2)[3] of the Federal Transit Act (49 U.S.C. 1613(a)(2)),

the Corporation (or a profitable railroad) shall continue to provide such service after the end of such period, except as otherwise provided in this subsection.

(5)(A) The Secretary shall reimburse the Corporation (or a profitable railroad) for any loss which is incurred by it during the 180-day mandatory operation period specified in paragraph (1) of this subsection which is not compensated for by a State (or a local or regional transpor-

[2] So in original. Probably should be ''this''.

[3] See References in Text note below.

tation authority). The amount of such reimbursement shall be determined pursuant to section 17(a)(1)[3] of the Federal Transit Act.

(B) The Secretary shall reimburse States, local public bodies, and agencies thereof for additional costs incurred by such States, bodies, and agencies for rail service continuation payments for rail passenger service pursuant to section 17(a)(2)[3] of the Federal Transit Act.

(C) For purposes of the obligation of the Secretary to reimburse the Corporation (or a profitable railroad) or States, local public bodies, and agencies thereof under subparagraphs (A) and (B) of this paragraph, the level of rail passenger service shall be determined on the basis of train miles, car miles, or some other appropriate indicia of scheduled train movements. Programs to correct deferred maintenance on rolling stock, right-of-way, and other facilities which are designed to maintain service, meet on-time performance, and maintain a reasonable degree of passenger comfort (and costs incurred incident thereto) shall be included within the meaning of the term ''loss'' as used in subparagraph (A) of this paragraph and within the meaning of the term ''additional costs'' as used in subparagraph (B) of this paragraph and section 17(a)(2)[3] of the Federal Transit Act (49 U.S.C. 1613(a)(2)).

(D) If a dispute arises with respect to the application of any such regulations, the parties to such dispute may submit such dispute to arbitration by a third party. If the parties are unable to agree upon the selection of an arbitrator, the Chairman of the Commission shall serve in that capacity (except as to matters required to be decided by the Commission, pursuant to section 562(a) of this title).

(6) Notwithstanding any other provision of this subsection, the Corporation is not obligated to provide rail passenger service on rail properties if a State (or a local or regional transportation authority) contracts for such service to be provided on such properties by an operator other than the Corporation, except that the Corporation shall, where appropriate, provide such operator with access to such properties for such purpose.

(7)(A) If a State (or a local or regional transportation authority) in the region offers to provide payment for the provision of additional rail passenger service, the Corporation shall undertake to provide such service pursuant to this subsection (including the discontinuance provisions of paragraph (2) of this subsection). An offer to provide payment for the provision of additional rail passenger service shall be made in accordance with subsection (c)(2)(A) of this section, and shall be designed to avoid any additional costs to the Corporation arising from the construction or modification of capital facilities or from any additional operating delays or costs arising from the absence of such construction or modification. The State (or local or regional transportation authority) shall demonstrate that it has acquired, leased, or otherwise obtained access to all rail properties, other than those designated for conveyance to the National Railroad Passenger Corporation pursuant to sections 716(c)(1)(C) and 716(c)(1)(D) of this title and to the Corporation pursuant to section 743(b)(1) of this title, necessary to provide the additional rail passenger service and that it has completed, or will complete prior to the inception of the additional rail service, all capital improvements necessary to avoid significant costs which cannot be avoided by improved scheduling or other means on other existing rail services (including rail freight service) and to assure that the additional service will not detract from the level and quality of existing rail passenger and freight service.

(B) As used in this paragraph, the term ''additional rail passenger service'' means rail passenger service (other than rail passenger service provided pursuant to the provisions of paragraphs (2) and (4) of this subsection), including extended or expanded service and modified routings, which is to be provided over rail properties conveyed to the Corporation pursuant to section 743(b)(1) of this title, or over (i) rail properties contiguous thereto conveyed to the National Railroad Passenger Corporation pursuant to this chapter, or (ii) any other rail properties contiguous thereto to which a State (or local or regional transportation authority) has obtained access.

(C) Notwithstanding any other provision of this paragraph, the Corporation shall not be required to operate additional rail passenger service over rail properties leased or acquired from or owned or leased by a profitable railroad in the region.

(8) The Secretary shall, in consultation with the Association, conduct a study to determine the best means of compensating the Corporation for liabilities which it may incur for damages to persons or property, resulting from the operation of rail passenger service required to be operated pursuant to this subsection or section 743(b)(2) of this title, which are not underwritten by private insurance carriers or are not indemnified by a State (or local or regional transportation authority). Such study shall identify the nature of the risks to the Corporation, the probable degree of uninsurability of such risks, and the desirability and feasibility of various indemnification programs, including subsidy offers made pursuant to this section, self-insurance through a passenger tax or other mechanism, or government indemnification for such liabilities. Within one year after November 8, 1978, the Secretary shall prepare a report with appropriate recommendations and shall submit such report to the Congress. Such report shall specify the most appropriate means of indemnifying the Corporation for such liabilities in a manner which shall prevent the cross-subsidization of passenger services with revenues from freight services operated by the Corporation.

(f) Purchase

If an offer to purchase is made under subsection (c)(2)(C) of this section, such offer shall be accompanied by an offer of a rail service continuation payment. Such payment shall continue until the purchase transaction is completed, unless a railroad assumes operations over such rail properties of its own account pursuant to an order or authorization of the Commission. Whenever a railroad in reorganization in the region or a profitable railroad gives notice of intent to discontinue service pursuant to

subsection (a) of this section, such railroad shall, upon the request of anyone apparently qualified to make an offer to purchase or to provide a rail service continuation payment, promptly make available its most recent reports on the physical condition of such property, together with such traffic and revenue data as would be required under subpart B of part 1121 of chapter X of title 49 of the Code of Federal Regulations and such other data as are necessary to ascertain the avoidable costs of providing service over such rail properties.

(g) Abandonment by Corporation

After the rail system to be operated by the Corporation or a subsidiary thereof under the final system plan has been in operation for 2 years, the Commission may authorize the Corporation or a subsidiary thereof to abandon any rail properties as to which it determines that rail service over such properties is not required by the public convenience and necessity, if the Corporation or a subsidiary thereof can demonstrate that no State (or local or regional transportation authority) is willing to offer a rail service continuation payment pursuant to subsection (c) of this section. The Commission may, at any time after the effective date of the final system plan, authorize additional rail service in the region or authorize the abandonment of rail properties which are not being operated by the Corporation or any subsidiary or affiliate thereof or by any other person. Determinations by the Commission under this subsection shall be made pursuant to applicable provisions of part A of subtitle IV of title 49.

(h) Interim abandonment

After February 5, 1976, and prior to the date of conveyance (pursuant to section 743(b)(1) of this title), no railroad in reorganization in the region may discontinue service or abandon any line of railroad other than in accordance with the provisions of this chapter, unless (1) it is authorized to do so by the Association, and (2) no affected State (or local or regional transportation authority) reasonably opposes such action, notwithstanding any provision of any other Federal law, the constitution or law of any State, or the decision or order of, or the pendency of any proceeding before any Federal or State court, agency, or authority.

(i) Disposition of designated rail properties

No railroad in reorganization in the region and no person leased, operated or controlled by such a railroad shall sell, transfer, encumber, or otherwise dispose of rail property, or any right or interest therein, designated for transfer to the Corporation or conveyance to a profitable railroad in the final system plan, except pursuant to section 743(b) of this title. The provisions of this subsection shall not apply to any such sale, transfer, encumbrance, or other disposition—

(1) as to which the Association generally or specifically consents in writing;

(2) which, prior to February 5, 1976, had been specifically approved by a United States district court having jurisdiction over the reorganization of a railroad in reorganization under section 77 of the Bankruptcy Act; or

(3) following certification to the special court, pursuant to section 719(c) of this title, of any such rail properties not previously so certified.

(Pub. L. 93–236, title III, § 304, Jan. 2, 1974, 87 Stat. 1008; Pub. L. 94–210, title VI, § 607(i), title VIII, § 804, Feb. 5, 1976, 90 Stat. 97, 133; Pub. L. 94–555, title II, §§ 205, 206, Oct. 19, 1976, 90 Stat. 2620, 2621; Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1466; Pub. L. 95–607, title II, § 201, Nov. 8, 1978, 92 Stat. 3064; Pub. L. 97–449, § 4(b)(2), Jan. 12, 1983, 96 Stat. 2441; Pub. L. 102–240, title III, § 3003(b), Dec. 18, 1991, 105 Stat. 2088; Pub. L. 104–88, title III, § 327(3), Dec. 29, 1995, 109 Stat. 951; Pub. L. 104–287, § 6(f)(4)(A), Oct. 11, 1996, 110 Stat. 3399.)

REFERENCES IN TEXT

Section 10362(b)(6) of title 49, referred to in subsecs. (a)(2)(B) and (d)(2), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804. Previously, in subsec. (d)(2), ''section 10362(b)(6) of title 49'' was substituted for ''section 205(d)(6) of this Act'', meaning section 205(d)(6) of Pub. L. 93–236, on authority of Pub. L. 95–473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49.

Section 762 of this title, referred to in subsec. (d)(4)(B), was repealed by Pub. L. 94–210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 17 of the Federal Transit Act, referred to in subsecs. (d)(4)(B) and (e)(4)(C), (5)(A) to (C), which was classified to section 1613 of former Title 49, Transportation, was repealed by Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379.

Section 77 of the Bankruptcy Act, referred to in subsec. (i)(2), was classified to section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§ 1161 et seq.) of chapter 11 of Title 11.

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104–287 made technical amendment to directory language of Pub. L. 104–88, § 327(3)(B). See 1995 Amendment note below.

1995—Subsec. (a)(2)(B). Pub. L. 104–88, § 327(3)(A), substituted ''section 10362(b)(6) of title 49'' for ''section 205(d)(6) of this Act''.

Subsec. (b)(3). Pub. L. 104–88, § 327(3)(B), as amended by Pub. L. 104–287, substituted ''part A of subtitle IV of title 49'' for ''the Interstate Commerce Act''.

Subsec. (d)(3). Pub. L. 104–88, § 327(3)(C), substituted ''this title, the Commission'' for ''this title, the Commission—'', struck out ''(A)'' before ''shall take such action'', and substituted ''under this subsection.'' for ''under this subsection; and

''(B) shall have authority, in accordance with the provisions of section 1(16)(b) of the Interstate Commerce Act (49 U.S.C. 1(16)(b)), to direct rail service to be provided by any designated railroad or by the trustees of a railroad in reorganization in the region, if a rail service continuation payment has been offered but an applicable operating or lease agreement is not in effect.

For purposes of the preceding sentence, any compensation required as a result of such directed service shall be determined in accordance with the standards developed pursuant to section 205(d)(6) of this Act.''

Subsec. (e)(4)(A). Pub. L. 104–88, § 327(3)(D)(i), struck out ''and under regulations issued by the Office pursuant to section 205(d)(5) of this Act'' before '', for the operation''.

Subsec. (e)(4)(C). Pub. L. 104–88, § 327(3)(D)(ii), struck out ''and regulations issued by the Office pursuant to

section 205(d)(5) of this Act'' after ''subsection (c)(2)(A) of this section''.

Subsec. (e)(5)(A), (B). Pub. L. 104–88, § 327(3)(E), struck out before period at end ''and under regulations issued by the Office pursuant to section 205(d)(5) of this Act''.

Subsec. (e)(7)(A). Pub. L. 104–88, § 327(3)(F), struck out ''and under regulations issued by the Office pursuant to section 205(d)(5) of this Act'' after ''subsection (c)(2)(A) of this section''.

Subsec. (g). Pub. L. 104–88, § 327(3)(G), substituted ''part A of subtitle IV of title 49'' for ''the Interstate Commerce Act''.

1991—Subsecs. (d)(4)(B), (e)(4)(C), (5)(A) to (C). Pub. L. 102–240 substituted ''Federal Transit Act'' for ''Urban Mass Transportation Act of 1964''.

1983—Subsec. (j). Pub. L. 97–449 repealed section 304(j) of Pub. L. 93–236, effective Oct. 17, 1978, the date Pub. L. 95–473 repealed subsec. (j) by repealing section 804 ''Sec. 304(j)'' of Pub. L. 94–210. See 1978 Amendment note below.

1978—Subsec. (e). Pub. L. 95–607 added subpar. (C) of par. (4) and pars. (7) and (8).

Subsec. (j). Pub. L. 95–473 struck out subsec. (j) which provided for exempt rail mass transportation not under the jurisdiction of the Interstate Commerce Commission.

1976—Subsec. (a). Pub. L. 94–210, § 804, redesignated existing provisions as par. (1) and inserted provision relating to applicability to a railroad in reorganization in the region, or of a person leased, operated, or controlled by such a railroad, in subpar. (B) inserted provision relating to notice on the date of any conveyance ordered by the special court, and in subpar. (C) inserted requirement that notice be sent to the Commission and substituted reference to the chief executive officer for reference to the Governor, and added par. (2).

Subsec. (b). Pub. L. 94–210, § 804, in par. (1) inserted exception of subsecs. (c) and (f) of this section and substituted provisions requiring notice to be sent to any person (including a government entity), for provisions requiring notice to be sent to all those required to receive notice, in par. (2) substituted ''240'' for ''180'', and added par. (3).

Subsec. (c). Pub. L. 94–210, § 804, substituted provisions relating to continuation of rail services and applicability of rail service continuation payments to such continuation, for provisions relating to limitations of Interstate Commerce Act, State constitution or law, or decision of Federal or State court or agency on power to discontinue rail service and abandon rail properties and applicability of rail service continuation subsidies on such power.

Subsec. (d). Pub. L. 94–210, § 804, added subsec. (d). Former subsec. (d) redesignated (f) and amended.

Subsec. (d)(4). Pub. L. 94–555, § 205(a), added par. (4).

Subsec. (e). Pub. L. 94–210, §§ 607(i), 804, added subsec. (e). Former subsec. (e) redesignated (g) and amended.

Subsec. (e)(5)(D). Pub. L. 94–555, § 205(b), redesignated former subpar. (C) as (D) and added subpar. (C).

Subsec. (f). Pub. L. 94–210, § 804, redesignated former subsec. (d) as (f) and substituted provisions relating to rail service continuation payments, for provisions relating to rail service continuation subsidies. Former subsec. (f) redesignated (h) and amended.

Subsec. (g). Pub. L. 94–210, § 804, redesignated former subsec. (e) as (g) and inserted reference to any subsidiary of a Corporation and provision relating to demonstration by the Corporation, etc., that no State (or local or regional transportation authority) will offer a continuation payment under subsec. (c) of this section.

Subsec. (h). Pub. L. 94–210, § 804, redesignated former subsec. (f) as (h), substituted ''February 5, 1976, and prior to the date of conveyance (pursuant to section 743(b)(1) of this title)'' for ''January 2, 1974'' and ''reorganization in the region may'' for ''reorganization may'', and made minor changes in structure.

Subsecs. (i), (j). Pub. L. 94–210, § 804, added subsecs. (i) and (j).

Subsec. (j)(1). Pub. L. 94–555, § 206(1), inserted limitation ''by rail'' to mass transportation services, and provided that any local body providing mass transportation services by rail is exempted from the rules, regulations, and orders promulgated under the Interstate Commerce Act, if interstate fares or application to the Interstate Commerce Commission for a change in such fares is subject to the approval or disapproval of the Governor of any state in which it provides services.

Subsec. (j)(2)(B). Pub. L. 94–555, § 206(2), substituted definition of ''mass transportation services'' for ''mass transportation''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 6(f)(4)(A) of Pub. L. 104–287 provided that the amendment made by that section is effective Dec. 29, 1995.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1976 AMENDMENT

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

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

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

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 744a. End of Conrail commuter service obligation

Notwithstanding any other provision of law or contract, Conrail shall be relieved of any legal obligation to operate commuter service on January 1, 1983.

(Pub. L. 97–35, title XI, § 1136, Aug. 13, 1981, 95 Stat. 647.)

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1981 and also as part of the Northeast Rail Service Act of 1981, and not as part of the Regional Rail Reorganization Act of 1973 which comprises this chapter.

EFFECTIVE DATE

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

AUTHORIZATION OF APPROPRIATION TO FACILITATE TRANSFER OF RAIL COMMUTER SERVICE FROM CONRAIL TO OTHER OPERATORS; STANDARDS FOR DISTRIBUTION OF APPROPRIATED FUNDS

Section 1139(b) of Pub. L. 97–35, as amended by Pub. L. 97–468, title V, § 504(a), Jan. 14, 1983, 96 Stat. 2552, provided that:

''(1) There are authorized to be appropriated to the Secretary not to exceed $50,000,000, to facilitate the transfer of rail commuter services from Conrail to other operators. The Secretary shall by regulation prescribe standards for the obligation of such funds, and shall ensure that distribution of such funds is equitably made between Amtrak Commuter and the commuter authorities that operate commuter service. In providing for the distribution of such funds, the Secretary shall consider any particular adverse financial impact upon any commuter authority that results from the termination of any lease or agreement between such commuter authority and Conrail. Amounts appropriated under this section are authorized to remain available until October 1, 1986.

''(2) Any funds appropriated under the authority of this subsection shall be distributed by the Secretary to Amtrak Commuter and commuter authorities according to the statutory provisions of paragraph (1) of this subsection within 60 days after receipt of an application by Amtrak Commuter or such commuter authorities or within 60 days after the date of enactment of the Rail Safety and Service Improvement Act of 1982 [Jan. 14, 1983], whichever is later.''

§ 745. Continuing reorganization; supplemental transactions

(a) Proposals

If the Secretary or the Association determines that, as part of continuing reorganization, further restructuring of rail properties in the region through transactions supplemental to the final system plan would promote the establishment and retention of a financially self-sustaining rail service system in the region adequate to meet the needs of the region, the Secretary or the Association, as the case may be, may develop proposals for such supplemental transactions as are necessary or appropriate to implement the needed restructuring. Transfers of rail properties included in proposals developed by the Association shall be limited to (1) rail properties which would have qualified for designation under section 716(c)(1)(A) of this title but which were not transferred or conveyed under the final system plan, and which the Association finds to be essential to the efficient operations of the Corporation, and (2) transfers, consistent with the final system plan, of rail properties from the Corporation to a subsidiary thereof. Each proposal (other than a proposal developed by the Association) shall be submitted in writing to the Association and shall state and describe any transactions proposed, the rail properties involved, the parties to such transactions, the financial and other terms of such transactions, the purposes of the chapter or the goals of the final system plan intended to be effectuated by such transactions, and such other information incidental thereto as the Association may prescribe. Within 10 days after receipt of a proposal developed by the Secretary, and upon the development of a proposal developed by the Association, the Association shall publish a summary of such proposal in the Federal Register, and shall afford interested persons (including the Corporation when property is to be transferred to or from the Corporation) an opportunity to comment thereon.

(b) Evaluation by Association

The Association shall analyze each proposal containing one or more supplemental transactions, taking into account the comments of interested persons and statements and exhibits submitted at any public hearings which may have been held. The Association shall, within 120 days after the publication of a summary thereof under subsection (a) of this section, publish in the Federal Register a report evaluating such proposal. Such evaluation shall state whether the supplemental transactions contained in such proposal, considered in their entirety, are (1) in the public interest and consistent with the purposes of this chapter and the goals of the final system plan, and (2) fair and equitable. If the Corporation opposes, or seeks modification of, any such proposed transfer, its written comments shall be given due consideration by the Association and shall be published as part of the evaluation. Within 30 days after the Association publishes its report, each proposed transferor or transferee shall notify the Association in writing as to whether any proposed supplemental transaction requiring the transfer of any property from or to such transferor or transferee is acceptable to such proposed transferor or transferee. If any such proposed transferor (other than the Corporation) or transferee fails to notify the Association that any proposed supplemental transaction requiring the transfer of any property from such transferor or to such transferee is acceptable to it, no further administrative or judicial proceedings shall be conducted with respect to such proposed supplemental transaction.

(c) Review by Commission

Within 90 days after the publication in the Federal Register of each report referred to in subsection (b) of this section, the Commission shall determine whether the supplemental transactions referred to in the report, considered in their entirety, would be in the public interest and consistent with the purposes of this chapter and the goals of the final system plan. In making such determination, the Commission shall give due consideration to the views received by it, within 30 days after the publication of the applicable report, from the Corporation and the Secretary. The Commission may condition its approval of such supplemental transactions on such reasonable terms and conditions as it may deem necessary in the public interest. The approval by the Commission of such supplemental transactions shall not be a prerequisite to the consummation of such transactions, but any determination of the Commission modifying, approving, or disapproving any proposed supplemental transactions shall be given due weight and consideration by the special court in the proceedings prescribed in subsection (d) of this section. If the Commission fails to act within the time period provided in this subsection,

the supplemental transactions involved shall be deemed to have been approved by the Commission. The Commission may prescribe such regulations as may be necessary for the administration of this section.

(d) Special court proceedings

(1) If the Association has made the determination pursuant to subsection (b) of this section that a proposal for supplemental transactions is in the public interest and consistent with the purposes of this chapter and the goals of the final system plan, and is fair and equitable, the Association shall, within 40 days after the date of the Commission's determination under subsection (c) of this section, or after the expiration of the 90-day period referred to in such subsection (c) of this section, whichever is applicable, petition the special court for an order of such court finding that such proposal for supplemental transactions is in the public interest and consistent with the purposes of this chapter and the goals of the final system plan, and is fair and equitable, and directing the Corporation to carry out the supplemental transactions specified in such proposal. If the Association has determined, pursuant to subsection (b) of this section that a proposal made by the Secretary is not in the public interest or is not consistent with the purposes of this chapter and the goals of the final system plan or is not fair and equitable, the Secretary may, if he determines that such proposal is in the public interest and consistent with the purposes of this chapter and the goals of the final system plan and is fair and equitable, petition the special court for an order of such court finding that such proposal for supplemental transactions is in the public interest and consistent with the purposes of this chapter and the goals of the final system plan and is fair and equitable, and directing the Corporation to carry out any supplemental transactions specified in such proposal. Such a petition shall be submitted to the special court within 90 days after the date of the Commission's determination under such subsection (c) of this section, or after the expiration of the 90-day period referred to in such subsection (c) of this section, whichever is applicable.

(2) After the filing of a petition under paragraph (1) of this subsection, the special court shall decide, after a hearing, whether the proposed supplemental transactions contained in such petition, considered in their entirety, are in the public interest and consistent with the purposes of this chapter and the goals of the final system plan and are fair and equitable. If the special court determines that such proposed supplemental transactions, considered in their entirety, are in the public interest and consistent with the purposes of this chapter and the goals of the final system plan and are fair and equitable, it shall, upon making such determination, issue such orders as may be necessary to direct the Corporation to consummate the transactions. If the special court determines that such proposed supplemental transactions, considered in their entirety, are not in the public interest or not consistent with the purposes of this chapter and the goals of the final system plan, or are not fair and equitable, it shall file an opinion stating its conclusion and the reasons therefor. In such event the Association (in the case of a proposal developed by the Association) or the Secretary (in the case of a proposal developed by the Secretary) may, within 120 days after the filing of such opinion, certify to the special court that the terms and conditions of the proposal have been modified consistent with the opinion of the court and are acceptable to each proposed transferor (other than the Corporation) or transferee, and may petition the special court for reconsideration of the proposal as so modified. After the filing of such petition, the special court shall decide, after a hearing, whether the proposal as modified by the certification is in the public interest and consistent with the purposes of this chapter and the goals of the final system plan and is fair and equitable, and shall enter such further orders as are consistent with its determination.

(3) The Corporation is authorized to petition the special court and to be represented regarding any proposed supplemental transaction, contained in a proposal developed by either the Association or the Secretary, which involves the properties of the Corporation.

(4) In proceedings under this subsection, the special court is authorized to exercise the powers of a reorganization court.

(5) Any evaluation by the Association, the Secretary, or the Commission shall not be reviewable in any court except the special court in accordance with the provisions of this section. The supplemental transactions shall not be restrained or enjoined by any court nor shall they be otherwise reviewable by any court other than by the special court to the extent provided in this section.

(6) Notwithstanding any other provision of this chapter, no findings, determinations, or proceedings shall be required with respect to any proposal for supplemental transactions other than as expressly set forth in this section.

(7) Repealed. Pub. L. 97–35, title XI, § 1155(b), Aug. 13, 1981, 95 Stat. 679.

(8) A final order or judgment of the special court entering or denying an order pursuant to this subsection shall be reviewable in the same manner as provided in section 719(e)(3) of this title.

(e) "Fair and equitable" defined

As used in this section, the term ''fair and equitable'' means fair and equitable, in accordance with the standards applicable to the approval of a plan of reorganization (or a step in such plan) under section 77 of the Bankruptcy Act[1] to—

(1) the estates of railroads in reorganization in the region and persons leased, operated, or controlled by such railroads who have conveyed rail properties, under section 743(b)(1) of this title, in exchange for securities of the Corporation, the Association, or profitable railroads and other benefits provided as a consequence of this chapter and to any subsequent holders of such securities at the time of the supplemental transaction involved; and

(2) the holders of other securities of the Corporation.

[1] See References in Text note below.

Whenever any property or securities of the Corporation are required to be valued in order to determine whether the terms of a supplemental transaction are fair and equitable, the special court shall give proper recognition to the contributions to the Corporation by all classes of security holders, except that such court shall not assign to the series B preferred stock or the common stock of the Corporation any values added to those securities, by reason of investment by the Association in debentures and series A preferred stock of the Corporation, in excess of any value required by constitutional principles applicable to a reorganization process.

(f) Expedited proposals

(1) Within 240 days after the effective date of the Staggers Rail Act of 1980, the Secretary, after providing an opportunity for comments from interested parties, shall determine whether to initiate a proposal for a supplemental transaction under this section for the transfer of all rail properties of the Corporation in the States of Connecticut and Rhode Island to another railroad in the region. If the Secretary determines that—

(A) the proposed transferee railroad is financially and operationally capable of assuming the freight operations and freight service obligations of the Corporation on a financially self-sustaining basis;

(B) the proposed transfer would promote the establishment and retention of a financially self-sustaining rail system in the States of Connecticut and Rhode Island adequate to meet the needs of such States; and

(C) the proposed transfer is consistent with the goals set forth in section 716(a)(8) of this title,

the Secretary shall develop such a proposal and may, after providing the Association, the Commission, and the States of Connecticut and Rhode Island an opportunity to review and comment on such proposal, petition the special court for an order to carry out such proposal.

(2)(A) Within 10 days after August 13, 1981, the Secretary shall initiate discussions and negotiations for the transfer of some or all of the Corporation's rail properties and freight service obligations in the States of Connecticut and Rhode Island to one or more parties under a plan which provides for continued rail freight service on all lines operated by the Corporation on August 13, 1981, for at least four years.

(B) Within 120 days after August 13, 1981, the Secretary shall petition the special court for an order to transfer all of the Corporation's rail properties and freight service obligations in the States of Connecticut and Rhode Island to one or more railroads in the Region—

(i) which have under subparagraph (A) of this paragraph completed negotiations and submitted to the Secretary a proposal to assume all of the freight operations and freight service obligations of the Corporation in such States on a financially self-sustaining basis for a period of at least four years; or

(ii) which have developed a proposal to assume all of the freight operations and freight service obligations of the Corporation in such States under an agreement by and between the Corporation and such railroad or railroads; or

(iii) which have, prior to May 1, 1981, submitted a proposal to the Secretary for such a transfer.

For the purpose of this section, an order to transfer may include the Corporation if the Corporation agrees to maintain service over lines retained by the Corporation for four years.

(C) To permit efficient and effective rail operations consistent with the public interest, as a part of any transfer under paragraph (2)(B) of this subsection, the Secretary shall promote the transfer of additional non-mainline Corporation properties in adjoining States that connect with properties that are the subject of such transfer.

(D) The special court shall determine a fair and equitable price for the rail properties to be transferred under this subsection, and shall, unless the parties otherwise agree, establish divisions of joint rates for through routes over such properties which are fair and equitable to the parties. The special court shall establish a method to ensure that such divisions are promptly paid.

(E) Notwithstanding any other provision of law or agreement in effect on May 1, 1981, the special court shall require that the railroad or railroads to which properties are to be transferred under this subsection assume all charges payable by the Corporation to Amtrak for the carriage of property by rail over those portions of the Northeast Corridor in Connecticut and Rhode Island. If the Corporation operates any rail freight service over those portions of the Northeast Corridor in Connecticut and Rhode Island after the date of such transfer, the Corporation shall pay Amtrak any compensation that may be separately agreed upon by the Corporation and Amtrak, and the railroad or railroads to which properties are transferred under this subsection shall not be obligated to pay any compensation owed by the Corporation to Amtrak for such post-transfer operations by the Corporation.

(3) If the special court determines that a proposal developed under this subsection is fair and equitable, meets the requirements of this subsection, and is in the public interest, it shall issue such orders as may be necessary to carry out such proposal. The provisions of paragraphs (2)–(6) of subsection (d) of this section shall apply to the determination of the special court under this subsection, except that the standards for such determination shall be those set forth in this paragraph.

(4)(A) Any employee who was protected by the compensatory provisions of subchapter V[2] of this chapter immediately prior to August 13, 1981, and who is deprived of employment as a result of the transfer of rail properties under this subsection shall be eligible for benefits under section 797[2] of this title.

(B) As used in this paragraph, ''employee deprived of employment'' means any employee who is unable to secure employment through the normal exercise of seniority rights, but does not include any employee who refuses an offer of

[2] See References in Text note below.

employment with a railroad acquiring properties under this subsection.

(g) Transfer of properties and freight service obligations of specific lines

(1) Within 20 days after August 13, 1981, the Secretary shall initiate discussions and negotiations for the expedited transfer of all properties and freight service obligations of the Corporation with respect to the following lines: Canaan, Connecticut, to Pittsfield, Massachusetts; North Adams Junction, Massachusetts, to North Adams, Massachusetts; Hazardville, Connecticut, to Springfield, Massachusetts; Westfield, Massachusetts, to Easthampton, Massachusetts; Westfield, Massachusetts, to Holyoke, Massachusetts.

(2) Within 120 days after August 13, 1981, the Secretary shall transfer, provided a qualified purchaser offers to purchase, the Corporation's properties and freight service obligations described in paragraph (1) of this subsection to another railroad or railroads in the Region which are determined by the Secretary to be qualified. A qualified purchaser is defined as a railroad financially self-sustaining which guarantees continuous service for at least four years.

(3) The Secretary shall determine a fair and equitable price for the rail properties to be transferred under this subsection, and shall, unless the parties otherwise agree, establish divisions of joint rates for through routes over such properties which are fair and equitable to the parties.

(4) The Secretary shall determine fair and equitable terms for the provision of such trackage rights, on segments of the Corporation's lines not to exceed 5 miles per line transferred, to acquiring carriers as may be necessary to operate such transferred lines in an efficient manner.

(Pub. L. 93–236, title III, § 305, as added Pub. L. 94–210, title VI, § 610(b), Feb. 5, 1976, 90 Stat. 100; amended Pub. L. 96–448, title VI, § 601(a), Oct. 14, 1980, 94 Stat. 1958; Pub. L. 97–35, title XI, § 1155, Aug. 13, 1981, 95 Stat. 677; Pub. L. 98–620, title IV, § 402(48), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 104–317, title VI, § 605(c)(2), Oct. 19, 1996, 110 Stat. 3859.)

REFERENCES IN TEXT

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

The effective date of the Staggers Rail Act of 1980, referred to in subsec. (f)(1), probably means Oct. 1, 1980, the effective date of section 601(a) of Pub. L. 96–448, which enacted subsec. (f) of this section. See section 710 of Pub. L. 96–448, set out as an Effective Date of 1980 Amendment note under section 1170 of Title 11.

Subchapter V of this chapter, referred to in subsec. (f)(4)(A), was repealed by Pub. L. 97–35, title XI, § 1144(a)(1), Aug. 13, 1981, 95 Stat. 669.

Section 797 of this title, referred to in subsec. (f)(4)(A), was repealed by Pub. L. 99–509, title IV, § 4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

AMENDMENTS

1996—Subsec. (d)(4). Pub. L. 104–317, which directed amendment of par. (4) by striking out "a judge of the United States district court with respect to such proceedings and such powers shall include those of", was executed by striking out text which contained the words "judge of a United States" rather than "judge of the United States" to reflect the probable intent of Congress.

1984—Subsec. (d)(2). Pub. L. 98–620 substituted "After" for "Within 180 days after" at beginning of first and last sentences.

1981—Subsec. (d)(7). Pub. L. 97–35, § 1155(b), struck out par. (7) which related to applicable requirements to supplemental transactions.

Subsec. (f). Pub. L. 97–35, § 1155(a), in par. (2) substituted provisions relating to discussions and negotiations, judicial procedures applicable, etc., for transfers, for provisions relating to establishment of a fair and equitable price for properties, and in par. (4) substituted provisions relating to eligibility for benefits of employees deprived of employment, for provisions relating to expedited supplemental transactions.

Subsec. (g). Pub. L. 97–35, § 1155(c), added subsec. (g).

1980—Subsec. (f). Pub. L. 96–448 added subsec. (f).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–317 effective 90 days after Oct. 19, 1996, and except as otherwise provided, applicable to proceedings that arise or continue after such effective date, see section 605(e) of Pub. L. 104–317, set out as a note under section 719 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

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

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

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

RAIL ABANDONMENT AND DISCONTINUANCE OF SERVICE REPORT

Section 904 of Pub. L. 94–210 directed Secretary to submit to Congress, within ninety days of Feb. 5, 1976,

a report on anticipated effect of any abandonment of lines of railroad and any discontinuances of rail service in States outside the region as defined in section 702 of this title, prior to repeal by Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379.

§ 746. Certificates of value

(a) General

On the date when the Corporation is required to deposit securities with the special court pursuant to section 743(a)(1) of this title, the Association shall deposit with the special court the certificates of value of the Association required by this section. The Secretary shall guarantee the payment of all certificates of value delivered in accordance with this subchapter. All guarantees entered by the Secretary under this section shall constitute general obligations of the United States of America for the payment or redemption of which its full faith and credit are pledged. Such guarantees shall be valid and incontestable except as to mutual mistake of fact or as to fraud or material misrepresentation by the holder of such certificates or the transferor of rail properties to which certificates of value of any series so guaranteed are issued.

(b) Number and distribution

A separate series of certificates of value shall be issued to each railroad in reorganization in the region and each person leased, operated, or controlled by such a railroad that transfers rail properties to the Corporation or a subsidiary thereof. The number of certificates of value of each series to be deposited pursuant to subsection (a) of this section shall be equal to the number of shares of series B preferred stock of the Corporation which are required to be deposited by the Corporation with the special court, pursuant to section 743(a)(1) of this title in exchange for the rail properties transferred to the Corporation or a subsidiary thereof by such transferor. Certificates of value of the appropriate series shall be distributed by the special court, pursuant to section 743(c)(4) of this title, at the same time to the same transferors, and in the same numbers of units as shares of such series B preferred stock are distributed to such transferor.

(c) Redemption

(1) Certificates of value, of any series, shall be redeemed by the Association on December 31, 1987, or on such earlier date as the Board of Directors of the Association and the Finance Committee jointly may determine and specify.

(2) Each certificate of value of each series shall be redeemable for an amount, payable in cash, equal to its base value on the redemption date, minus—

(A) the sum of the fair market value of the series B preferred stock applicable to such certificate, the fair market value of the common stock applicable to such certificate, and all cash dividends theretofore paid on any such series B preferred stock and on any such common stock; and

(B) any sums paid to a transferor of rail properties to whom such series of certificates of value was issued resulting from sales or leases by the Corporation of properties transferred to it by such transferor divided by the number of certificates of value distributed to such transferor.

(3) The number of shares of series B preferred stock and common stock applicable to each certificate of value of any series, pursuant to paragraph (2) of this subsection, shall be—

(A) one share of series B preferred stock (adjusted to reflect any stock splits, stock combinations, reclassifications or similar transactions affecting the number of shares of outstanding series B preferred stock following the date of distribution pursuant to section 743(c)(4) of this title); and

(B) the number of shares of common stock determined by dividing the total number of shares of common stock distributed pursuant to section 743(c)(4) of this title to the transferor receiving such series of certificates of value (adjusted to reflect any stock splits, stock combinations, reclassifications, or similar transactions affecting the number of shares of outstanding common stock following the date of distribution pursuant to section 743(c)(4) of this title) by the total number of certificates of value in the series so distributed to such transferor.

(4) The base value of each certificate of value of any series shall be the value obtained by (A) taking the net liquidation value, as determined by the special court, to which the transferor to whom such series of certificates of value is issued is entitled by virtue of transfers of rail properties, under section 743(b)(1) of this title to the Corporation or a subsidiary thereof; (B) subtracting the value of other benefits provided under this chapter, as determined by the special court; (C) adding such amount, if any, as the special court may determine shall be required after taking into consideration compensable unconstitutional erosion, if any, in the estate of a railroad in reorganization, or of a railroad leased, operated, or controlled by such a railroad, which the special court finds to have occurred during any bankruptcy proceeding with respect to such railroad; (D) adding interest from the transfer date to the redemption date to be compounded annually at a rate of 8 percent per annum; and (E) dividing the resulting value by the number of certificates of value of such series distributed to such transferor. In determining such base value, the special court shall give due weight and consideration to the finding of the Association as to the net liquidation value to which each transferor is entitled by virtue of conveyances of rail properties under section 743(b)(1) of this title. For purposes of this paragraph, the term ''rail properties'' includes all rights with respect to employee benefit plans transferred and assigned to the Corporation pursuant to section 743(b)(6) of this title. Net liquidation value with respect to such rights shall be determined after taking into account all obligations finally transferred or assigned to the Corporation pursuant to such section.

(5) The fair market value of series B preferred stock and of common stock of the Corporation shall be determined in accordance with regulations prescribed by the Association, on the basis of the average price of each such security in the primary established market in which such secu-

rities are traded over a period of 120 consecutive trading days ending not less than 20 nor more than 40 trading days preceding the redemption date, or, in the case of a security for which there is not an established trading market, on the basis of the fair market value thereof as determined by the majority vote of three experts in the valuation of securities, one to be selected by the Association, one to be selected by the directors of the Corporation elected by the holders of the security to be valued, and one to be selected by the two first selected.

(d) Authorization of appropriations

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

(Pub. L. 93–236, title III, § 306, as added Pub. L. 94–210, title VI, § 610(b), Feb. 5, 1976, 90 Stat. 104; amended Pub. L. 94–248, §§ 2, 3, Mar. 25, 1976, 90 Stat. 286.)

AMENDMENTS

1976—Subsec. (c)(3)(A). Pub. L. 94–248, § 2, substituted ''adjusted to reflect'' for ''without regard to''.

Subsec. (c)(3)(B). Pub. L. 94–248, § 3, inserted provisions relating to adjustment of number of shares of common stock to reflect any stock splits, stock combinations, etc.

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

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

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 747. Protection of Federal funds

(a) Audit

(1) The Comptroller General of the United States is authorized to audit the programs, activities, and financial operations of the Corporation for any period during which (A) Federal funds provided pursuant to this chapter are being used to finance any portion of its operations, or (B) Federal funds have been invested therein pursuant to this chapter. Any such audit may be conducted under such rules and regulations as the Comptroller General may prescribe. The Comptroller General shall report to the Congress at such times and to such extent as he considers necessary to keep the Congress informed on the security of such Federal funds and guarantees and, to the extent appropriate, make recommendations for achieving greater economy, efficiency, and effectiveness in such programs, activities, and operations.

(2) For the purpose of any audit conducted pursuant to subsection (a) of this section, the Comptroller General, or a designated representative of the Comptroller General, shall have access to and the right to examine all books, accounts, records, reports, files, and other papers, items, or property belonging to or in use by the Corporation.

(b) Report

The Association shall prepare and submit an annual report to Congress on the performance of the Corporation in order to keep the Congress informed as to matters which may affect the quality of rail services in the region and which may affect the security of Federal funds referred to in subsection (a) of this section. Each such report shall be submitted within 150 days after the end of the fiscal year of the Corporation. Each such report shall include an evaluation of—

(1) the degree to which the goals of section 716(a) of this title are being met;

(2) the amounts and causes of deviations, if any, from the financial projections of the final system plan;

(3) the amount of Federal funds made available to the Corporation and a clear description of the uses of such funds;

(4) the projected financial needs of the Corporation;

(5) the projected sources from which such financial needs are likely to be met; and

(6) the ability of the Corporation to become financially self-sustaining without requiring Federal funds in excess of those authorized by section 716(f) of this title.

(c) Monitoring of Corporation

(1) The Association shall also report to the Congress, in accordance with this subsection, on the policies of the Corporation and the results of such policies with respect to operations, cost containment, and marketing.

(2) Within 90 days after November 1, 1978, the Association shall (A) subdivide each such policy area into constituent parts or groups of parts which are specific and significant, (B) identify the most appropriate indicia to reflect accurately such parts or groups of parts, and (C)(i) determine any and all deficiencies in data used to compute the values of such indicia including consistency and clarity of definitions, timeliness of data entry, editing and validation of input data, and processing, and (ii) outline the efforts of the Association and Corporation to correct the deficiencies and the results of such efforts. On or before the end of such 90-day period, the Association shall submit to the Congress such methodological information and additional information which the Association deems necessary or appropriate to further the purpose of this subchapter.

(3) Using such indicia, the Association shall report on (A) the relationship of each constituent part or groups of parts to the Corporation's revenue and capital and operating expenses, (B) the extent to which such parts or group of parts contributes to profits or losses, (C) the efforts of management to contain or reduce the contribution of such part or group of parts to losses, (D) the results of such efforts, and (E) such other information as the Association deems necessary or appropriate.

(4) The Association shall (A) transmit to the Congress the first such monitoring report pursuant to paragraph (3) at the end of the first cal-

endar quarter which begins after the end of the 90-day period for preparation and submission of the methodological information pursuant to paragraph (2), (B) report such monitoring information to the Congress at the end of the first quarter of each calendar year thereafter, (C) update methodological and monitoring information periodically as the Association deems necessary or appropriate, but in no case less frequently than once a year, and (D) where the results of such updating are statistically significant or relevant to Congressional policymaking, report them and the reasons for their significance at the end of the calendar quarter in which the updating occurred.

(Pub. L. 93–236, title III, § 307, as added Pub. L. 94–210, title VI, § 609, Feb. 5, 1976, 90 Stat. 99; amended Pub. L. 95–565, § 7, Nov. 1, 1978, 92 Stat. 2400.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95–565 added subsec. (c).

CONRAIL FUNDING STUDIES; REPORTS TO CONGRESS; RECOMMENDATIONS FOR FINANCIALLY SELF-SUSTAINING RAIL SYSTEM; AVAILABILITY OF RECOMMENDATIONS; PUBLICATION IN FEDERAL REGISTER; COMMENTS ON REPORTS; RECOMMENDATIONS BY SECRETARY ON FUTURE STRUCTURE AND OPERATIONS BY CORPORATION; IMMUNITY FROM ANTITRUST LAWS; ANALYSIS OF EFFECTS ON CORPORATION AND EMPLOYEES OF ALTERNATIVE CHANGES IN LABOR AGREEMENTS AND RELATED OPERATIONAL CHANGES; PROJECTIONS ON BENEFITS, CHANGES, SAVINGS, AND INCREASED REVENUES

Pub. L. 96–448, title VII, § 703(a)–(d), Oct. 14, 1980, 94 Stat. 1962, directed the United States Railway Association and the Consolidated Rail Corporation, not later than Apr. 1, 1980 (which probably should have been Apr. 1, 1981) to each submit a report to Congress analyzing the impact, upon the Corporation, rail service in the region, railroad employees, the economy of the region, other rail carriers in the region and elsewhere, and the Federal budget, of no further Federal funding for the Corporation, continued Federal funding of the rail system of the Corporation as then structured, and future Federal funding of the Corporation to the extent necessary to preserve rail service in the region which could be self-supporting, without undue interim disruption of operations, required publication of these reports in the Federal Register, directed the Interstate Commerce Commission, not later than May 1, 1981, to submit to Congress its comments on the report of the Association, the Secretary of Transportation, and the Corporation, directed the Secretary of Transportation, not later than Apr. 1, 1981, to submit to Congress his recommendations with respect to the future structure and operations of the Corporation, and not later than May 1, 1981, to submit to Congress his comments and recommendations with respect to the reports of the Association and Corporation, provided that the antitrust laws as defined in section 791(a)(3) of this title not apply to any action of the Association or Secretary of Transportation prior to May 1, 1981, directed the Corporation, not later than Mar. 15, 1981 to submit to Congress an analysis of the effects upon the Corporation and its employees of alternative changes in labor agreements and related operational changes, including an analysis of any Federal funding that would be required, and directed the Corporation, not later than Jan. 15, 1981, to submit to the Association its projections of the benefits to the Corporation of the Staggers Rail Act of 1980, Pub. L. 96–448, Oct. 14, 1980, 94 Stat. 1895, its projections of changes needed in the structure of the rail system of the Corporation, including properties which might be abandoned or transferred, and other projections of potential savings or increased revenues to the Corporation.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsecs. (b) and (c)(4)(B) of this section relating to the requirement that the Association submit annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 11th and 12th items on page 195 of House Document No. 103–7.

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

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

§ 748. Abandonments

(a) General

The Corporation may, in accordance with this section, file with the Commission an application for a certificate of abandonment for any line which is part of the system of the Corporation. Any such application shall be governed by this section and shall not, except as specifically provided in this section, be subject to the provisions of chapter 109 of title 49.

(b) Applications for abandonment

Any application for abandonment that is filed by the Corporation under this section before December 1, 1981, shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to the line to be abandoned.

(c) Notice of insufficient revenues

(1) The Corporation may, prior to November 1, 1985, file with the Commission a notice of insufficient revenues for any line which is part of the system of the Corporation.

(2) At any time after the 90-day period beginning with the filing of a notice of insufficient revenues for a line, the Corporation may file an application for abandonment for such line. An application for abandonment that is filed by the Corporation under this subsection for a line for which a notice of insufficient revenues was filed under paragraph (1) shall be granted by the Commission within 90 days after the date such application is filed unless, within such 90-day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to such line.

(d) Offers of financial assistance

(1) The provisions of section 10904 of title 49 (including the timing requirements of subsection (d) thereof) shall apply to any offer of financial assistance under subsection (b) or (c) of this section.

(2) The Corporation shall provide any person that intends to make an offer of financial assistance under subsection (b) or (c) of this section with such information as the Commission may require.

(e) Liquidation

(1) If any application for abandonment is granted under subsection (b) of this section, the Commission shall, as soon as practicable, appraise the net liquidation value of the line to be abandoned, and shall publish notice of such appraisal in the Federal Register.

(2) Appraisals made under paragraph (1) shall not be appealable.

(3)(A) If, within 120 days after the date on which an appraisal is published in the Federal Register under paragraph (1), the Corporation receives a bona fide offer for the sale, for 75 percent of the amount at which the liquidation value of such line was appraised by the Commission, of the line to be abandoned, the Corporation shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

(B) If the Corporation receives no bona fide offer under subparagraph (A), within such 120-day period, the Corporation may abandon or dispose of the line as it chooses, except that the Corporation may not dismantle bridges, or other structures (not including rail, signals, and other rail facilities) for 120 days thereafter. The Secretary may require that bridges or other structures (not including rail, signals, and other rail facilities), not be dismantled for an additional 8 months if he assumes all liability of any sort related to such property.

(4) If the purchaser under paragraph (3)(A) of this subsection of any line of the Corporation abandons such line within five years after such purchase, the proceeds of any track liquidations shall be paid into the general fund of the Treasury of the United States.

(f) Employee protection

The provisions of section 10903(b)(3)[1] of title 49 shall not apply to any abandonment granted under this section. Any employee who was protected by the compensatory provisions of subchapter V[2] of this chapter immediately prior to August 13, 1981, who is deprived of employment by such an abandonment shall be eligible for employee protection under section 797[2] of this title.

(Pub. L. 93–236, title III, § 308, as added Pub. L. 97–35, title XI, § 1156(a), Aug. 13, 1981, 95 Stat. 679; amended Pub. L. 98–181, title II, § 2003(c)(2), Nov. 30, 1983, 97 Stat. 1298; Pub. L. 104–88, title III, § 327(4), Dec. 29, 1995, 109 Stat. 952.)

REFERENCES IN TEXT

Subchapter V of this chapter, referred to in subsec. (f), was repealed by Pub. L. 97–35, title XI, § 1144(a)(1), Aug. 13, 1981, 95 Stat. 669.

Section 797 of this title, referred to in subsec. (f), was repealed by Pub. L. 99–509, title IV, § 4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

AMENDMENTS

1995—Subsec. (d)(1). Pub. L. 104–88, § 327(4)(A), substituted ''section 10904'' for ''section 10905(d)–(f)''.

Subsec. (f). Pub. L. 104–88, § 327(4)(B), substituted ''section 10903(b)(3)'' for ''section 10903(b)(2)''.

1983—Subsec. (c)(1). Pub. L. 98–181 substituted ''1985'' for ''1983''.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE

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

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

SUBCHAPTER IV—TRANSFER OF FREIGHT SERVICES

§§ 761 to 769c. Repealed. Pub. L. 99–509, title IV, § 4033(a)(1), Oct. 21, 1986, 100 Stat. 1908

Section 761, Pub. L. 93–236, title IV, § 401, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 654, related to sale of interest of United States in common stock of Consolidated Rail Corporation.

A prior section 761, Pub. L. 93–236, title IV, § 401, Jan. 2, 1974, 87 Stat. 1010, related to Congressional findings and purpose in providing for a program of rail service continuation subsidies, prior to repeal by Pub. L. 94–210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 762, Pub. L. 93–236, title IV, § 402, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 655, related to debt and preferred stock of Consolidated Rail Corporation.

A prior section 762, Pub. L. 93–236, title IV, § 402, Jan. 2, 1974, 87 Stat. 1010; Pub. L. 93–488, § 1(d), Oct. 26, 1974, 88 Stat. 1464; Pub. L. 94–210, title VIII, § 805(a), Feb. 5, 1976, 90 Stat. 139, directed Secretary to provide financial assistance to States and local or regional transportation authorities in facilitating and maintaining main line or local rail service, prior to repeal by Pub. L. 94–210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 763, Pub. L. 93–236, title IV, § 403, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 655, related to determinations about profitability of Consolidated Rail Corporation.

A prior section 763, Pub. L. 93–236, title IV, § 403, Jan. 2, 1974, 87 Stat. 1012; Pub. L. 93–488, § 1(e), Oct 26, 1974, 88 Stat. 1465; Pub. L. 94–210, title VIII, § 805(b), (c), Feb. 5, 1976, 90 Stat. 142, authorized Association to provide loans for acquisition of rail properties by States or local or regional transportation authorities and for modernization of those acquired properties, prior to repeal by Pub. L. 94–210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 764, Pub. L. 93–236, title IV, § 404, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 656, related to failure to sell interest of United States in common stock of Consolidated Rail Corporation as an entity.

Section 765, Pub. L. 93–236, title IV, § 405, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 657, related to plans to transfer Consolidated Rail Corporation's freight rail properties and service responsibilities.

[1] So in original. Section 10903(b) of Title 49, Transportation, does not contain a par. (3).

[2] See References in Text note below.

Section 766, Pub. L. 93–236, title IV, § 406, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 658, related to consolidation and review of freight transfer agreements.

Section 767, Pub. L. 93–236, title IV, § 407, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 658, related to public comment and Congressional notification regarding freight transfer agreements.

Section 768, Pub. L. 93–236, title IV, § 408, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 659, related to performance under freight transfer agreements.

Section 769, Pub. L. 93–236, title IV, § 409, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 659, provided that conveyance of interest in rail properties under freight transfer agreement is deemed to be an assignment.

Section 769a, Pub. L. 93–236, title IV, § 410, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 660, related to identification and sale of unprofitable subsidiaries of Consolidated Rail Corporation.

Section 769b, Pub. L. 93–236, title IV, § 411, as added Pub. L. 97–35, title XI, § 1146(a), Aug. 13, 1981, 95 Stat. 672, related to labor transfer agreements.

Section 769c, Pub. L. 93–236, title IV, § 412, as added Pub. L. 97–35, title XI, § 1146(a), Aug. 13, 1981, 95 Stat. 673, related to labor protection benefits.

SUBCHAPTER V—EMPLOYEE PROTECTION

§§ 771 to 780. Repealed. Pub. L. 97–35, title XI, § 1144(a)(1), Aug. 13, 1981, 95 Stat. 669

Section 771, Pub. L. 93–236, title V, § 501, Jan. 2, 1974, 87 Stat. 1012; Pub. L. 94–210, title VI, §§ 607(i), 613, Feb. 5, 1976, 90 Stat. 97, 112; Pub. L. 94–248, § 5, Mar. 25, 1976, 90 Stat. 286; Pub. L. 94–555, title II, § 207(a), Oct. 19, 1976, 90 Stat. 2621; Pub. L. 96–448, title V, § 508(d), Oct. 14, 1980, 94 Stat. 1957, set forth provisions defining terms applicable to employee protection rights.

Section 772, Pub. L. 93–236, title V, § 502, Jan. 2, 1974, 87 Stat. 1013; Pub. L. 94–210, title VI, § 614, Feb. 5, 1976, 90 Stat. 112, set forth provisions respecting employment offers.

Section 773, Pub. L. 93–236, title V, § 503, Jan. 2, 1974, 87 Stat. 1014, related to assignment of work.

Section 774, Pub. L. 93–236, title V, § 504, Jan. 2, 1974, 87 Stat. 1014; Pub. L. 94–210, title VI, § 615, Feb. 5, 1976, 90 Stat. 113; Pub. L. 94–555, title II, §§ 207(b), 208, Oct. 19, 1976, 90 Stat. 2622; Pub. L. 96–448, title V, § 506, Oct. 14, 1980, 94 Stat. 1956, set forth provisions respecting collective bargaining agreements.

Section 775, Pub. L. 93–236, title V, § 505, Jan. 2, 1974, 87 Stat. 1015; Pub. L. 94–210, title VI, § 616(a)–(g), Feb. 5, 1976, 90 Stat. 115, 116; Pub. L. 94–555, title II, §§ 209, 210, Oct. 19, 1976, 90 Stat. 2623; Pub. L. 96–448, title V, §§ 501–503, Oct. 14, 1980, 94 Stat. 1948–1954, set forth provisions relating to employee protection programs.

Section 776, Pub. L. 93–236, title V, § 506, Jan. 2, 1974, 87 Stat. 1019, related to contracting out of work.

Section 777, Pub. L. 93–236, title V, § 507, Jan. 2, 1974, 87 Stat. 1020; Pub. L. 96–448, title V, § 508(e), Oct. 14, 1980, 94 Stat. 1957, related to arbitration of disputes or controversies.

Section 778, Pub. L. 93–236, title V, § 508, Jan. 2, 1974, 87 Stat. 1020; Pub. L. 94–210, title VI, § 617, Feb. 5, 1976, 90 Stat. 117, related to duties of acquiring and selling railroads.

Section 779, Pub. L. 93–236, title V, § 509, Jan. 2, 1974, 87 Stat. 1020; Pub. L. 94–210, title VI, § 616(h), Feb. 5, 1976, 90 Stat. 116; Pub. L. 94–555, title II, § 207(c), Oct. 19, 1976, 90 Stat. 2622; Pub. L. 96–448, title V, § 504, Oct. 14, 1980, 94 Stat. 1955, set forth provisions respecting benefit payments.

Section 780, Pub. L. 93–236, title V, § 510, as added Pub. L. 96–448, title V, § 505, Oct. 14, 1980, 94 Stat. 1956, related to railroad hiring.

EFFECTIVE DATE OF REPEAL; CONTINUATION OF BENEFITS AFTER REPEAL; LAW GOVERNING DISPUTES; PREREQUISITES TO DISBURSEMENT OF BENEFITS

Pub. L. 97–35, title XI, § 1144(a)(2)–(4), Aug. 13, 1981, 95 Stat. 669, provided that:

''(2) Notwithstanding the repeal made by paragraph (1) of this subsection [repealing this subchapter]—

''(A) benefits accrued as of the effective date of this subsection as a result of events that occurred wholly prior to October 1, 1981, shall be disbursed except as provided in paragraph (3); and

''(B) any dispute or controversy regarding such benefits shall be determined under the terms of the law in effect on the date the claim arose.

''(3) Benefits shall not be disbursed under paragraph (2)(A) unless the employee has filed a claim for such benefits within 90 days after the date of repeal; except that, with respect to a claim which is the subject of or is based upon any arbitration decision issued after the date of repeal, such 90-day period shall not commence until such arbitration decision is issued to the employee and the employee's representative; and no benefits shall be disbursed unless appropriations for such purposes are or become available.

''(4) The provisions of this subsection shall take effect on the first day of the first month beginning after the date of enactment of this subtitle [Aug. 13, 1981].''

EMPLOYEE PROTECTION PAYMENTS UNDER FORMER PROVISIONS; REIMBURSEMENT

Pub. L. 96–448, title V, § 507, Oct. 14, 1980, 94 Stat. 1956, provided that notwithstanding any other provision of law, the Consolidated Rail Corporation and other employers with employees protected under this subchapter, until the effective date of Pub. L. 96–448 [probably means Oct. 1, 1980, see section 710 of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy], continue to make payments for employee protection under such Act, [probably means this subchapter] in accordance with the provisions of such Act [probably means this subchapter], which were in effect on Jan. 1, 1979, and that notwithstanding any other provision of law, such Corporation and employers be reimbursed for such payments in accordance with former section 779(a) of this title.

CONRAIL EMPLOYEE PROTECTION

Pub. L. 96–254, title II, § 214, May 30, 1980, 94 Stat. 417, provided that the Consolidated Railroad Corporation make payments in accordance with this subchapter, and the United States Railway Association not, as a result of such payments, withhold any funds from the Corporation, and that this provision take effect as of Mar. 1, 1980, and remain in effect until the expiration of the 45-day period beginning on May 30, 1980, and after the expiration of such 45-day period, payments by the Consolidated Rail Corporation under this subchapter and funding of the Corporation by the United States Railway Association be governed by applicable law.

SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

§ 791. Relationship to other laws

(a) Antitrust

(1) Except as specifically provided in paragraph (2) of this subsection, no provision of this chapter shall be deemed to convey to any railroad or employee or director thereof any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(2) The antitrust laws are inapplicable with respect to any action taken to formulate or imple-

ment the final system plan where such action was in compliance with the requirements of such plan and with respect to any action taken to formulate or implement any supplemental transaction.

(3) As used in this subsection, ''antitrust laws'' includes the Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended; the Federal Trade Commission Act (38 Stat. 717), as amended [15 U.S.C. 41 et seq.], sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), as amended [15 U.S.C. 8, 9]; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended; and the antitrust laws of any State or subdivision thereof.

(b) Commerce, securities, and bankruptcy

(1) The provisions of subtitle IV of title 49 and the Bankruptcy Act, are inapplicable (A) to actions taken under this chapter to formulate and implement the final system plan where such action was in compliance with the requirements of such plan, and (B) to actions taken under this chapter to formulate or implement any supplemental transaction.

(2) All securities of the Corporation which are issued to the Association as the initial holder, or which are issued in connection with the transfer to the Corporation or a subsidiary thereof of rail properties under this chapter, shall be deemed for all purposes to have been issued subject to and authorized pursuant to section 11301[1] of title 49.

(3) The provisions of section 77e of title 15, shall not apply to transactions involving the issuance of any security of the Corporation to the Association, transactions involving the issuance of any security of the Corporation that is deposited with the special court pursuant to section 743(a) of this title, or transactions involving the issuance or distribution of any security of the Corporation, where the terms and conditions of such issuance or distribution are approved by the special court pursuant to section 743(c) of this title.

(4) The powers and duties of the Commission under section 77 of the Bankruptcy Act, with respect to a railroad in reorganization in the region which conveys all or substantially all of its designated rail properties to the Corporation or a subsidiary thereof, or to profitable railroads in the region, pursuant to the final system plan, and the requirement that plans of reorganization be filed with the Commission, shall cease upon the date of such conveyance. The powers and duties of the Commission under section 77 of the Bankruptcy Act shall also so terminate, as of February 5, 1976, with respect to any railroad in reorganization under such section 77 but not subject to this chapter which (1) does not operate any line of railroad, and (2) has transferred all or substantially all of its rail properties to a railroad in reorganization in the region which was subject to this chapter prior to February 5, 1976. Thereafter, such powers and duties of the Commission shall be vested in the district court of the United States which has jurisdiction of the estate of any such railroad in reorganization at the time of such conveyance. Such court shall proceed to reorganize or liquidate such railroad in reorganization pursuant to such section 77 on such terms as the court deems just and reasonable, or pursuant to any other provisions of the Bankruptcy Act, if the court finds that such action would be in the best interests of such estate. This paragraph does not affect any obligation of any carrier by railroad subject to regulation under subtitle IV of title 49. The powers and duties of the Commission under section 77 of the Bankruptcy Act shall continue in effect only to the extent that the railroad in reorganization continues to operate any line of railroad.

(c) Environment

The provisions of section 4332(2)(C) of title 42 shall not apply with respect to any action taken under authority of this chapter before, and including, the conveyance of rail properties ordered by the special court under section 743 (b)(1) of this title, and shall not apply thereafter to any action taken in compliance with the requirements of the final system plan.

(d) Northeast Corridor

(1) Rail properties designated in accordance with section 716(c)(1)(C) of this title shall be purchased or leased by the National Railroad Passenger Corporation. The Corporation shall negotiate an appropriate sale or lease agreement with the National Railroad Passenger Corporation for the properties designated for transfer pursuant to section 716(c)(1)(C) of this title, which shall take effect on the date of conveyance of such properties to the Corporation.

(2) Properties acquired by purchase, lease, or otherwise pursuant to this subsection shall be improved in order to meet the goal set forth in section 716(a)(3) of this title, relating to improved highspeed passenger service, by the earliest practicable date after January 2, 1974.

(3) The Secretary shall begin the necessary engineering studies and improvements on January 2, 1974.

(4) The final system plan shall provide for any necessary coordination with freight or commuter services of use of the facilities designated in section 716(c)(1)(C) of this title. Such coordination may be effectuated through a single operating entity, designated in the final system plan, or as mutually agreed upon by the interested parties.

(5) Construction or improvements made pursuant to this subsection may be made in consultation with the Corps of Engineers.

(Pub. L. 93–236, title VI, § 601(a)–(d), Jan. 2, 1974, 87 Stat. 1021; Pub. L. 94–210, title VI, § 618, title VII, § 706(b), formerly § 705(b), Feb. 5, 1976, 90 Stat. 117, 123, renumbered Pub. L. 96–254, title II, § 206(a), May 30, 1980, 94 Stat. 412.)

REFERENCES IN TEXT

Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended, referred to in subsec. (a)(3), is known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended, referred to in subsec. (a)(3), is known as the Clayton Act, which is classified to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of

[1] See References in Text note below.

Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act (38 Stat. 717), as amended, referred to in subsec. (a)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Sections 73 and 74 of the Act of August 27, 1894, referred to in subsec. (a)(3), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570. Sections 73 to 77 of this Act are known as the Wilson Tariff Act. Sections 73 to 76 enacted sections 8 to 11 of Title 15. Section 77 was not classified to the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8 of Title 15 and Tables.

Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended, referred to in subsec. (a)(3), is popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Tables.

The Bankruptcy Act, referred to in subsec. (b)(1), (4), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. Section 77 of this Act was classified to section 205 of former Title 11. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§ 1161 et seq.) of chapter 11 of Title 11.

Section 11301 of title 49, referred to in subsec. (b)(2), was omitted and a new section 11301 enacted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, 837. The new section 11301 does not relate to issuance of securities. Previously, in subsec. (b)(2), ''section 11301 of title 49'' was substituted for ''section 20a of the Interstate Commerce Act (49 U.S.C. 20a)'' on authority of Pub. L. 95–473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49.

CODIFICATION

In subsec. (b)(1), (4), ''subtitle IV of title 49'' substituted for ''the Interstate Commerce Act (49 U.S.C. 1 et seq.)'' on authority of Pub. L. 95–473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49, Transportation.

A subsec. (e) of section 601 of Pub. L. 93–236, which was designated in the original as ''Emergency Service'', amended section 1(16) of former Title 49, Transportation.

AMENDMENTS

1976—Subsec. (a)(2). Pub. L. 94–210, § 618(a), inserted provision relating to any action to formulate or implement any supplemental transaction.

Subsec. (b). Pub. L. 94–210, § 618(b), redesignated existing provisions as par. (1), substituted provisions relating to inapplicability to actions under this chapter to formulate and implement the final system plan and any supplemental transaction, for provisions relating to inapplicability to transactions under this chapter to the extent necessary to formulate and implement the final system plan whenever a provision of the Interstate Commerce or Bankruptcy Act is inconsistent with this chapter, and added pars. (2) to (4).

Subsec. (c). Pub. L. 94–210, § 618(c), substituted provisions relating to inapplicability to action taken before, and including, the conveyance of rail properties under section 743(b)(1) of this title, and action taken thereafter in compliance with the requirements of the final system plan, for provisions relating to inapplicability to action taken before the effective date of the final system plan.

Subsec. (d)(1). Pub. L. 94–210, § 705(b), substituted mandatory for discretionary authority for purchase of properties by the Corporation and provisions relating to negotiations for properties for transfer pursuant to section 716(c)(1)(C) of this title, for provisions relating to negotiations as provided in the final system plan.

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

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

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Section 619 of title VI of Pub. L. 94–210 provided that: ''Nothing in this title [enacting sections 726 and 745 to 747 of this title and amending sections 702, 711 to 713, 716, 718 to 721, 724, 725, 741, 743, 744, 771, 772, 774, 775, 778, 779, and 791 of this title, and section 856 of former Title 31, Money and Finance] shall affect the application of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to actions of the Commission.''

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

Section, Pub. L. 93–236, title VI, § 602, Jan. 2, 1974, 87 Stat. 1022, provided that as part of his annual report, the Secretary transmit to Congress a comprehensive report on the effectiveness of the Association and the Corporation in implementing the purposes of this chapter, together with any recommendations for additional legislative or other action.

Subsequent to repeal by Pub. L. 97–375, section was repealed and the provisions thereof were reenacted as the last sentence of section 308(a) of Title 49, Transportation, by Pub. L. 97–449, §§ 1(b), 7(b), Jan. 12, 1983, 96 Stat. 2413, 2443. Section 6(a) of Pub. L. 97–449 provided that: ''Sections 1–5 of this act restate, without substantive change, laws enacted before November 15, 1982, that were replaced by those sections. * * * Laws enacted after November 14, 1982, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.'' Accordingly, the last sentence of section 308(a) of Title 49 was superseded by the repeal made by section 111(b) of Pub. L. 97–375, and was specifically repealed by Pub. L. 98–216, § 2(1)(A)(ii), Feb. 14, 1984, 98 Stat. 4.

Pub. L. 97–375, title I, § 111(b), Dec. 21, 1982, 96 Stat. 1821, which repealed this section, was itself repealed by Pub. L. 98–216, § 6(b), Feb. 14, 1984, 98 Stat. 8.

§ 793. Repealed. Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1466; Pub. L. 97–449, § 4(b)(2), Jan. 12, 1983, 96 Stat. 2441, eff. Oct. 17, 1978

Section, Pub. L. 93–236, title VI, § 603, Jan. 2, 1974, 87 Stat. 1023, related to freight rates for recyclables.

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

Pub. L. 94–210, title II, § 204, Feb. 5, 1976, 90 Stat. 40, which provided for an investigation by the Interstate Commerce Commission of discriminatory freight rates for transportation of recyclable or recycled materials, was repealed by Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1466.

§ 794. Tax payments to States

(a) Notwithstanding any other provision of law, no railroad in reorganization shall withhold from any State, or any political subdivision thereof, the payment of the portion of any tax owed by such railroad to such State or subdivision, which portion has been collected by such railroad from any tenant thereof.

(b) Any railroad which violates the provisions of subsection (a) of this section by withholding any portion of a tax referred to in such subsection shall be fined not more than $10,000 for each such violation.

(Pub. L. 93–236, title VI, § 605, as added Pub. L. 94–5, § 9, Feb. 28, 1975, 89 Stat. 9.)

SUBCHAPTER VII—PROTECTION OF EMPLOYEES

§ 797. Repealed. Pub. L. 99–509, title IV, § 4024(c), Oct. 21, 1986, 100 Stat. 1904

Section, Pub. L. 93–236, title VII, § 701, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 661; Pub. L. 99–509, title IV, § 4024(a), (b), Oct. 21, 1986, 100 Stat. 1903, related to employee protection agreement.

REPEAL OF SECTION; CONTINUING RESPONSIBILITIES OF CONSOLIDATED RAIL CORPORATION AFTER SALE DATE

Section 4024(c)–(f) of Pub. L. 99–509, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(c) REPEAL OF SECTION 701.—Section 701 of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] is repealed effective on the sale date [Apr. 2, 1987, see 45 U.S.C. 702(17A)]. Notwithstanding this repeal—

''(1) any dispute or controversy regarding benefits under section 701 shall be determined under the terms of the law in effect prior to such repeal; and

''(2) the Railroad Retirement Board shall take such actions as may be necessary to complete administration and closeout of the section 701 program and the Board is authorized to receive and apply Corporation funds for this purpose.

''(d) CONTINUING RESPONSIBILITIES.—(1) On and after the sale date, the Corporation shall provide the protection for its employees described in 'Part III, Article III, Employee Protection', of the 'Definitive Agreement of September 17, 1985, By and Between Conrail and the Undersigned Representatives of Conrail's Agreement Employees' and Appendix 3 thereto, together with any amendments thereto, or under any other terms and conditions as shall be agreed between the Corporation and the representatives of its employees.

''(2) The Corporation shall pay, as designated by the Railroad Retirement Board, any remaining benefits under section 701 of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 797] that accrued, but were not disbursed, prior to the sale date.

''(3) The Railroad Retirement Board shall transfer to the Corporation such information regarding administration of the labor protection program under such section 701 as may be reasonably necessary for the Corporation to discharge its responsibilities under this subsection, including copies of the individual claim records of employees of the Corporation.

''(4) The United States shall have no liability for benefits under this subsection.

''(e) COMPENSATION FOR WAGES BELOW INDUSTRY STANDARD.—The Corporation shall pay $200,000,000 to present and former employees subject to collective bargaining agreements, in accordance with the terms and conditions in the Definitive Agreement referred to in subsection (d)(1), or as otherwise agreed between the parties.

''(f) ESOP TRANSACTIONS.—(1) As soon as practicable after the date of the enactment of this Act [Oct. 21, 1986], the employee stock ownership plan of the Corporation (hereafter in this subsection referred to as the 'ESOP') shall be amended to provide that—

''(A) the shares of the ConRail Equity Corporation preferred stock held by the ESOP shall be surrendered by the ESOP in exchange for an equal number of shares of the common stock of the Corporation, and such common stock of the Corporation shall be allocated by the ESOP to the same persons in the same amounts as the shares of ConRail Equity Corporation preferred stock had been allocated; and

''(B) the remaining shares of the ConRail Equity Corporation preferred stock held by the Corporation shall be cancelled, and an equal number of shares of the common stock of the Corporation shall be contributed by the Corporation to the ESOP, which shares shall be allocated by the ESOP to persons who are or were ESOP participants in accordance with the formula set forth in section 2 of Article II of Part III of the Definitive Agreement referred to in subsection (d)(1), and in accordance with a comparable formula for present and former employees of the Corporation not covered by such section of the Definitive Agreement, except that no contribution by the Corporation to the ESOP shall be made which would affect the tax-qualified status of the ESOP, or of any of the employee benefit plans maintained by the Corporation or any affiliate of the Corporation, under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.].

''(2)(A)(i) As soon as practicable after the expiration of 180 days after 100 percent of the United States shares are sold, the ESOP shall distribute all of the stock in the accounts of its participants and beneficiaries, except as provided in clause (ii).

''(ii) Fractional shares shall not be distributed under clause (i). Shares equal to the aggregate amount of fractional shares shall be surrendered by the ESOP and redeemed by the Corporation for cash at the average closing price for the common stock of the Corporation on a national securities exchange for the 10 business days immediately preceding the date of distribution under clause (i), or, if the common stock of the Corporation is not listed on a national securities exchange, at the average closing price for such stock for such 10 business days as appearing in any regularly published reporting or quotation service, and the proceeds of such redemption shall be distributed by the ESOP to the same participants and beneficiaries and in the same amounts as the fractional shares had been allocated.

''(B) After completing the distribution under subparagraph (A), the ESOP shall terminate.

''(3) The Corporation shall distribute any full shares of its common stock which, because of the exception under paragraph (1)(B), could not be contributed to the ESOP to those persons to whom the ESOP would have allocated such shares pursuant to paragraph (1)(B) had such shares been contributed to the ESOP. The Corporation shall pay cash pursuant to the formula set forth in paragraph (2)(A)(ii) in lieu of fractional shares.

''(4) For purposes of Rule 144 promulgated under the Securities Act of 1933 [15 U.S.C. 77a et seq.], each share of the common stock of the Corporation distributed

under this subsection shall be deemed to have been beneficially owned by the recipient, as of the date of such distribution, for a period of 3 years.''

§ 797a. Termination allowance

(a) General

The Corporation may terminate the employment of certain employees, in accordance with this section, upon the payment of an allowance of $350 for each month of active service with the Corporation or with a railroad in reorganization, but in no event may any such termination allowance exceed $25,000.

(b) Employment needs

Within 90 days after August 13, 1981, the Corporation shall determine, for each location, the number of employees that the Corporation intends to separate under subsection (a) of this section.

(c) Notification and separation procedure

(1) Within 90 days after August 13, 1981, the Corporation shall notify its employees of their rights and responsibilities under this section.

(2) Within 90 days after August 13, 1981, the Corporation shall notify each train and engine service employee eligible to be separated under paragraph (3) that such employee may be entitled to receive a separation payment under this section if such employee files a written request to be separated. Such notice may be revised from time to time.

(3) If the number of employees who request to be separated pursuant to paragraph (2) of this subsection is greater, in engine service at any location, than the number of excess firemen at the location, and in train service at the location than the number of excess second and third brakemen, as determined by the Corporation, the Corporation shall separate the employees described in paragraph (2) of this subsection in order of seniority beginning with the most senior employee, until the excess firemen and second and third brakemen positions at that location, as determined by the Corporation, have been eliminated.

(d) Designated separations

If the number of employees who are separated pursuant to subsection (c)(3) of this section is less at any location than the number of excess firemen in freight and commuter service and second and third brakemen in freight service at such location, as determined by the Corporation, the Corporation may, after 210 days after August 13, 1981, designate for separation employees in engine service or train service respectively in inverse order of seniority, beginning with the most junior employee in active service at such location until the excess firemen in freight and commuter service and second and third brakemen in freight service, at that location have been eliminated. An employee designated under this subsection may choose (1) to furlough himself voluntarily, in which case the next most junior employee protected under the fireman manning or crew consist agreements or any other agreement or law, in the same craft or class at such location may be separated instead and receive the separation allowance, or (2) to exercise his seniority to another location, in which case the Corporation may separate, under the provisions of this subsection, the next most junior protected employee in active service at the location to which seniority ultimately is exercised.

(e) Effect on positions

(1) The Corporation shall refrain from filling one fireman position in freight service, or in commuter service where applicable, for each employee in engine service separated in accordance with this section.

(2) The Corporation may refrain from filling one brakeman position in excess of one conductor and one brakeman on one crew in freight service for each employee in train service who is separated in accordance with this section.

(3) Positions permitted to be not filled under this subsection shall be not filled in different types of freight service actually operated at or from the location in a sequence to be agreed upon between the Corporation and the general chairman representative of classes or crafts of employees having jurisdiction over the positions to be not filled. If no such agreement is reached, the Corporation may designate the position to be not filled.

(4) Notwithstanding paragraphs (1) and (2) of this subsection, the Corporation shall retain all rights it has under any provision of law or agreement to refrain from filling any position of employment.

(f) Procedures

The Corporation and representatives of the various classes and crafts of employees to be separated may agree on procedures to implement this section, but the absence of such agreement shall not interfere with implementation of the separations authorized by this section.

(g) Commuter employees

The provisions of this section shall apply to the separation of firemen in commuter service, except that with respect to such employees the Corporation is required to make the separations authorized by this section.

(Pub. L. 93–236, title VII, § 702, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 662.)

§ 797b. Preferential hiring

(a) General

Any employee who is deprived of employment shall have the first right of hire by any other railroad for a vacancy for which he is qualified in a class or craft (or in the case of a non-agreement employee, for a non-agreement vacancy) in which such employee was employed by the Corporation or a predecessor carrier for not less than one year, except where such a vacancy is covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a railroad shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.

(b) Status

The first right of hire afforded to employees under this section shall be coequal to the first right of hire afforded under sections 907 and 1004 of this title.

(Pub. L. 93–236, title VII, § 703, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 663.)

EXEMPTION OF NATIONAL RAILROAD PASSENGER CORPORATION IN HIRING QUALIFIED TRAIN AND ENGINE EMPLOYEES

Pub. L. 99–272, title IV, § 4011(c), Apr. 7, 1986, 100 Stat. 109, provided that: ''The provisions of section 703 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797b), section 8 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 907), and section 105 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1004) shall not apply to the National Railroad Passenger Corporation in the hiring of qualified train and engine employees who hold seniority rights to work in intercity rail passenger service in connection with the assumption by such Corporation of functions previously performed under contract by other carriers.''

§ 797c. Central register of railroad employment

(a) Register

(1) The Railroad Retirement Board (hereafter in this section referred to as the ''Board'') shall prepare and maintain a register of persons separated from railroad employment after at least one year of completed service with a railroad who have declared their current availability for employment in the railroad industry. The register shall be subdivided by class and craft of prior employment and shall be updated periodically to reflect current availability.

(2) Each entry in the register shall include, or provide access to, basic information concerning the individual's experience and qualifications.

(3) The Board shall place at the top of the register those former railroad employees entitled to priority under applicable provisions of law, including this chapter.

(b) Corporation employees

As soon as is practicable after August 13, 1981, the Corporation shall provide to the Board the names of its former employees who elect to appear on the register and who have not been offered employment with acquiring railroads.

(c) Vacancy notices; warning; civil penalty

(1) Each railroad shall timely file with the Board a notice of vacancy with respect to any position for which the railroad intends to accept applications from persons other than current employees of that carrier.

(2)(A) As soon as the Board becomes aware of any failure on the part of a railroad to comply with paragraph (1), the Board shall issue a warning to such railroad of its potential liability under subparagraph (B).

(B) Any railroad failing to comply with paragraph (1) of this subsection after being warned by the Board under subparagraph (A) shall be liable for a civil penalty in the amount of $500 for each subsequent vacancy with respect to which such railroad has so failed to comply.

(d) Placement

The Board shall, through distribution of copies of the central register (or portions thereof) to railroads and representatives of classes or crafts of employees and through publication of employment information derived from vacancy notices filed with the Board, promote the placement of former railroad employees possessing requisite skills and experience in appropriate positions with other railroads.

(e) Employment applications

In addition to its responsibilities under subsections (a) through (d) of this section, the Board shall facilitate the filing of employment applications with respect to current vacancies in the industry by former railroad employees entitled to priority under applicable provisions of law, including this chapter.

(f) Expiration

The provisions of this section shall cease to be effective on the expiration of the 6-year period beginning on August 13, 1981.

(g) Resolution of disputes

Any dispute, grievance, or claim arising under this section, section 797b of this title, section 907 of this title, or section 1004 of this title shall be subject to resolution in accordance with the following procedures:

(1) Any employee with such a dispute, grievance, or claim may petition the Board to review and investigate the dispute, grievance, or claim.

(2) The Board shall investigate the dispute, grievance, or claim, and if it concludes that the employee's rights under this section, section 797b of this title, section 907 of this title, or section 1004 of this title may have been violated, the dispute, grievance, or claim shall be subject to resolution in accordance with the procedures set forth in section 153 of this title.

(3) In the case of any violation of this section, section 797b of this title, section 907 of this title, or section 1004 of this title, the Adjustment Board (or any division or delegate thereof) or any other board of adjustment created under section 153 of this title shall, where appropriate, award such relief, including back pay, as may be necessary to enforce the employee's rights.

(Pub. L. 93–236, title VII, § 704, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 663; amended Pub. L. 97–468, title II, § 235, Jan. 14, 1983, 96 Stat. 2547; Pub. L. 99–272, title IV, § 4011(a), (b), Apr. 7, 1986, 100 Stat. 108, 109.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–272, § 4011(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (f). Pub. L. 99–272, § 4011(b), substituted ''6-year'' for ''4-year''.

1983—Subsec. (f). Pub. L. 97–468, § 235(a), substituted ''4-year'' for ''3-year''.

Subsec. (g). Pub. L. 97–468, § 235(b), substituted ''this section, section 797b of this title, section 907 of this title, or section 1004 of this title'' for ''this section or section 797b of this title'' wherever appearing.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 4011(d) of Pub. L. 99–272 provided that: ''The amendments made by subsections (a) and (c) [amending this section and enacting provisions set out as a note under section 797b of this title] shall take effect on the date of enactment of this Act [Apr. 7, 1986], and the

amendment made by subsection (b) [amending this section] shall be effective as of August 1, 1985.''

§ 797d. Election and treatment of benefits

(a) Election

(1) Any employee who accepts any benefits under an agreement entered into under section 797[1] of this title or a termination allowance under section 797a of this title, shall, except as provided in paragraph (2) of this subsection, be deemed to waive any employee protection benefits otherwise available under any other provision of law or any contract or agreement in effect on August 13, 1981, except benefits under sections 797b and 797c of this title, and shall be deemed to waive any cause of action for any alleged loss of benefits resulting from the provisions of or the amendments made by the Northeast Rail Service Act of 1981.

(2) Nothing in paragraph (1) of this subsection shall affect the right of any employee described in such paragraph to benefits under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] or the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

(b) Treatment of benefits

Any benefits received by an employee under an agreement entered into pursuant to section 797[1] of this title and any termination allowance received under section 797a of this title shall be considered compensation solely for purposes of—

(1) the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

(2) determining the compensation received by such employee in any base year under the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

(Pub. L. 93–236, title VII, § 705, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 664.)

REFERENCES IN TEXT

Section 797 of this title, referred to in subsecs. (a)(1) and (b), was repealed by Pub. L. 99–509, title IV, § 4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

The Northeast Rail Service Act of 1981, referred to in subsec. (a)(1), is subtitle E (§§ 1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

The Railroad Retirement Act of 1974, referred to in subsecs. (a)(2) and (b)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

The Railroad Unemployment Insurance Act, referred to in subsecs. (a)(2) and (b)(2), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§ 351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

§ 797e. Assignment of work

(a) General

With respect to any craft or class of employees not covered by a collective bargaining agreement that provides for a process substantially equivalent to that provided for in this section, the Corporation shall have the right to assign, allocate, reassign, reallocate, and consolidate work formerly performed on the rail properties acquired pursuant to the provisions of this chapter from a railroad in reorganization to any location, facility, or position on its system if it does not remove such work from coverage of a collective bargaining agreement and does not infringe upon the existing classification of work rights of any craft or class of employees at the location or facility to which such work is assigned, allocated, reassigned, reallocated, or consolidated. Prior to the exercise of authority under this subsection, the Corporation shall negotiate an agreement with the representatives of the employees involved permitting such employees the right to follow their work.

(b) Expiration

The authority granted by this section shall apply only for as long as benefits are provided under this subchapter with funds made available under section 797*l*[1] of this title.

(Pub. L. 93–236, title VII, § 706, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 665.)

REFERENCES IN TEXT

Section 797*l* of this title, referred to in subsec. (b), was repealed by Pub. L. 99–509, title IV, § 4033(a)(2), Oct. 21, 1986, 100 Stat. 1908, and a new section 797*l* of this title was subsequently added by Pub. L. 104–88, § 327(5).

§ 797f. Contracting out

All work in connection with the operation or services provided by the Corporation on the rail lines, properties, equipment, or facilities acquired pursuant to the provisions of this chapter and the maintenance, repair, rehabilitation, or modernization of such lines, properties, equipment, or facilities which has been performed by practice or agreement in accordance with provisions of the existing contracts in effect with the representatives of the employees of the classes or crafts involved shall continue to be performed by the Corporation's employees, including employees on furlough. Should the Corporation lack a sufficient number of employees, including employees on furlough, and be unable to hire additional employees, to perform the work required, it shall be permitted to subcontract that part of such work which cannot be performed by its employees, including those on furlough, except where agreement by the representatives of the employees of the classes or crafts involved is required by applicable collective-bargaining agreements. The term ''unable to hire additional employees'' as used in this section contemplates establishment and maintenance by the Corporation of an apprenticeship, training, or recruitment program to provide an adequate number of skilled employees to perform the work.

(Pub. L. 93–236, title VII, § 707, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 665.)

[1] See References in Text note below.

[1] See References in Text note below.

§ 797g. New collective-bargaining agreements

(a) Agreement

Not later than 60 days after the effective date of any conveyance pursuant to the provisions of this chapter, the representatives of the various classes or crafts of employees of a railroad in reorganization involved in a conveyance and representatives of the Corporation shall commence negotiation of a new single collective bargaining agreement for each class and craft of employees covering the rate of pay, rules, and working conditions of employees who are the employees of the Corporation. Such collective bargaining agreement shall include appropriate provisions concerning rates of pay, rules, and working conditions, but shall not, before April 1, 1984, include any provisions for job stabilization which may exceed or conflict with those established herein. Negotiations with respect to such single collective bargaining agreement, and any successor thereto, shall be conducted systemwide.

(b) Procedure

(1) Any procedure for finally determining the components of the first single collective bargaining agreement for any class or craft, agreed upon before August 13, 1981, shall be completed no later than 45 days after August 13, 1981. Such agreed upon procedure shall be deemed to satisfy the requirements of sections 157 and 158 of this title. The National Mediation Board shall appoint any person as provided for by such agreements.

(2) Nothing in this section shall be construed to require the parties to enter into a new single collective bargaining agreement if the agreement between the parties in effect immediately prior to August 13, 1981, complied with section 774(d)[1] of this title as in effect immediately prior to such date.

(c) Railway Labor Act notices

Employees of the Corporation may not serve notices under section 156 of this title for the purpose of negotiating job stabilization or other protective agreements with the Corporation until after April 1, 1984.

(Pub. L. 93–236, title VII, § 708, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 665.)

REFERENCES IN TEXT

Section 774 of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 97–35, title XI, § 1144(a)(1), Aug. 13, 1981, 95 Stat. 669.

§ 797h. Employee and personal injury claims

(a) Liability for employee claims

In all cases of claims, prior to April 1, 1976, by employees, arising under the collective bargaining agreements of the railroads in reorganization in the Region, and subject to section 153 of this title, the Corporation, the National Railroad Passenger Corporation, or an acquiring carrier, as the case may be, shall assume responsibility for the processing of any such claims, and payment of those which are sustained or settled on or subsequent to the date of conveyance, under section 743(b)(1) of this title, and shall be entitled to direct reimbursement from the Association pursuant to section 721(h) of this title, to the extent that such claims are determined by the Association to be the obligation of a railroad in reorganization in the Region. Any liability of an estate of a railroad in reorganization to its employees which is assumed, processed, and paid pursuant to this subsection by the Corporation, the National Railroad Passenger Corporation, or an acquiring carrier shall remain the preconveyance obligation of the estate of such railroad for purposes of section 721(h)(1) of this title. The Corporation, the National Railroad Passenger Corporation, an acquiring carrier, or the Association, as the case may be, shall be entitled to a direct claim as a current expense of administration, in accordance with the provisions of section 721(h) of this title (other than paragraph (4)(A) thereof), for reimbursement (including costs and expenses of processing such claims) from the estate of the railroad in reorganization on whose behalf such obligations are discharged or paid. In those cases in which claims for employees were sustained or settled prior to such date of conveyance, it shall be the obligation of the employees to seek satisfaction against the estate of the railroads in reorganization which were their former employers.

(b) Assumption of personal injury claims

All cases or claims by employees or their personal representatives for personal injuries or death against a railroad in reorganization in the Region arising prior to the date of conveyance of rail properties, pursuant to section 743 of this title, shall be assumed by the Corporation or an acquiring railroad, as the case may be. The Corporation or the acquiring railroad shall process and pay any such claims that are sustained or settled, and shall be entitled to direct reimbursement from the Association pursuant to section 721(h) of this title, to the extent that such claims are determined by the Association or its successor authority to be the obligation of such railroad. Any liability of an estate of a railroad in reorganization which is assumed, processed, and paid, pursuant to this subsection, by the Corporation or an acquiring railroad shall remain the preconveyance obligation of the estate of such railroad for purposes of section 721(h)(1) of this title. The Corporation, an acquiring railroad, or the Association, as the case may be, shall be entitled to a direct claim as a current expense of administration, in accordance with the provisions of section 721(h) of this title (other than paragraph (4)(A) thereof), for reimbursement (including costs and expenses of processing such claims) from the estate of the railroad in reorganization on whose behalf such obligations were discharged or paid.

(Pub. L. 93–236, title VII, § 709, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 666.)

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

See section 1341 of this title.

[1] See References in Text note below.

§ 797i. Limitations on liability

(a) Federal Government

The liability of the United States under an agreement entered into or benefit schedule prescribed under section 797[1] of this title or for payment of a termination allowance under section 797a of this title shall be limited to amounts appropriated under section 797*l*[1] of this title.

(b) The Corporation

(1) The Corporation, Amtrak Commuter, and commuter authorities shall incur no liability under an agreement entered into or benefit schedule prescribed under section 797[1] of this title or for the payment of a termination allowance under section 797a of this title.

(2) Notwithstanding any other provision of law, until April 1, 1984, the Corporation shall have no liability for employee protection in the event of a sale of any asset to a purchaser, and such purchaser shall assume the liability for the application of employee protection conditions imposed by the Commission for all employees adversely affected by such sale.

(Pub. L. 93–236, title VII, § 710, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 667.)

REFERENCES IN TEXT

Section 797 of this title, referred to in subsecs. (a) and (b)(1), was repealed by Pub. L. 99–509, title IV, § 4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

Section 797*l* of this title, referred to in subsec. (a), was repealed by Pub. L. 99–509, title IV, § 4033(a)(2), Oct. 21, 1986, 100 Stat. 1908, and a new section 797*l* of this title was subsequently added by Pub. L. 104–88, § 327(5).

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 797j. Preemption

No State may adopt or continue in force any law, rule, regulation, order, or standard requiring the Corporation to employ any specified number of persons to perform any particular task, function, or operation, or requiring the Corporation to pay protective benefits to employees, and no State in the Region may adopt or continue in force any such law, rule, regulation, order, or standard with respect to any railroad in the Region.

(Pub. L. 93–236, title VII, § 711, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 667; amended Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379.)

[1] See References in Text note below.

AMENDMENTS

1994—Pub. L. 103–272 struck out ‘‘, the National Railroad Passenger Corporation, or the Amtrak Commuter Services Corporation’’ before ‘‘to employ any’’.

§ 797k. Factfinding panel

(a) Purpose

The Corporation shall enter into collective bargaining agreements with its employees which provide for the establishment of one or more advisory factfinding panels, chaired by a neutral expert in industrial relations, for purposes of recommending changes in operating practices and procedures which result in greater productivity to the maximum extent practicable.

(b) National Mediation Board

The National Mediation Board shall appoint public members to any panel established by an agreement entered into under this subparagraph, and shall perform such functions contained in the agreement as are consistent with the duties of such Board under the Railway Labor Act [45 U.S.C. 151 et seq.].

(c) Other functions

The factfinding panel may, before making its report to the parties, provide mediation, conciliation, and other assistance to the parties.

(Pub. L. 93–236, title VII, § 712, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 668.)

REFERENCES IN TEXT

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

§ 797*l*. Class II railroads receiving Federal assistance

The Surface Transportation Board shall impose no labor protection conditions in approving an application under section 10902 of title 49 when the application involves a Class II rail carrier which—

(1) is headquartered in a State, and operates in at least one State, with a population of less than 1,000,000 persons, as determined by the 1990 census; and

(2) has, as of January 1, 1996, been a recipient of repayable Federal Railroad Administration assistance in excess of $5,000,000.

(Pub. L. 93–236, title VII, § 713, as added Pub. L. 104–88, title III, § 327(5)(A), formerly § 327(5), Dec. 29, 1995, 109 Stat. 952, renumbered Pub. L. 104–287, § 6(f)(4)(B), Oct. 11, 1996, 110 Stat. 3399.)

PRIOR PROVISIONS

A prior section 797*l*, Pub. L. 93–236, title VII, § 713, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 668, authorized appropriations to carry out activities for protection of employees of Consolidated Rail Corporation, prior to repeal by Pub. L. 99–509, title IV, § 4033(a)(2), Oct. 21, 1986, 100 Stat. 1908.

EFFECTIVE DATE

Section effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as a note under section 701 of Title 49, Transportation.

§ 797m. Arbitration

Any dispute or controversy with respect to the interpretation, application, or enforcement of the provisions of this subchapter, except sections 797b, 797c, 797g, and 797*l*[1] of this title, or section 1144 of the Northeast Rail Service Act of 1981, and except those matters subject to judicial review under section 1152 of the Northeast Rail Service Act of 1981 [45 U.S.C. 1105], which have not been resolved within 90 days, may be submitted by either party to an Adjustment Board for a final and binding decision thereon as provided in section 153 of this title, in which event the burden of proof on all issues so presented shall be on the Corporation, or the Association, where appropriate.

(Pub. L. 93–236, title VII, § 714, as added Pub. L. 97–35, title XI, § 1143(a), Aug. 13, 1981, 95 Stat. 668.)

REFERENCES IN TEXT

Section 797*l* of this title, referred to in text, was repealed by Pub. L. 99–509, title IV, § 4033(a)(2), Oct. 21, 1986, 100 Stat. 1908, and a new section 797*l* of this title was subsequently added by Pub. L. 104–88, § 327(5).

Section 1144 of the Northeast Rail Service Act of 1981, referred to in text, is section 1144 of Pub. L. 97–35, title XI, Aug. 13, 1981, 95 Stat. 669, which repealed subchapter V (§ 771 et seq.) of this chapter and sections 910 and 1006 of this title and enacted provisions set out as a note under section 771 of this title.

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

See section 1341 of this title.

CHAPTER 17—RAILROAD REVITALIZATION AND REGULATORY REFORM

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
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SUBCHAPTER III—NORTHEAST CORRIDOR PROJECT IMPLEMENTATION

851 to 856. Repealed.

SUBCHAPTER I—GENERAL PROVISIONS

§ 801. Declaration of policy

(a) Purpose

It is the purpose of the Congress in this Act to provide the means to rehabilitate and maintain the physical facilities, improve the operations and structure, and restore the financial stability of the railway system of the United States, and to promote the revitalization of such railway system, so that this mode of transportation will remain viable in the private sector of the economy and will be able to provide energy-efficient, ecologically compatible transportation services with greater efficiency, effectiveness, and economy, through—

(1) ratemaking and regulatory reform;

(2) the encouragement of efforts to restructure the system on a more economically justified basis, including planning authority in the Secretary of Transportation, an expedited procedure for determining whether merger and consolidation applications are in the public interest, and continuing reorganization authority;

(3) financing mechanisms that will assure adequate rehabilitation and improvement of facilities and equipment, implementation of the final system plan, and implementation of the Northeast Corridor project;

(4) transitional continuation of service on light-density rail lines that are necessary to continued employment and community well-being throughout the United States;

(5) auditing, accounting, reporting, and other requirements to protect Federal funds and to assure repayment of loans and financial responsibility; and

(6) necessary studies.

(b) Policy

It is declared to be the policy of the Congress in this Act to—

(1) balance the needs of carriers, shippers, and the public;

(2) foster competition among all carriers by railroad and other modes of transportation, to promote more adequate and efficient transportation services, and to increase the attractiveness of investing in railroads and rail-service-related enterprises;

(3) permit railroads greater freedom to raise or lower rates for rail services in competitive markets;

(4) promote the establishment of railroad rate structures which are more sensitive to changes in the level of seasonal, regional, and shipper demand;

(5) promote separate pricing of distinct rail and rail-related services;

(6) formulate standards and guidelines for determining adequate revenue levels for railroads; and

(7) modernize and clarify the functions of railroad rate bureaus.

(Pub. L. 94–210, title I, § 101, Feb. 5, 1976, 90 Stat. 33.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 94–210, Feb. 5, 1976, 90 Stat. 31, as amended, known as the Railroad Revitalization and Regulatory Reform Act of 1976. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 1 of Pub. L. 94–210 provided in part that this Act [enacting this chapter and sections 726 and 745 to 747 of this title, and sections 1a, 5c, 26b, 26c, 1613, 1653a, 1654, and 1657a of former Title 49, Transportation, amending sections 543, 545, 546, 562 to 564, 702, 711 to 713, 715, 716, 718 to 721, 724, 725, 741, 743, 744, 762, 763, 771, 772, 774, 775, 778, 779, and 791 of this title, sections 77c, 77s, 78m, and 80a–3 of Title 15, Commerce and Trade, sec-

[1] See References in Text note below.

tions 11 and 856 of former Title 31, Money and Finance, and sections 1, 1a, 5, 5b, 6, 12, 13, 15, 15a, 17, 20, 27, 314, 1653, 1658, and 1659 of former Title 49, repealing sections 761 to 762 of this title, enacting provisions set out as notes under sections 745, 761, 791, and 793 of this title, sections 77c and 80a–3 of Title 15, and sections 1, 1a, 5b, 5c, 17, and 1654 of former Title 49, and amending notes set out under section 1651 of former Title 49] may be cited as the ''Railroad Revitalization and Regulatory Reform Act of 1976''.

§ 802. Definitions

As used in this Act, unless the context otherwise indicates, the term—

(1) ''Association'' means the United States Railway Association;

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

(3) ''Corporation'' means the Consolidated Rail Corporation;

(4) ''final system plan'' means the final system plan and any additions thereto adopted by the Association pursuant to the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.);

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

(6) ''Office'' means the Rail Services Planning Office of the Commission;

(7) ''railroad'' has the meaning given that term in section 20102 of title 49; and

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

(Pub. L. 94–210, title I, § 102, Feb. 5, 1976, 90 Stat. 33; Pub. L. 97–468, title VI, § 615(b)(2), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 104–88, title III, § 330(1), Dec. 29, 1995, 109 Stat. 953; Pub. L. 109–59, title IX, § 9003(a), Aug. 10, 2005, 119 Stat. 1921.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 94–210, Feb. 5, 1976, 90 Stat. 31, as amended, known as the Railroad Revitalization and Regulatory Reform Act of 1976. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

The Regional Rail Reorganization Act of 1973, referred to in par. (4), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

AMENDMENTS

2005—Par. (7). Pub. L. 109–59 amended par. (7) generally. Prior to amendment, par. (7) read as follows: '''railroad' means a rail carrier subject to part A of subtitle IV of title 49, and includes the National Railroad Passenger Corporation; and''.

1995—Par. (7). Pub. L. 104–88 substituted ''rail carrier subject to part A of subtitle IV of title 49'' for ''common carrier by railroad or express, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3))''.

1983—Par. (7). Pub. L. 97–468 struck out ''and the Alaska Railroad'' before the semicolon at end.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title, see section 615(b) of Pub. L. 97–468.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

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

See section 1341 of this title.

§ 803. Repealed. Pub. L. 97–449, § 7(b), Jan. 12, 1983, 96 Stat. 2443

Section, Pub. L. 94–210, title IX, § 905, Feb. 5, 1976, 90 Stat. 148, directed that no person in the United States be discriminated against on the basis of race, color, national origin, or sex with regard to any activity funded in whole or in part under this Act and provided for cutoff of funds to and civil action against any person who persisted in failure to comply. See section 306 of Title 49, Transportation.

SUBCHAPTER II—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

§ 821. Definitions

For purposes of this subchapter:

(1)(A) The term ''cost'' means the estimated long-term cost to the Government of a direct loan or loan guarantee or modification thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

(B) The cost of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following estimated cash flows:

(i) Loan disbursements.

(ii) Repayments of principal.

(iii) Payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries.

Calculation of the cost of a direct loan shall include the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.

(C) The cost of a loan guarantee shall be the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:

(i) Payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments.

(ii) Payments to the Government, including origination and other fees, penalties, and recoveries.

Calculation of the cost of a loan guarantee shall include the effects of changes in loan terms resulting from the exercise by the guar-

anteed lender of an option included in the loan guarantee contract, or by the borrower of an option included in the guaranteed loan contract.

(D) The cost of a modification is the difference between the current estimate of the net present value of the remaining cash flows under the terms of a direct loan or loan guarantee contract, and the current estimate of the net present value of the remaining cash flows under the terms of the contract, as modified.

(E) In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the cash flows of the direct loan or loan guarantee for which the estimate is being made.

(F) When funds are obligated for a direct loan or loan guarantee, the estimated cost shall be based on the current assumptions, adjusted to incorporate the terms of the loan contract, for the fiscal year in which the funds are obligated.

(2) The term ''current'' has the same meaning as in section 900(c)(9) of title 2.

(3) The term ''direct loan'' means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims.

(4) The term ''direct loan obligation'' means a binding agreement by the Secretary to make a direct loan when specified conditions are fulfilled by the borrower.

(5) The term ''intermodal'' means of or relating to the connection between rail service and other modes of transportation, including all parts of facilities at which such connection is made.

(6) The term ''loan guarantee'' means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(7) The term ''loan guarantee commitment'' means a binding agreement by the Secretary to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

(8) The term ''modification'' means any Government action that alters the estimated cost of an outstanding direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) from the current estimate of cash flows. This includes the sale of loan assets, with or without recourse, and the purchase of guaranteed loans. This also includes any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated cost of outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) such as a change in collection procedures.

(Pub. L. 94–210, title V, § 501, as added Pub. L. 105–178, title VII, § 7203(a)(1), June 9, 1998, 112 Stat. 471.)

PRIOR PROVISIONS

A prior section 821, Pub. L. 94–210, title V, § 501, Feb. 5, 1976, 90 Stat. 66; Pub. L. 95–620, title VIII, § 803(c)(1), Nov. 9, 1978, 92 Stat. 3347; Pub. L. 96–101, § 24(b), Nov. 4, 1979, 93 Stat. 747; Pub. L. 96–448, title IV, § 405(d), Oct. 14, 1980, 94 Stat. 1947; Pub. L. 97–35, title XI, § 1162(b), Aug. 13, 1981, 95 Stat. 684; Pub. L. 99–509, title IV, § 4033(c)(2), Oct. 21, 1986, 100 Stat. 1908, defined terms for purposes of this subchapter, prior to repeal by Pub. L. 105–178, title VII, § 7203(a)(1), June 9, 1998, 112 Stat. 471.

SAVINGS PROVISION

Pub. L. 105–178, title VII, § 7203(b)(2), June 9, 1998, 112 Stat. 477, provided that: ''A transaction entered into under the authority of title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) before the date of enactment of this Act [June 9, 1998] shall be administered until completion under its terms as if this Act [see Tables for classification] were not enacted.''

§ 822. Direct loans and loan guarantees

(a) General authority

The Secretary shall provide direct loans and loan guarantees to—

(1) State and local governments;

(2) interstate compacts consented to by Congress under section 410(a) of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 note);

(3) government sponsored authorities and corporations;

(4) railroads;

(5) joint ventures that include at least one railroad; and

(6) solely for the purpose of constructing a rail connection between a plant or facility and a second rail carrier, limited option rail freight shippers that own or operate a plant or other facility that is served by no more than a single railroad.

(b) Eligible purposes

(1) In general

Direct loans and loan guarantees under this section shall be used to—

(A) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops;

(B) refinance outstanding debt incurred for the purposes described in subparagraph (A); or

(C) develop or establish new intermodal or railroad facilities.

(2) Operating expenses not eligible

Direct loans and loan guarantees under this section shall not be used for railroad operating expenses.

(c) Priority projects

In granting applications for direct loans or guaranteed loans under this section, the Secretary shall give priority to projects that—

(1) enhance public safety;

(2) enhance the environment;

(3) promote economic development;

(4) enable United States companies to be more competitive in international markets;

(5) are endorsed by the plans prepared under section 135 of title 23 by the State or States in which they are located;

(6) preserve or enhance rail or intermodal service to small communities or rural areas;

(7) enhance service and capacity in the national rail system; or

(8) would materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.

(d) Extent of authority

The aggregate unpaid principal amounts of obligations under direct loans and loan guarantees made under this section shall not exceed $35,000,000,000 at any one time. Of this amount, not less than $7,000,000,000 shall be available solely for projects primarily benefiting freight railroads other than Class I carriers. The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.

(e) Rates of interest

(1) Direct loans

The Secretary shall require interest to be paid on a direct loan made under this section at a rate not less than that necessary to recover the cost of making the loan.

(2) Loan guarantees

The Secretary shall not make a loan guarantee under this section if the interest rate for the loan exceeds that which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates and customary fees incurred under similar obligations in the private capital market.

(f) Infrastructure partners

(1) Authority of Secretary

In lieu of or in combination with appropriations of budget authority to cover the costs of direct loans and loan guarantees as required under section 661c(b)(1) of title 2, the Secretary may accept on behalf of an applicant for assistance under this section a commitment from a non-Federal source to fund in whole or in part credit risk premiums with respect to the loan that is the subject of the application. In no event shall the aggregate of appropriations of budget authority and credit risk premiums described in this paragraph with respect to a direct loan or loan guarantee be less than the cost of that direct loan or loan guarantee.

(2) Credit risk premium amount

The Secretary shall determine the amount required for credit risk premiums under this subsection on the basis of—

(A) the circumstances of the applicant, including the amount of collateral offered, if any;

(B) the proposed schedule of loan disbursements;

(C) historical data on the repayment history of similar borrowers;

(D) consultation with the Congressional Budget Office;

(E) the size and characteristics of the cohort of which the loan or loan guarantee is a member; and

(F) any other factors the Secretary considers relevant.

(3) Payment of premiums

Credit risk premiums under this subsection shall be paid to the Secretary before the disbursement of loan amounts.

(4) Cohorts of loans

In order to maintain sufficient balances of credit risk premiums to adequately protect the Federal Government from risk of default, while minimizing the length of time the Government retains possession of those balances, the Secretary shall establish cohorts of loans. When all obligations attached to a cohort of loans have been satisfied, credit risk premiums paid for the cohort, and interest accrued thereon, which were not used to mitigate losses shall be returned to the original source on a pro rata basis. A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for 1 loan or loan guarantee.

(g) Prerequisites for assistance

The Secretary shall not make a direct loan or loan guarantee under this section unless the Secretary has made a finding in writing that—

(1) repayment of the obligation is required to be made within a term of not more than 25 years from the date of its execution;

(2) the direct loan or loan guarantee is justified by the present and probable future demand for rail services or intermodal facilities;

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

(4) the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government; and

(5) the purposes of the direct loan or loan guarantee are consistent with subsection (b) of this section.

(h) Conditions of assistance

(1) The Secretary shall, before granting assistance under this section, require the applicant to agree to such terms and conditions as are sufficient, in the judgment of the Secretary, to ensure that, as long as any principal or interest is due and payable on such obligation, the applicant, and any railroad or railroad partner for whose benefit the assistance is intended—

(A) will not use any funds or assets from railroad or intermodal operations for purposes not related to such operations, if such use would impair the ability of the applicant, railroad, or railroad partner to provide rail or intermodal services in an efficient and eco-

nomic manner, or would adversely affect the ability of the applicant, railroad, or railroad partner to perform any obligation entered into by the applicant under this section;

(B) will, consistent with its capital resources, maintain its capital program, equipment, facilities, and operations on a continuing basis; and

(C) will not make any discretionary dividend payments that unreasonably conflict with the purposes stated in subsection (b) of this section.

(2) The Secretary shall not require an applicant for a direct loan or loan guarantee under this section to provide collateral. Any collateral provided or thereafter enhanced shall be valued as a going concern after giving effect to the present value of improvements contemplated by the completion and operation of the project. The Secretary shall not require that an applicant for a direct loan or loan guarantee under this section have previously sought the financial assistance requested from another source.

(3) The Secretary shall require recipients of direct loans or loan guarantees under this section to comply with—

(A) the standards of section 24312 of title 49, as in effect on September 1, 2002, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with such standards for construction work financed under an agreement made under section 24308(a) of that title; and

(B) the protective arrangements established under section 836 of this title, with respect to employees affected by actions taken in connection with the project to be financed by the loan or loan guarantee.

(i) Time limit for approval or disapproval

Not later than 90 days after receiving a complete application for a direct loan or loan guarantee under this section, the Secretary shall approve or disapprove the application.

(j) Repayment schedules

(1) In general

The Secretary shall establish a repayment schedule requiring payments to commence not later than the sixth anniversary date of the original loan disbursement.

(2) Accrual

Interest shall accrue as of the date of disbursement, and shall be amortized over the remaining term of the loan beginning at the time the payments begin.

(Pub. L. 94–210, title V, § 502, as added Pub. L. 105–178, title VII, § 7203(a)(1), June 9, 1998, 112 Stat. 473; amended Pub. L. 109–59, title IX, § 9003(b)–(g), Aug. 10, 2005, 119 Stat. 1921–1923.)

REFERENCES IN TEXT

Section 410(a) of the Amtrak Reform and Accountability Act of 1997, referred to in subsec. (a)(2), is section 410(a) of Pub. L. 105–134, which is set out as a note under section 24101 of Title 49, Transportation.

PRIOR PROVISIONS

A prior section 822, Pub. L. 94–210, title V, § 502, Feb. 5, 1976, 90 Stat. 67; Pub. L. 95–620, title VIII, § 803(c)(2)–(4), Nov. 9, 1978, 92 Stat. 3347, related to the Rail Fund, prior to repeal by Pub. L. 105–178, title VII, § 7203(a)(1), June 9, 1998, 112 Stat. 471.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–59, § 9003(b), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary may provide direct loans and loan guarantees to State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least 1 railroad.''

Subsec. (c)(7), (8). Pub. L. 109–59, § 9003(c), added pars. (7) and (8).

Subsec. (d). Pub. L. 109–59, § 9003(d), substituted ''$35,000,000,000'' for ''$3,500,000,000'' and ''$7,000,000,000'' for ''$1,000,000,000'' and inserted at end ''The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.''

Subsec. (f)(2)(A). Pub. L. 109–59, § 9003(f)(2), substituted ''amount of collateral offered, if any;'' for ''amount of collateral offered;''.

Subsec. (f)(2)(E), (F). Pub. L. 109–59, § 9003(e)(1)–(3), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (f)(4). Pub. L. 109–59, § 9003(e)(4), inserted at end ''A cohort may include loans and loan guarantees. The Secretary shall not establish any limit on the proportion of a cohort that may be used for 1 loan or loan guarantee.''

Subsec. (h). Pub. L. 109–59, § 9003(f)(1), designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C) of par. (1), respectively, and added pars. (2) and (3).

Subsecs. (i), (j). Pub. L. 109–59, § 9003(g), added subsecs. (i) and (j).

SUBSTANTIVE CRITERIA AND STANDARDS

Pub. L. 109–59, title IX, § 9003(j), Aug. 10, 2005, 119 Stat. 1923, provided that: ''Not later than 30 days after the date of enactment of this Act [Aug. 10, 2005], the Secretary of Transportation shall publish in the Federal Register and post on the Department of Transportation Web site the substantive criteria and standards used by the Secretary to determine whether to approve or disapprove applications submitted under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822). The Secretary of Transportation shall ensure adequate procedures and guidelines are in place to permit the filing of complete applications within 30 days of such publication.''

§ 823. Administration of direct loans and loan guarantees

(a) Applications

The Secretary shall prescribe the form and contents required of applications for assistance under section 822 of this title, to enable the Secretary to determine the eligibility of the applicant's proposal, and shall establish terms and conditions for direct loans and loan guarantees made under that section.

(b)[1] Full faith and credit

All guarantees entered into by the Secretary under section 822 of this title shall constitute general obligations of the United States of America backed by the full faith and credit of the United States of America.

(b)[1] Assignment of loan guarantees

The holder of a loan guarantee made under section 822 of this title may assign the loan

[1] So in original. There are two subsections designated (b).

guarantee in whole or in part, subject to such requirements as the Secretary may prescribe.

(c) Modifications

The Secretary may approve the modification of any term or condition of a direct loan, loan guarantee, direct loan obligation, or loan guarantee commitment, including the rate of interest, time of payment of interest or principal, or security requirements, if the Secretary finds in writing that—

(1) the modification is equitable and is in the overall best interests of the United States; and

(2) consent has been obtained from the applicant and, in the case of a loan guarantee or loan guarantee commitment, the holder of the obligation.

(d) Compliance

The Secretary shall assure compliance, by an applicant, any other party to the loan, and any railroad or railroad partner for whose benefit assistance is intended, with the provisions of this subchapter, regulations issued hereunder, and the terms and conditions of the direct loan or loan guarantee, including through regular periodic inspections.

(e) Commercial validity

For purposes of claims by any party other than the Secretary, a loan guarantee or loan guarantee commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this subchapter, and that such obligation has been approved and is legal as to principal, interest, and other terms. Such a guarantee or commitment shall be valid and incontestable in the hands of a holder thereof, including the original lender or any other holder, as of the date when the Secretary granted the application therefor, except as to fraud or material misrepresentation by such holder.

(f) Default

The Secretary shall prescribe regulations setting forth procedures in the event of default on a loan made or guaranteed under section 822 of this title. The Secretary shall ensure that each loan guarantee made under that section contains terms and conditions that provide that—

(1) if a payment of principal or interest under the loan is in default for more than 30 days, the Secretary shall pay to the holder of the obligation, or the holder's agent, the amount of unpaid guaranteed interest;

(2) if the default has continued for more than 90 days, the Secretary shall pay to the holder of the obligation, or the holder's agent, 90 percent of the unpaid guaranteed principal;

(3) after final resolution of the default, through liquidation or otherwise, the Secretary shall pay to the holder of the obligation, or the holder's agent, any remaining amounts guaranteed but which were not recovered through the default's resolution;

(4) the Secretary shall not be required to make any payment under paragraphs (1) through (3) if the Secretary finds, before the expiration of the periods described in such paragraphs, that the default has been remedied; and

(5) the holder of the obligation shall not receive payment or be entitled to retain payment in a total amount which, together with all other recoveries (including any recovery based upon a security interest in equipment or facilities) exceeds the actual loss of such holder.

(g) Rights of the Secretary

(1) Subrogation

If the Secretary makes payment to a holder, or a holder's agent, under subsection (g) of this section in connection with a loan guarantee made under section 822 of this title, the Secretary shall be subrogated to all of the rights of the holder with respect to the obligor under the loan.

(2) Disposition of property

The Secretary may complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, rent, sell, or otherwise dispose of any property or other interests obtained pursuant to this section. The Secretary shall not be subject to any Federal or State regulatory requirements when carrying out this paragraph.

(h) Action against obligor

The Secretary may bring a civil action in an appropriate Federal court in the name of the United States in the event of a default on a direct loan made under section 822 of this title, or in the name of the United States or of the holder of the obligation in the event of a default on a loan guaranteed under section 822 of this title. The holder of a guarantee shall make available to the Secretary all records and evidence necessary to prosecute the civil action. The Secretary may accept property in full or partial satisfaction of any sums owed as a result of a default. If the Secretary receives, through the sale or other disposition of such property, an amount greater than the aggregate of—

(1) the amount paid to the holder of a guarantee under subsection (g) of this section; and

(2) any other cost to the United States of remedying the default,

the Secretary shall pay such excess to the obligor.

(i) Breach of conditions

The Attorney General shall commence a civil action in an appropriate Federal court to enjoin any activity which the Secretary finds is in violation of this subchapter, regulations issued hereunder, or any conditions which were duly agreed to, and to secure any other appropriate relief.

(j) Attachment

No attachment or execution may be issued against the Secretary, or any property in the control of the Secretary, prior to the entry of final judgment to such effect in any State, Federal, or other court.

(k) Evaluation charge

The Secretary may charge and collect from each applicant a reasonable charge for the cost of evaluating the application, including appraisal of the value of the equipment or facili-

ties for which the direct loan or loan guarantee is sought, and for making necessary determinations and findings. Such charge shall not aggregate more than one-half of 1 percent of the principal amount of the obligation. Amounts collected under this subsection shall be credited directly to the Safety and Operations account of the Federal Railroad Administration, and shall remain available until expended to pay for the evaluation costs described in this subsection.

(*l*) Fees and charges

Except as provided in this subchapter, the Secretary may not assess any fees, including user fees, or charges in connection with a direct loan or loan guarantee provided under section 822 of this title.

(Pub. L. 94–210, title V, § 503, as added and amended Pub. L. 105–178, title VII, § 7203(a)(1), (4), June 9, 1998, 112 Stat. 475, 477; Pub. L. 109–59, title IX, § 9003(h), (i), Aug. 10, 2005, 119 Stat. 1923.)

CODIFICATION

The text of section 831(c) of this title, which was transferred to subsec. (b) of this section, relating to full faith and credit backing of guarantees entered into by Secretary, by Pub. L. 105–178, title VII, § 7203(a)(4), June 9, 1998, 112 Stat. 477, was based on Pub. L. 94–210, title V, § 511, Feb. 5, 1976, 90 Stat. 76; Pub. L. 94–555, title II, § 215(a), Oct. 19, 1976, 90 Stat. 2625; Pub. L. 105–178, title VII, § 7203(a)(2), (3), June 9, 1998, 112 Stat. 477.

PRIOR PROVISIONS

A prior section 823, Pub. L. 94–210, title V, § 503, Feb. 5, 1976, 90 Stat. 69; Pub. L. 94–555, title II, § 216(b), Oct. 19, 1976, 90 Stat. 2627, related to classification and designation of rail lines, prior to repeal by Pub. L. 105–178, title VII, § 7203(a)(1), June 9, 1998, 112 Stat. 471.

AMENDMENTS

2005—Subsec. (k). Pub. L. 109–59, § 9003(h), in heading, substituted ''Evaluation'' for ''Investigation'' and, in text, inserted ''the cost of evaluating the application, including'' after ''reasonable charge for'' and inserted at end ''Amounts collected under this subsection shall be credited directly to the Safety and Operations account of the Federal Railroad Administration, and shall remain available until expended to pay for the evaluation costs described in this subsection.''

Subsec. (*l*). Pub. L. 109–59, § 9003(i), added subsec. (*l*).

1998—Subsec. (b). Pub. L. 105–178, § 7203(a)(4), redesignated subsec. (c) of section 831 of this title as subsec. (b) of this section, relating to full faith and credit backing of guarantees entered into by Secretary. See Codification note above.

§§ 824, 825. Repealed. Pub. L. 105–178, title VII, § 7203(a)(1), (2), June 9, 1998, 112 Stat. 471, 477

Section 824, Pub. L. 94–210, title V, § 504, Feb. 5, 1976, 90 Stat. 70; Pub. L. 94–555, title II, §§ 216(c), 220(d), Oct. 19, 1976, 90 Stat. 2627, 2629, related to capital needs study to be submitted to Secretary.

Section 825, Pub. L. 94–210, title V, § 505, Feb. 5, 1976, 90 Stat. 71; Pub. L. 94–555, title II, §§ 212, 216(a), Oct. 19, 1976, 90 Stat. 2624, 2626; Pub. L. 95–565, § 5, Nov. 1, 1978, 92 Stat. 2400; Pub. L. 95–607, title III, §§ 301(a), 302, Nov. 8, 1978, 92 Stat. 3066; Pub. L. 95–620, title VIII, § 803(c)(5), (6), Nov. 9, 1978, 92 Stat. 3347, 3348; Pub. L. 96–73, title IV, § 401, Sept. 29, 1979, 93 Stat. 557; Pub. L. 96–101, §§ 16, 24(a), Nov. 4, 1979, 93 Stat. 744, 747; Pub. L. 96–254, title I, § 112, May 30, 1980, 94 Stat. 404; Pub. L. 96–448, title IV, §§ 404, 405(a)(1), (c)(1), (2), (4), (5), 406, title VII, § 701(d), Oct. 14, 1980, 94 Stat. 1945–1947, 1961; Pub. L. 97–35, title XI, § 1162(a), (c), (d), Aug. 13, 1981, 95 Stat. 683, 684; Pub. L. 97–468, title IV, §§ 401, 403(b), Jan. 14, 1983, 96 Stat. 2550, 2551; Pub. L. 99–509, title IV, § 4033(c)(3), Oct. 21, 1986, 100 Stat. 1908; Pub. L. 104–88, title III, § 330(2), Dec. 29, 1995, 109 Stat. 953, related to rehabilitation and improvement financing.

§ 825a. Repealed. Pub. L. 99–509, title IV, § 4033(c)(6), Oct. 21, 1986, 100 Stat. 1909

Section, Pub. L. 97–468, title IV, § 402, Jan. 14, 1983, 96 Stat. 2550, provided for financial assistance to responsible persons for purchase, lease, or rehabilitation of rail lines of Consolidated Rail Corporation.

§§ 826 to 830. Repealed. Pub. L. 105–178, title VII, § 7203(a)(2), June 9, 1998, 112 Stat. 477

Section 826, Pub. L. 94–210, title V, § 506, Feb. 5, 1976, 90 Stat. 73; Pub. L. 94–555, title II, §§ 213, 214, Oct. 19, 1976, 90 Stat. 2624, 2625; Pub. L. 96–448, title IV, § 405(c)(3)(A), (C), Oct. 14, 1980, 94 Stat. 1946, 1947, related to redeemable preference shares.

Section 827, Pub. L. 94–210, title V, § 507, Feb. 5, 1976, 90 Stat. 74; Pub. L. 95–607, title III, § 301(b), Nov. 8, 1978, 92 Stat. 3066; Pub. L. 96–73, title IV, § 401, Sept. 29, 1979, 93 Stat. 557; Pub. L. 96–448, title IV, §§ 404, 405(a)(2), (c)(3)(B), Oct. 14, 1980, 94 Stat. 1945, 1946; Pub. L. 97–468, title IV, § 401, Jan. 14, 1983, 96 Stat. 2550, related to fund anticipation notes.

Section 828, Pub. L. 94–210, title V, § 508, Feb. 5, 1976, 90 Stat. 74, related to fund bonds.

Section 829, Pub. L. 94–210, title V, § 509, Feb. 5, 1976, 90 Stat. 76; Pub. L. 94–555, title II, § 216(d), Oct. 19, 1976, 90 Stat. 2627; Pub. L. 95–607, title III, § 301(c), Nov. 8, 1978, 92 Stat. 3066; Pub. L. 96–73, title IV, § 401, Sept. 29, 1979, 93 Stat. 557; Pub. L. 96–448, title IV, §§ 404, 405(a)(2), (b)(1), Oct. 14, 1980, 94 Stat. 1945; Pub. L. 97–35, title XI, § 1162(e), (f), Aug. 13, 1981, 95 Stat. 684, 685; Pub. L. 97–468, title IV, §§ 401, 403(a), Jan. 14, 1983, 96 Stat. 2550, 2551; Pub. L. 99–509, title IV, § 4033(c)(4), Oct. 21, 1986, 100 Stat. 1909; Pub. L. 104–88, title III, § 330(3), Dec. 29, 1995, 109 Stat. 953, related to authorization of appropriations, purchases, transfer of funds, and restrictions.

Section 830, Pub. L. 94–210, title V, § 510, Feb. 5, 1976, 90 Stat. 76; Pub. L. 104–88, title III, § 330(4), Dec. 29, 1995, 109 Stat. 953, related to exemption of redeemable preference shares from certain Federal and State securities provisions.

§ 831. Transferred

CODIFICATION

Section, Pub. L. 94–210, title V, § 511, Feb. 5, 1976, 90 Stat. 76; Pub. L. 94–555, title II, §§ 215, 220(e), (f), Oct. 19, 1976, 90 Stat. 2625, 2629, 2630; Pub. L. 96–448, title IV, § 405(e), Oct. 14, 1980, 94 Stat. 1947; Pub. L. 99–509, title IV, § 4033(c)(5), Oct. 21, 1986, 100 Stat. 1909; Pub. L. 102–240, title I, § 1036(e), Dec. 18, 1991, 105 Stat. 1986, which related to guarantee of obligations, was repealed, except for subsec. (c), by Pub. L. 105–178, title VII, § 7203(a)(2), June 9, 1998, 112 Stat. 477. Subsec. (c) of section 831 was amended, redesignated, and transferred to section 823(b) of this title by Pub. L. 105–178, title VII, § 7203(a)(3), (4), June 9, 1998, 112 Stat. 477.

§§ 832 to 834. Repealed. Pub. L. 105–178, title VII, § 7203(a)(2), June 9, 1998, 112 Stat. 477

Section 832, Pub. L. 94–210, title V, § 512, Feb. 5, 1976, 90 Stat. 79, related to issuance of notes or obligations.

Section 833, Pub. L. 94–210, title V, § 513, Feb. 5, 1976, 90 Stat. 80, related to default on guaranteed obligations.

Section 834, Pub. L. 94–210, title V, § 514, Feb. 5, 1976, 90 Stat. 81, related to audit of transactions.

§ 835. Repealed. Pub. L. 97–375, title I, § 111(d), Dec. 21, 1982, 96 Stat. 1821; Pub. L. 105–178, title VII, § 7203(a)(2), June 9, 1998, 112 Stat. 477

Section, Pub. L. 94–210, title V, § 515, Feb. 5, 1976, 90 Stat. 82, directed Secretary to report to Congress within 90 days following end of each fiscal year on financial condition and operations of Fund and of obligation guarantee fund during such fiscal year, and on anticipated condition and operations of Fund and of obligation guarantee fund during current fiscal year.

§ 836. Employee protection

(a) General

Fair and equitable arrangements shall be provided, in accordance with this section, to protect the interests of any employees not otherwise protected under title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771 et seq.), who may be affected by actions taken pursuant to authorizations or approval obtained under this subchapter. Such arrangements shall be determined by the execution of an agreement between the representatives of the railroads and the representatives of their employees, within 120 days after February 5, 1976. In the absence of such an executed agreement, the Secretary of Labor shall prescribe the applicable protective arrangements, within 150 days after February 5, 1976.

(b) Terms

The arrangements required by subsection (a) of this section shall apply to each employee who has an employment relationship with a railroad on the date on which such railroad first applies for applicable financial assistance under this subchapter. Such arrangements shall include such provisions as may be necessary for the negotiation and execution of agreements as to the manner in which the protective arrangements shall be applied, including notice requirements. Such agreements shall be executed prior to implementation of work funded from financial assistance under this subchapter. If such an agreement is not reached within 30 days after the date on which an application for such assistance is approved, either party to the dispute may submit the issue for final and binding arbitration. The decision on any such arbitration shall be rendered within 30 days after such submission. Such arbitration decision shall in no way modify the protection afforded in the protective arrangements established pursuant to this section, shall be final and binding on the parties thereto, and shall become a part of the agreement. Such arrangements shall also include such provisions as may be necessary—

(1) for the preservation of compensation (including subsequent general wage increases, vacation allowances, and monthly compensation guarantees), rights, privileges, and benefits (including fringe benefits such as pensions, hospitalization, and vacations, under the same conditions and so long as such benefits continue to be accorded to other employees of the employing railroad in active service or on furlough, as the case may be) to such employees under existing collective-bargaining agreements or otherwise;

(2) to provide for final and binding arbitration of any dispute which cannot be settled by the parties, with respect to the interpretation, application, or enforcement of the provisions of the protective arrangements;

(3) to provide that an employee who is unable to secure employment by the exercise of his or her seniority rights, as a result of actions taken with financial assistance obtained under this subchapter, shall be offered reassignment and, where necessary, retraining to fill a position comparable to the position held at the time of such adverse effect and for which he is, or by training and retraining can become, physically and mentally qualified, so long as such offer is not in contravention of collective bargaining agreements relating thereto; and

(4) to provide that the protection afforded pursuant to this section shall not be applicable to employees benefited solely as a result of the work which is financed by funds provided pursuant to this subchapter.

(c) Subcontracting

The arrangements which are required to be negotiated by the parties or prescribed by the Secretary of Labor, pursuant to subsections (a) and (b) of this section, shall include provisions regulating subcontracting by the railroads of work which is financed by funds provided pursuant to this subchapter.

(Pub. L. 94–210, title V, § 504, formerly § 516, Feb. 5, 1976, 90 Stat. 82; renumbered § 504, Pub. L. 105–178, title VII, § 7203(a)(5), June 9, 1998, 112 Stat. 477.)

REFERENCES IN TEXT

The Regional Rail Reorganization Act of 1973, referred to in subsec. (a), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended. Title V of the Regional Rail Reorganization Act of 1973, which was classified generally to subchapter V (§ 771 et seq.) of chapter 16 of this title, was repealed by Pub. L. 97–35, title XI, § 1144(a)(1), Aug. 13, 1981, 95 Stat. 669. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

PRIOR PROVISIONS

A prior section 504 of Pub. L. 94–210 was classified to section 824 of this title prior to repeal by Pub. L. 105–178.

§§ 837, 838. Repealed. Pub. L. 105–178, title VII, § 7203(a)(2), June 9, 1998, 112 Stat. 477

Section 837, Pub. L. 94–210, title V, § 517, Feb. 5, 1976, 90 Stat. 83, related to intercity rail passenger service.

Section 838, Pub. L. 94–210, title V, § 518, as added Pub. L. 102–533, § 12(a), Oct. 27, 1992, 106 Stat. 3521, related to Columbus and Greenville Railway.

SUBCHAPTER III—NORTHEAST CORRIDOR PROJECT IMPLEMENTATION

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

Section, Pub. L. 94–210, title VII, § 701, Feb. 5, 1976, 90 Stat. 119; Pub. L. 96–254, title II, § 205, May 30, 1980, 94 Stat. 412, specified powers and duties of National Railroad Passenger Corporation with respect to implementing the Northeast Corridor improvement project. See sections 24102, 24305, 24315, 24902, and 24904 of Title 49, Transportation.

§852. Repealed. Pub. L. 97–35, title XI, §1188(e), Aug. 13, 1981, 95 Stat. 699

Section, Pub. L. 94–210, title VII, §702, Feb. 5, 1976, 90 Stat. 120, set forth provisions relating to the Operations Review Panel.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 1189 of Pub. L. 97–35.

§§853 to 855. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section 853, Pub. L. 94–210, title VII, §703, Feb. 5, 1976, 90 Stat. 121; Pub. L. 95–421, §§5, 8, Oct. 5, 1978, 92 Stat. 926, 927; Pub. L. 96–254, title II, §§202, 203, 209, May 30, 1980, 94 Stat. 410, 414; Pub. L. 97–468, title III, §301(1), Jan. 14, 1983, 96 Stat. 2547; Pub. L. 99–272, title IV, §4007(d), Apr. 7, 1986, 100 Stat. 108, enumerated goals of Northeast Corridor improvement project. See section 24902 of Title 49, Transportation.

Section 854, Pub. L. 94–210, title VII, §704, Feb. 5, 1976, 90 Stat. 122; Pub. L. 94–555, title II, §217, Oct. 19, 1976, 90 Stat. 2627; Pub. L. 95–421, §9, Oct. 5, 1978, 92 Stat. 928; Pub. L. 96–254, title II, §§204(a), (b), 210, May 30, 1980, 94 Stat. 411, 414; Pub. L. 97–35, title XI, §1193, Aug. 13, 1981, 95 Stat. 701; Pub. L. 97–468, title III, §301(2)–(4), Jan. 14, 1983, 96 Stat. 2548, 2549; Pub. L. 100–342, §6, June 22, 1988, 102 Stat. 627, related to funding of Northeast Corridor improvement project. See sections 24104, 24902, 24904, 24907, and 24909 of Title 49.

Section 855, Pub. L. 94–210, title VII, §705, as added Pub. L. 96–254, title II, §206(a), May 30, 1980, 94 Stat. 412; amended Pub. L. 97–468, title III, §301(5), Jan. 14, 1983, 96 Stat. 2550, related to transfers of authority with respect to track improvements and implementation of Northeast Corridor improvement project goals. See sections 24902, 24904, and 24909 of Title 49.

§856. Repealed. Pub. L. 103–429, §7(a)(1), Oct. 31, 1994, 108 Stat. 4388

Section, Pub. L. 94–210, title VII, §708, as added Pub. L. 102–533, §4(a), Oct. 27, 1992, 106 Stat. 3516, directed Secretary to develop and report to Congress within one year after Oct. 27, 1992, on a program master plan for improvements in passenger service between Boston and New York. See section 24903 of Title 49, Transportation.

EFFECTIVE DATE OF REPEAL

Section 7(a)(1) of Pub. L. 103–429 provided that the repeal by that section is effective July 5, 1994.

CHAPTER 18—MILWAUKEE RAILROAD RESTRUCTURING

Sec.
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§901. Congressional findings

(a) Congress hereby finds that—

(1) the severe operating losses and the deteriorating plant and equipment of the Milwaukee Railroad threaten to cause cessation of its operations in the near future;

(2) a cessation of operations by the Milwaukee Railroad would have serious repercussions on the economies of the States in which such railroad principally operates (the States of Washington, Montana, Idaho, North Dakota, South Dakota, Illinois, Iowa, Missouri, Michigan, Indiana, Minnesota, and Wisconsin);

(3) a cessation of operations of the Milwaukee Railroad would result in the loss of many thousands of jobs of railroad workers and other workers whose employment is dependent upon rail service over the lines presently operated by the Milwaukee Railroad;

(4) experienced railroad employees make a valuable contribution toward strengthening the railroad industry; and other railroads have the ability and willingness to employ displaced employees of the Milwaukee Railroad;

(5) the ownership by employees or by employees and shippers of part or all of the Milwaukee Railroad may be a valuable tool in reorganization and should be given serious consideration;

(6) cessation of essential transportation services by the Milwaukee Railroad would endanger the public welfare;

(7) cessation of such services is imminent; and

(8) there is no other practicable means of obtaining funds to meet payroll and other expenses necessary for continuation of services and reorganization of the Milwaukee Railroad.

(b) The Congress declares that emergency measures set forth in this chapter must be taken to restructure the Milwaukee Railroad and to avoid the potential unemployment and damage to the economy of the region and of the Nation which a cessation of essential services by the Milwaukee Railroad would otherwise cause.

(Pub. L. 96–101, §2, Nov. 4, 1979, 93 Stat. 736.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 96–101, Nov. 4, 1979, 93 Stat. 736, as amended, known as the Milwaukee Railroad Restructuring Act, which enacted this chapter and amended sections 231f, 662, 721, 821, and 825 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 97–468, title II, §201, Jan. 14, 1983, 96 Stat. 2543, provided that: "This title [amending sections 797c, 907, 913, 915, 1004, 1005, 1007, 1014, and 1017 of this title, repealing section 1008 of this title and enacting provisions set out as notes under this section] may be referred to as the 'Bankrupt Railroad Service Preservation and Employee Protection Act of 1982'."

SHORT TITLE

Section 1 of Pub. L. 96–101 provided: "That this Act [enacting this chapter and amending sections 231f, 662,

721, 821, and 825 of this title] may be cited as the 'Milwaukee Railroad Restructuring Act'.''

STATEMENT OF PURPOSE

Pub. L. 97–468, title II, subtitle A, § 211, Jan. 14, 1983, 96 Stat. 2543, provided that: ''It is the purpose of this subtitle [amending sections 915 and 1017 of this title and enacting provisions set out as notes under this section] to continue the effort by Congress to assure service over the lines of rail carriers subject to liquidation in instances where rail carriers are willing to provide service over such lines and financially responsible persons are willing to purchase the lines for continued rail operations.''

CONGRESSIONAL FINDINGS

Pub. L. 97–468, title II, § 212, Jan. 14, 1983, 96 Stat. 2543, provided that: ''The Congress finds that—

''(1) it is necessary to establish procedures to facilitate and expedite the acquisition of rail lines of carriers subject to liquidation by financially responsible persons in instances where service is not being provided over the line by the carrier and where the financially responsible person seeks to provide rail service over the line;

''(2) procedures set forth in the amendments made by this title [see Short Title of 1983 Amendment note above] represent an exercise of the powers of the Congress under the Constitution to regulate commerce among the several States which will provide a practicable means for preserving rail service, thus benefiting shippers, employees, and the economies of the States in which such carriers subject to liquidation have operated service, and for facilitating interstate commerce, while at the same time providing safeguards to protect the interest of the estates of such carriers by requiring compensation which is not less than the constitutionally required minimum; and

''(3) it is in the public interest that the Interstate Commerce Commission's authority to issue orders involving temporary authority to operate service over lines of carriers subject to liquidation be clarified.''

[Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.]

§ 902. Definitions

As used in this chapter—

(1) the term ''bankruptcy court'' means the court having jurisdiction over the reorganization of the Milwaukee Railroad;

(2) the term ''Board'' means the Railroad Retirement Board;

(3) the term ''Commission'' means the Interstate Commerce Commission;

(4) the term ''employee''—

(A) includes any employee of the Milwaukee Railroad who worked on a line of such railroad the sale of which became effective on October 1, 1979; but

(B) does not include any individual serving as president, vice-president, secretary, treasurer, comptroller, counsel, member of the board of directors, or any other person performing such functions;

(5) the term ''Milwaukee Railroad'' means the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; and

(6) the term ''restructured Milwaukee Railroad'' means the entity that is designated as the reorganized railroad under the reorganization plan for the Milwaukee Railroad finally certified by the Commission.

(Pub. L. 96–101, § 3, Nov. 4, 1979, 93 Stat. 736; Pub. L. 96–254, title I, § 123, May 30, 1980, 94 Stat. 409.)

AMENDMENTS

1980—Par. (6). Pub. L. 96–254 redefined ''restructured Milwaukee Railroad'' to mean the entity that is designated as the reorganized railroad under the reorganization plan for the Milwaukee Railroad finally certified by the Commission.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 903. Sales and transfers

(a) The Milwaukee Railroad may negotiate and enter into agreements to sell, to another rail carrier or any other person, all or any portion of its rail properties used in railroad operations as of October 15, 1979. Such sale agreements may in no event become final and effective until the occurrence of an event described in section 920(b) of this title, or April 1, 1980, whichever first occurs. In taking action under this subsection, the Milwaukee Railroad may consult with the Secretary of Transportation.

(b)(1) The Secretary of Transportation, under the authority of section 333 of title 49, may develop plans, participate in negotiations, and recommend to the trustee proposals for the sale or transfer of any rail properties of the Milwaukee Railroad which are used in rail operations as of October 15, 1979. In taking action under this paragraph, the Secretary shall give preference to financially responsible persons, including governmental entities, negotiating for the purchase of any lines with the intent of providing common carrier service.

(2) Any sale or transfer proposal developed under paragraph (1) of this subsection shall be submitted to the bankruptcy court. Such a proposal may in no event become final or effective until the occurrence of an event described in section 920(b) of this title, or April 1, 1980, whichever first occurs.

(Pub. L. 96–101, § 4, Nov. 4, 1979, 93 Stat. 737.)

CODIFICATION

In subsec. (b)(1), ''section 333 of title 49'' was substituted for ''section 5(a)–(e) of the Department of Transportation Act [49 U.S.C. 1654(a)–(e)]'', on authority of Pub. L. 97–449, § 6(b), Jan. 12, 1983, 96 Stat. 2443, the first section of which enacted subtitle I (§ 101 et seq.) and chapter 31 (§ 3101 et seq.) of subtitle II of Title 49, Transportation.

§ 904. Court approved abandonments and sales

(a) Abandonment of lines of railroad under section 1170 of title 11

(1) Upon the occurrence of an event described in section 920(b) of this title, or on April 1, 1980, whichever first occurs, the bankruptcy court may authorize the abandonment of lines of the Milwaukee Railroad pursuant to section 1170 of title 11. Pending the expiration of the time for appeal of an abandonment order or the determination of any such appeal, the bankruptcy court may authorize the termination of service on a line to be abandoned, and the order authorizing such termination may not be stayed. In authorizing any abandonment pursuant to this section, the court shall require the carrier to provide a fair arrangement at least as protective of the interests of employees as that required under section 11347[1] of title 49.

(2) Prior to the date specified in paragraph (1) of this subsection, the bankruptcy court may hear and consider any request for the abandonment of lines of the Milwaukee Railroad, and may fix the time for the Commission's report on the request, but it may take final action authorizing such abandonment only in accordance with such paragraph (1).

(b) Sale or transfer of lines of railroad

(1) Upon the occurrence of an event described in section 920(b) of this title, or on April 1, 1980, whichever first occurs, the bankruptcy court may authorize the sale or transfer of a line of the Milwaukee Railroad to be used in continued rail operations, subject to the approval of the Commission under paragraph (2) of this subsection. In authorizing any such sale or transfer, the court shall provide a fair arrangement at least as protective of the interest[2] of employees as that required under section 11347[1] of title 49.

(2) The bankruptcy court may not authorize a sale or transfer pursuant to paragraph (1) of this subsection unless an appropriate application with respect to such sale or transfer is initiated with the Commission and, within such time as the court may fix, not exceeding 180 days, the Commission, with or without a hearing, as the Commission may determine, and with or without modification or condition, approves such application, or does not act on such application. Any action or order of the Commission approving, modifying, conditioning, or disapproving such application is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5. An application may be initiated with the Commission prior to the date specified in paragraph (1) of this subsection.

(3) Pending review of an application by the Commission pursuant to paragraph (2) of this subsection, the bankruptcy court may, on a preliminary basis, authorize the sale or transfer of lines of the Milwaukee Railroad to another rail carrier. The court may permit the purchasing carrier to operate interim service as a common carrier over the lines to be purchased, without regard to section 10901 of title 49. In operating such service, the purchasing carrier shall use employees of the Milwaukee Railroad to the extent necessary for the operation of such service. The bankruptcy court may take final action authorizing any such sale or transfer only in accordance with paragraph (1) of this subsection.

(c) Effect on priorities and timing of employee protection payments

Nothing in this section shall be deemed to affect the priorities or timing of payment of employee protection which might have existed in the absence of this chapter.

(Pub. L. 96–101, § 5, Nov. 4, 1979, 93 Stat. 737.)

REFERENCES IN TEXT

Section 11347 of title 49, referred to in subsecs. (a)(1) and (b)(1), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804. Provisions similar to those in section 11347 are contained in section 11326(a) of Title 49.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 905. Employee or employee-shipper ownership plan

(a) Submission of plan to Commission; approval; findings

(1) No later than December 1, 1979, an association composed of representatives of national railway labor organizations, employee coalitions, and shippers (or any combination of the foregoing) may submit to the Commission a single plan for converting all or a substantial part of the Milwaukee Railroad into an employee or employee-shipper owned company and a method for implementing such plan. The plan shall include a comprehensive evaluation of the prospects for the financial self-sustainability of the Milwaukee Railroad.

(2) The Commission shall, within 30 days after the date of submission of a plan under paragraph (1) of this subsection, approve the proposed plan if it finds that such plan is feasible. The finding of the Commission with respect to the feasibility of the plan shall be made pursuant to section 554 of title 5.

(3) The Commission shall make a finding that the plan submitted under this section is feasible if it determines that—

(A) adequate public and private financing is available to the proponents of such plan;

(B) such plan is fair and equitable to the estate of the Milwaukee Railroad;

(C) implementation of such plan will occur by April 1, 1980;

(D) the railroad proposed to be operated under the plan can be operated on a self-sustaining basis; and

[1] See References in Text note below.

[2] So in original. Probably should be "interests".

(E) the plan contains an assessment of all operating practices, and includes agreements by labor and management to make implementing changes designed to achieve labor productivity increases (which may include changes in work rules to increase productivity) consistent with safe operations and adequate service.

For purposes of the determinations under this paragraph, adequate financing shall include all sources of private funds, the probable value and priority of valid claims against the estate, and Federal, State, or local funds available under programs (in existence as of January 1, 1980) which are or will be available to the proponent and which the proponent is likely to obtain.

(b) Submission of findings to bankruptcy court

If the Commission finds that the plan submitted under this section is feasible, it shall submit its finding to the bankruptcy court. Within 10 days after the date of such submission, the bankruptcy court shall, after a hearing, determine whether such plan is fair and equitable to the estate of the Milwaukee Railroad. The Commission's determination with respect to that issue shall be rebutted only by clear and convincing evidence.

(c) Implementation of plan

If the Commission finds that the plan is feasible and the bankruptcy court determines that the plan is fair and equitable to the estate of the Milwaukee Railroad, the proponents of such plan shall implement the plan no later than April 1, 1980.

(d) Judicial review

Except as provided in this section, the findings of the Commission with respect to the plan shall not be subject to review.

(e) Furnishing of reports and other information for preparation of plan

(1) The trustee of the Milwaukee Railroad shall promptly provide to the person engaged in developing the employee or employee and shipper ownership plan under this section—

(A) its most recent reports on the physical condition of the railroad; and

(B) traffic, revenue, marketing, and other data necessary to determine the amount of the acquisition cost of the railroad or portion of the railroad that would be required to continue rail transportation over the railroad line.

(2) Information provided pursuant to this subsection shall be used only for purposes of preparing a plan and shall not be disclosed to any competitor or, unless necessary in connection with the preparation of the plan, to any customer of the Milwaukee Railroad.

(Pub. L. 96–101, § 6, Nov. 4, 1979, 93 Stat. 738.)

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 906. Guarantee of trustee certificates

(a) to (c) Omitted

(d) Authorization

The Secretary of Transportation shall, under the authority of the Emergency Rail Services Act of 1970 [45 U.S.C. 661 et seq.], immediately guarantee trustee certificates of the Milwaukee Railroad, on the basis of an estimate of the amount required to be provided under subsection (e) of this section, for purposes of allowing the Milwaukee Railroad, commencing November 1, 1979, to maintain its entire railroad system in accordance with section 920 of this title, and as required to finance operations which the Milwaukee Railroad continues for the 60-day period beginning on the date of the occurrence of an event described in section 920(b) of this title or on April 1, 1980, whichever first occurs. Such guarantee shall be made without regard to the findings set forth in section 3(a) of the Emergency Rail Services Act of 1970 [45 U.S.C. 662(a)], and the provisions of section 3(b)(3) [45 U.S.C. 662(b)(3)] and the last two sentences of section 3(d) of such Act [45 U.S.C. 662(d)] shall not apply to such guarantee.

(e) Amount of guarantee

The Secretary shall guarantee trustee certificates of the Milwaukee Railroad pursuant to this section in an amount equal to the difference between (1) the total expenses incurred by such railroad attributable to the maintenance and the continuation of service in accordance with subsection (d) of this section, and (2) the revenues of such railroad.

(f) Subordination of claims

Notwithstanding the provisions of section 3(c) of the Emergency Rail Services Act of 1970 [45 U.S.C. 662(c)], certificates guaranteed under this chapter shall be subordinated to the claims of any creditors of the Milwaukee Railroad as of November 4, 1979.

(g) Availability of funds

The Commission shall immediately make available to the Secretary of Transportation the sum of $10,000,000, out of funds available for directed service under title 49. The Secretary of Transportation shall immediately make such funds available to the trustee of the Milwaukee Railroad for purposes of financing the operations of the Milwaukee Railroad, beginning November 1, 1979, in accordance with section 920 of this title.

(h) Cancellation of United States obligations

(1) All obligations to the United States or any agency or instrumentality of the United States incurred pursuant to this section by the Milwaukee Railroad or the trustee of the property of the Milwaukee Railroad shall be waived and canceled when—

(A) the Milwaukee Railroad is reorganized as an operating rail carrier; or

(B) substantially all of the Milwaukee Railroad is purchased.

(2) For purposes of this subsection, substantially all of the Milwaukee Railroad shall be considered as having been purchased when (A) more than 50 percent of the rail system operated by the Milwaukee Railroad on October 14, 1980, has been purchased, and (B) more than 50 percent of the employees employed by the Milwaukee Railroad on October 14, 1980, have obtained employment with other rail carriers.

(Pub. L. 96–101, § 7(less (a)–(c)), Nov. 4, 1979, 93 Stat. 740; Pub. L. 96–448, title VII, § 701(c)(1), Oct. 14, 1980, 94 Stat. 1961.)

REFERENCES IN TEXT

The Emergency Rail Services Act of 1970, referred to in subsec. (d), is Pub. L. 91–663, Jan. 8, 1971, 84 Stat. 1975, as amended, which is classified generally to chapter 15 (§ 661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

Directed service under title 49, referred to in subsec. (g), probably refers to directed service under section 11125 of Title 49, Transportation, prior to the general amendment of subtitle IV of Title 49, by Pub. L. 104–88, § 102(a).

CODIFICATION

Subsecs. (a) to (c) of this section amended section 662 of this title.

AMENDMENTS

1980—Subsec. (h). Pub. L. 96–448 added subsec. (h).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 907. Railroad hiring

Each person who is an employee of the Milwaukee Railroad on September 30, 1979, and who is separated or furloughed from his employment with such railroad (other than for cause) prior to April 1, 1984, as a result of a reduction of service by such railroad shall, unless found to be less qualified than other applicants, have the first right of hire by any other rail carrier that is subject to regulation by the Commission for any vacancy that is not covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a rail carrier shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.

(Pub. L. 96–101, § 8, Nov. 4, 1979, 93 Stat. 740; Pub. L. 97–468, title II, § 236(a), Jan. 14, 1983, 96 Stat. 2547.)

AMENDMENTS

1983—Pub. L. 97–468 substituted ''April 1, 1984'' for ''April 1, 1981''.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

EXEMPTION OF NATIONAL RAILROAD PASSENGER CORPORATION IN HIRING QUALIFIED TRAIN AND ENGINE EMPLOYEES

Section inapplicable to National Railroad Passenger Corporation in hiring of qualified train and engine employees holding seniority rights to work in intercity rail passenger service in connection with the assumption by such Corporation of functions previously performed under contract by other carriers, see section 4011(c) of Pub. L. 99–272, set out as a note under section 797b of this title.

§ 908. Employee protection agreements

(a) Agreement between Milwaukee Railroad and labor organizations

The Milwaukee Railroad and labor organizations representing the employees of such railroad may, not later than 20 days after November 4, 1979, enter into an agreement providing protection for employees of such railroad who are adversely affected as a result of a reduction in service by such railroad or a restructuring transaction carried out by such railroad. Such employee protection may include, but need not be limited to, interim employee assistance, moving expenses, employee relocation incentive compensation, and separation allowances.

(b) Submission of matter to National Mediation Board

If the Milwaukee Railroad and the labor organizations representing the employees of such railroad are unable to enter into an employee protection agreement under subsection (a) of this section within 20 days after November 4, 1979, the parties shall immediately submit the matter to the National Mediation Board. The National Mediation Board shall attempt, by mediation, to bring the parties to an agreement with respect to employee protection no later than 40 days after November 4, 1979.

(c) Fair and equitable agreements

(1) If the National Mediation Board is unable to bring the parties to an agreement under subsection (b) of this section within 40 days after November 4, 1979, the Milwaukee Railroad and the labor organizations representing the employees of such railroad shall immediately enter into an employee protection agreement that is fair and equitable.

(2) If an employee protection agreement is entered into under this subsection, any claim of an employee for benefits and allowances under such agreement shall be filed with the Board in such

time and manner as the Board by regulation shall prescribe. The Board shall determine the amount for which such employee is eligible under such agreement and shall certify such amount to the Milwaukee Railroad for payment.

(d) Payment of benefits and allowances

Benefits and allowances under an employee protection agreement entered into under this section shall be paid by the Milwaukee Railroad in accordance with section 914 of this title, and claims of employees for such benefits and allowances shall be treated as administrative expenses of the estate of the Milwaukee Railroad.

(Pub. L. 96–101, § 9, Nov. 4, 1979, 93 Stat. 741.)

§ 909. Supplementary unemployment insurance

(a) Eligible employees

Any employee of the Milwaukee Railroad—

(1) who (A) is employed by the restructured Milwaukee Railroad, and (B) is separated from that employment by reason of any reduction in service by such railroad prior to April 1, 1984; or

(2) who (A) is separated from his employment with the Milwaukee Railroad in connection with a restructuring transaction carried out by such railroad, and obtains employment, prior to April 1, 1981, with another rail carrier, and (B) is separated from employment with such other carrier prior to April 1, 1984,

shall be entitled to receive monthly supplementary unemployment insurance in accordance with the provisions of this section.

(b) Period of payment

Each employee described in subsection (a) of this section shall be entitled to receive supplementary unemployment insurance during each month in which such employee is not employed, for all or a portion of such month, by the Milwaukee Railroad or another rail carrier. Each such employee shall be entitled to receive such insurance for a total of not more than 36 months, except that—

(1) the period of entitlement for assistance under this section shall not exceed the employee's total months of service with the Milwaukee Railroad; and

(2) no compensation shall be provided under this section after April 1, 1984, unless it is necessary in order to provide an employee with at least 8 months of such insurance, but after such date, such employee only shall receive such 8-month minimum if such employee is not employed continuously after such date.

(c) Amount of payment

Supplementary unemployment insurance under this section shall be payable to an employee on a monthly basis in an amount equal to—

(1) eighty percent of such employee's average monthly normal compensation from employment with the Milwaukee Railroad during the period beginning June 1, 1977, and ending on November 4, 1979, less

(2) the sum of (A) the amount of any benefits payable to such employee for such month under the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.] or under any State unemployment insurance program, and (B) the amount of any earnings of such employee for such month from employment or self-employment of any kind.

(d) Filing of application

An application for supplementary unemployment insurance shall be filed with the Board in such time and manner as the Board by regulation shall prescribe.

(e) Insurance as compensation

Any supplementary unemployment insurance received by any employee pursuant to this section shall be considered to be compensation solely—

(1) for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

(2) for purposes of determining the compensation received by such employee in any base year under the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

(f) Employees not covered

(1) The provisions of this section shall not apply to an employee in the event of his resignation, retirement, or discharge for cause from the employment of any rail carrier.

(2) An employee shall not be entitled to receive supplementary unemployment insurance under this section if he has failed to exhaust all seniority rights or other employment rights under applicable collective bargaining agreements.

(3) An employee shall not be entitled to receive supplementary unemployment insurance under this section for any month or portion of a month in which such employee is unemployed due to normal seasonal unemployment patterns in the railroad industry.

(g) Furloughed employees

For purposes of this section, any employee of the Milwaukee Railroad who is furloughed shall be considered to be separated from his employment.

(Pub. L. 96–101, § 10(a)–(g), Nov. 4, 1979, 93 Stat. 741, 742.)

REFERENCES IN TEXT

The Railroad Unemployment Insurance Act, referred to in subsecs. (c)(2) and (e)(2), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§ 351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (e)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

CODIFICATION

Section is comprised of subsecs. (a) to (g) of section 10 of Pub. L. 96–101. Subsec. (h) of section 10 amended section 231f(b)(7) of this title.

§ 910. Repealed. Pub. L. 97–35, title XI, § 1144(b), Aug. 13, 1981, 95 Stat. 669

Section, Pub. L. 96–101, § 11, Nov. 4, 1979, 93 Stat. 742, set forth provisions respecting employment of Milwaukee Railroad employees. See section 797c of this title.

EFFECTIVE DATE OF REPEAL

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

§911. New career training assistance

(a) Eligible employees

Any employee who elects to receive a separation allowance from the Milwaukee Railroad under an employee protection agreement entered into under section 908 of this title shall be entitled to receive from the Board expenses for training in qualified institutions for new career opportunities.

(b) Commencement of training as condition

To be entitled for assistance under this section, an employee must begin his course of training within two years following the date of his separation from employment with the Milwaukee Railroad.

(c) Filing of application; Board determination

Entitlement to expenses for assistance under this section shall be determined by the Board on the basis of an application therefor filed by an employee with the Board.

(d) Assistance prohibited after April 1, 1984

No assistance may be provided under this section after April 1, 1984.

(e) Definitions

As used in this section—

(1) the term ''expenses'' means actual expenses paid for room, board, tuition, fees, or educational material in an amount not to exceed $3,000; and

(2) the term ''qualified institution'' means an educational institution accredited for payment by the Veterans' Administration under chapter 36 of title 38, or a State-accredited institution which has been in existence for not less than two years.

(Pub. L. 96–101, §12, Nov. 4, 1979, 93 Stat. 743; Pub. L. 96–254, title I, §119(f), May 30, 1980, 94 Stat. 408.)

AMENDMENTS

1980—Subsec. (e)(2). Pub. L. 96–254 inserted reference to State-accredited institutions which have been in existence for not less than two years.

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

§912. Election

Any employee who receives any assistance under section 909 or section 911 of this title or under an employee protection agreement entered into under section 908 of this title shall be deemed to waive any employee protection benefits otherwise available to such employee under the Bankruptcy Act, subtitle IV of title 49, or any applicable contract or agreement.

(Pub. L. 96–101, §13, Nov. 4, 1979, 93 Stat. 743.)

REFERENCES IN TEXT

Section 909 of this title, referred to in text, was in the original ''section 10'', meaning section 10 of Pub. L. 96–101, Nov. 4, 1979, 93 Stat. 741. Subsecs. (a) to (g) of section 10 are classified to section 909 of this title. Subsec. (h) of section 10 amended section 231f(b)(7) of this title.

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

§913. Authorization of appropriations

(a) There is authorized to be appropriated to provide supplementary unemployment insurance under section 909 of this title not to exceed $5,000,000.

(b) There is authorized to be appropriated for new career training assistance under section 911 of this title not to exceed $1,500,000.

(c) There is authorized to be appropriated to the Board to carry out its administrative expenses under this chapter and the Rock Island Railroad Transition and Employee Assistance Act [45 U.S.C. 1001 et seq.] not to exceed $750,000. Effective October 1, 1980, there is authorized to be appropriated to the Board an additional $1,000,000 to carry out its administrative expenses under this chapter and the Rock Island Railroad Transition and Employee Assistance Act [45 U.S.C. 1001 et seq.].

(d) There are authorized to be appropriated $15,000,000 for purposes of providing transaction assistance in accordance with section 825(h)(1)(A) and (B) of this title.

(e) Amounts appropriated under this section are authorized to remain available until expended.

(Pub. L. 96–101, §14, Nov. 4, 1979, 93 Stat. 743; Pub. L. 96–254, title I, §109, May 30, 1980, 94 Stat. 403; Pub. L. 96–448, title VII, §701(c)(2), Oct. 14, 1980, 94 Stat. 1961; Pub. L. 97–468, title II, §234(b), Jan. 14, 1983, 96 Stat. 2547.)

REFERENCES IN TEXT

Section 909 of this title, referred to in subsec. (a), was in the original ''section 10'', meaning section 10 of Pub. L. 96–101, Nov. 4, 1979, 93 Stat. 741. Subsecs. (a) to (g) of section 10 are classified to section 909 of this title. Subsec. (h) of section 10 amended section 231f(b)(7) of this title.

The Rock Island Railroad Transition and Employee Assistance Act, referred to in subsec. (c), is title I of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, which is classified principally to chapter 19 (§1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

Section 825 of this title, referred to in subsec. (d), was repealed by Pub. L. 105–178, title VII, §7203(a)(2), June 9, 1998, 112 Stat. 477.

AMENDMENTS

1983—Subsec. (b). Pub. L. 97–468 struck out provision that, effective Oct. 1, 1980, there was authorized to be appropriated an additional $1,500,000 for new career training assistance under section 911 of this title and section 1014 of this title.

1980—Subsec. (b). Pub. L. 96–254, §109(b), inserted provisions authorizing an appropriation of an additional $1,500,000, effective Oct. 1, 1980, for career training assistance under section 911 of this title and section 1014 of this title.

Subsec. (c). Pub. L. 96–254, § 109(a), inserted provisions authorizing the use of previously appropriated funds to carry out administrative expenses under the Rock Island Railroad Transition and Employee Assistance Act and authorizing an appropriation of an additional $1,000,000, effective Oct. 1, 1980, to carry out administrative expenses under this chapter and the Rock Island Railroad Transition and Employee Assistance Act.

Subsecs. (d), (e). Pub. L. 96–448 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

§ 914. Obligation guarantees

(a) Authorization

The Secretary of Transportation, under the authority of section 831 of this title, shall guarantee obligations of the Milwaukee Railroad for purposes of providing employee protection in accordance with the terms of the employee protection agreement entered into under section 908 of this title. Guarantees under this section shall be entered into without regard to the requirements of subsection (g) of section 831 of this title.

(b) Obligations as administrative expense

Any obligation guaranteed pursuant to this section shall be treated as an administrative expense of the estate of the Milwaukee Railroad.

(c) Limit on aggregate unpaid principal amount

The aggregate unpaid principal amount of obligations which may be guaranteed by the Secretary pursuant to this section shall not exceed $75,000,000.

(d) Limit on total liability

The total liability of the Milwaukee Railroad in connection with benefits and allowances provided under an employee protection agreement entered into under section 908 of this title shall not exceed $75,000,000.

(e) Liability of United States respecting section 908 agreements

Except in connection with obligations guaranteed under this section, the United States shall incur no liability to employees in connection with any employee protection agreement entered into under section 908 of this title.

(f) Applicability of section 836 of this title

Section 836 of this title shall not apply to any obligation guaranteed under this section.

(Pub. L. 96–101, § 15, Nov. 4, 1979, 93 Stat. 743; Pub. L. 96–448, title VII, § 701(a)(3), Oct. 14, 1980, 94 Stat. 1959.)

REFERENCES IN TEXT

Section 831 of this title, referred to in subsec. (a), was repealed by Pub. L. 105–178, title VII, § 7203(a)(2), June 9, 1998, 112 Stat. 477, except for subsec. (c) of that section, which was renumbered and transferred to section 823(b) of this title by section 7203(a)(4) of Pub. L. 105–178.

AMENDMENTS

1980—Subsec. (e). Pub. L. 96–448 inserted ''to employees'' after ''no liability''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

§ 915. Court approved abandonment and sales in pending cases

(a) Abandonment of lines of railroad under Bankruptcy Act

Notwithstanding any other provision of law, in any case pending under section 77 of the Bankruptcy Act on November 4, 1979, the court may authorize the abandonment of lines of railroad pursuant to section 1170 of title 11. Pending the expiration of the time for appeal of an abandonment order or the determination of any such appeal, the court may authorize the termination of service on a line to be abandoned, and the order authorizing such termination may not be stayed. In authorizing any abandonment pursuant to this section, the court shall require the carrier to provide a fair arrangement at least as protective of the interests of employees as that required under section 11347[1] of title 49.

(b) Sale or transfer of lines of railroad under Bankruptcy Act

(1) Notwithstanding any other provision of law, in any case pending under section 77 of the Bankruptcy Act on November 4, 1979, the court may authorize the sale or transfer of a line of railroad to be used in continued rail operations, subject to the approval of the Commission under paragraph (2) of this subsection, if the application with respect to such sale or transfer is filed with the Commission on or after November 1, 1979. In authorizing any such sale or transfer, the court shall provide a fair arrangement at least as protective of the interests of employees as that required under section 11347[1] of title 49.

(2) The court described in paragraph (1) may not authorize a sale or transfer pursuant to such paragraph unless an appropriate application with respect to such sale or transfer is initiated with the Commission and, within such time as the court may fix, not exceeding 180 days, the Commission, with or without a hearing, as the Commission may determine, and with or without modification or condition, approves such application, or does not act on such application. Any action or order of the Commission approving, modifying, conditioning, or disapproving such application is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5.

(3)(A) If a person has made or makes an offer to acquire from a carrier subject to liquidation a rail line or lines over which no service is provided by that carrier, and that offer has been or is rejected by the trustee in bankruptcy of such carrier, such person may submit an application to the Commission seeking approval of such person's acquisition of such line or lines. A copy of any such application shall be filed simultaneously with the court.

(B) The Commission shall, within 15 days after the filing of an application under subparagraph (A) of this paragraph, determine whether the applicant—

(i) is a financially responsible person; and

(ii) has made a bona fide offer to acquire the line or lines under reasonable terms.

(C)(i) If the Commission's determination under subparagraph (B) of this paragraph is affirma-

[1] See References in Text note below.

tive with respect to the matters referred to in clauses (i) and (ii) of such subparagraph, the applicant and the trustee in bankruptcy (hereafter in this paragraph referred to collectively as the ''parties'') shall enter into negotiations with respect to terms for the acquisition of the line or lines applied for. If the parties at any time agree on such terms, a request for approval of the acquisition shall be filed with the Commission and the court. If the parties are unable to agree to such terms within 30 days after the date of the Commission's determination under subparagraph (B) of this paragraph, either party may, within 60 days after the expiration of such 30-day period, request the Commission to prescribe terms for such acquisition, including compensation for the line or lines to be acquired. The Commission shall prescribe such terms within 60 days after any such request is made. The terms prescribed by the Commission shall be binding upon both parties, subject to court review as provided in subparagraph (D) of this paragraph, except that the applicant may withdraw its offer within 10 days after the Commission prescribes such terms.

(ii) If more than one applicant has requested under this subparagraph that the Commission prescribe the terms of acquisition for the same or overlapping lines or portions of such lines, the Commission shall prescribe terms for such acquisition which it determines best serve the public interest.

(D)(i) Within 15 days after the Commission prescribes terms under subparagraph (C) of this paragraph, the Commission shall transmit such terms to the court, unless the offer is withdrawn under such subparagraph. Notwithstanding any other provision of law, the court shall, within 60 days after such transmittal, approve the acquisition under terms prescribed by the Commission if the compensation for the line or lines is not less than that required as a constitutional minimum.

(ii) Except as provided in this subparagraph, no action shall be taken by the court which would prejudice the acquisition which is the subject of an application under this paragraph.

(E) The Commission shall require that any person acquiring a line or lines under this paragraph use, to the maximum extent practicable, employees or former employees of the carrier subject to liquidation in the operation of service on such line or lines.

(F) No person acquiring a line under this paragraph may transfer or discontinue service on such line prior to the expiration of 4 years after such acquisition.

(G) The Commission shall, within 45 days after January 14, 1983, prescribe such regulations and procedures as are necessary to carry out the provisions of this paragraph.

(H) As used in this paragraph, the term—

(i) ''carrier subject to liquidation'' means a carrier which, on January 14, 1983, was the subject of a proceeding pending under section 77 of the Bankruptcy Act or under subchapter IV of chapter 11 of title 11 and which has been ordered by the court to liquidate its properties;

(ii) ''the court'' means the court having bankruptcy jurisdiction over the carrier subject to liquidation; and

(iii) ''financially responsible person'' means a person capable of compensating the carrier subject to liquidation for the acquisition of the line or lines proposed to be acquired and able to cover expenses associated with providing service over such line or lines for a period of not less than 4 years.

(4) Pending review of an application by the Commission pursuant to paragraph (2) of this subsection, the court described in paragraph (1) may, on a preliminary basis, authorize the sale or transfer proposed in such application. The court may permit the purchasing carrier to operate interim service over the lines to be purchased, and in operating such service it shall use employees of the carrier subject to the bankruptcy proceeding to the extent such purchasing carrier deems necessary for the operation of such service.

(c) Judicial review

Any action or order of the Commission approving, modifying, conditioning, or disapproving an application for the sale or transfer of rail property that is filed with the Commission before November 1, 1979, in connection with a case pending under section 77 of the Bankruptcy Act on November 4, 1979—

(1) is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5; and

(2) may not be stayed by the Commission.

(d) Authority of bankruptcy court

The authority of the bankruptcy court to authorize abandonments, sales, and transfers of lines of the Milwaukee Railroad shall be governed by the provisions of section 904 of this title, rather than the provisions of this section.

(e) Effect on priorities and timing of employee protection payments

Nothing in this section shall be deemed to affect the priorities or timing of payment of employee protection which might have existed in the absence of this chapter.

(Pub. L. 96–101, §17, Nov. 4, 1979, 93 Stat. 744; Pub. L. 97–468, title II, §213, Jan. 14, 1983, 96 Stat. 2544.)

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in subsecs. (a), (b)(1), (3)(H)(i), and (c), was classified to section 205 of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

Section 11347 of title 49, referred to in subsecs. (a) and (b)(1), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804. Provisions similar to those in section 11347 are contained in section 11326(a) of Title 49.

AMENDMENTS

1983—Subsec. (b)(3), (4). Pub. L. 97–468 added par. (3) and redesignated former par. (3) as (4).

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise

provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 916. Repealed. Pub. L. 104–88, title III, § 328, Dec. 29, 1995, 109 Stat. 952

Section, Pub. L. 96–101, § 18, Nov. 4, 1979, 93 Stat. 746; Pub. L. 96–254, title I, § 116, May 30, 1980, 94 Stat. 405, provided that this chapter be in lieu of directed service on any line of the Milwaukee Railroad with certain exceptions.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

§ 917. Applicability of National Environmental Policy Act

The provisions of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] shall not apply to transactions carried out pursuant to this chapter.

(Pub. L. 96–101, § 19, Nov. 4, 1979, 93 Stat. 746.)

REFERENCES IN TEXT

The National Environmental Policy Act, referred to in text, probably means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§ 918. Authority of Railroad Retirement Board

(a) The Board may prescribe such regulations as may be necessary to carry out its duties under this chapter.

(b) In carrying out its duties under this chapter, the Board may exercise such of the powers, duties, and remedies provided in subsections (a), (b), and (d) of section 362 of this title as are not inconsistent with the provisions of this chapter.

(Pub. L. 96–101, § 20, Nov. 4, 1979, 93 Stat. 746.)

§ 919. Publications and reports

(a) Within 30 days after November 4, 1979, the Board shall publish, and make available for distribution by the Milwaukee Railroad to all its employees, a document which describes in detail the rights of such employees under sections 907, 908, 909, 910,[1] and 911 of this title.

(b) During the 2-year period beginning on November 4, 1979, the Board shall submit a report to the Congress every 6 months describing its activities under this chapter.

(Pub. L. 96–101, § 21, Nov. 4, 1979, 93 Stat. 746.)

REFERENCES IN TEXT

Section 909 of this title, referred to in subsec. (a), was in the original ''section 10'', meaning section 10 of Pub. L. 96–101, Nov. 4, 1979, 93 Stat. 741. Subsecs. (a) to (g) of section 10 are classified to section 909 of this title. Subsec. (h) of section 10 amended section 231f(b)(7) of this title.

Section 910 of this title, referred to in subsec. (a), was repealed by Pub. L. 97–35, title XI, § 1144(b), Aug. 13, 1981, 95 Stat. 669.

§ 920. Continuation of service

(a) Until the occurrence of an event described in subsection (b) of this section, the Milwaukee Railroad (1) shall maintain its entire railroad system, as it existed on October 15, 1979, (2) shall continue no less than the regular level of service provided by it as of that date, and (3) shall not embargo traffic (other than when necessitated by acts of God or safety requirements) or abandon or discontinue service over any part of its railroad system.

(b) The Milwaukee Railroad shall comply with the requirements of subsection (a) of this section until—

(1) an employee or employee-shipper ownership plan is not submitted to the Interstate Commerce Commission within the time period prescribed under section 905(a) of this title;

(2) the proposed plan is found by the Commission not to be feasible or the Commission does not act within 30 days;

(3) the proposed plan is found by the bankruptcy court not to be fair and equitable to the estate of the Milwaukee Railroad; or

(4) the plan is not implemented within the time period prescribed under section 905(c) of this title.

(Pub. L. 96–101, § 22, Nov. 4, 1979, 93 Stat. 746.)

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 921. Office of Rail Public Counsel

The Office of Rail Public Counsel may appear and be heard in the case in the bankruptcy court involving the reorganization of the Milwaukee Railroad, for purposes of representing affected shippers, localities, and municipalities with respect to the proposed abandonment of any line of the Milwaukee Railroad.

(Pub. L. 96–101, § 25, Nov. 4, 1979, 93 Stat. 747.)

§ 922. Employee stock ownership plan for surviving portion of Milwaukee Railroad

If an event described in section 920(b) of this title occurs, resulting in the survival of less than the entire Milwaukee Railroad system, then any relief provided for such surviving Milwaukee Railroad system under the Emergency Rail Services Act of 1970 [45 U.S.C. 661 et seq.] or any other Federal legislation shall be conditioned upon good faith efforts by the trustee or the Milwaukee Railroad, or both, to establish an

[1] See References in Text note below.

employee stock ownership plan which shall embrace the purchase or acquisition of qualifying employer securities of the Milwaukee Railroad equal in value to 25 per centum of the amount of such relief provided.

(Pub. L. 96–101, § 26, Nov. 4, 1979, 93 Stat. 747.)

REFERENCES IN TEXT

The Emergency Rail Services Act of 1970, referred to in text, is Pub. L. 91–663, Jan. 8, 1971, 84 Stat. 1975, as amended, which is classified generally to chapter 15 (§ 661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

CHAPTER 19—ROCK ISLAND RAILROAD EMPLOYEE ASSISTANCE

Sec.
1001. Congressional findings.
1002. Definitions.
1003. Service continuation.
1004. Railroad hiring.
1005. Employee protection agreement.
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§ 1001. Congressional findings

Congress hereby finds that—

(1) uninterrupted continuation of services over Rock Island lines is dependent on adequate employee protection provisions covering Rock Island Railroad employees who are not hired by other railroads;

(2) for those Rock Island Railroad employees not hired by other rail carriers, there is no other practicable means of obtaining funds to meet the necessary costs of such employee protection that are assumed by the Rock Island Railroad;

(3) a cessation of necessary operations of the Rock Island Railroad would have serious repercussions on the economies of the States in which such railroad principally operates; and

(4) premature cessation of services over lines which are the subject of pending purchase application would result in harm to the shipping public and could imperil continuation of vital commuter service.

(Pub. L. 96–254, title I, § 102, May 30, 1980, 94 Stat. 399.)

SHORT TITLE

Section 101 of title I of Pub. L. 96–254 provided that: ''This title [enacting this chapter, amending sections 231f, 726, 825, 902, 911, 913, and 916 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Rock Island Railroad Transition and Employee Assistance Act'.''

SAVINGS PROVISION

Section 125, formerly § 124, of title I of Pub. L. 96–254, renumbered Pub. L. 96–448, title VII, § 701(a)(1), Oct. 14, 1980, 94 Stat. 1959, provided that: ''If any provision of this title [see Short Title note above] or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.''

§ 1002. Definitions

As used in this chapter, the term—

(1) ''bankruptcy court'' means the court having jurisdiction over the reorganization of the Rock Island Railroad;

(2) ''Board'' means the Railroad Retirement Board;

(3) ''Commission'' means the Interstate Commerce Commission;

(4) ''employee'' includes any employee of the Rock Island Railroad as of August 1, 1979, but does not include any individual serving as president, vice-president, secretary, treasurer, comptroller, counsel, member of the board of directors, or any other person performing such functions;

(5) the term ''Rock Island Railroad'' means the Chicago, Rock Island and Pacific Railroad Company, the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding; and

(6) the term ''Secretary'' means the Secretary of Transportation.

(Pub. L. 96–254, title I, § 103, May 30, 1980, 94 Stat. 399; Pub. L. 96–448, title VII, § 701(b)(3), Oct. 14, 1980, 94 Stat. 1960.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title I (§ 101 et seq.) of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, as amended, known as the Rock Island Railroad Transition and Employee Assistance Act, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

1980—Par. (5). Pub. L. 96–448 inserted '', the estate of such Company in its reorganization proceeding, or the trustee appointed in such proceeding'' after ''Railroad Company''. The amendment was executed by inserting amendatory text preceding the semicolon instead of the period at end of par. (5) as directed to reflect the probable intent of Congress, in view of par. (5) being enacted without a closing period.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 1003. Service continuation

(a) Situations requiring directed service; time period

Notwithstanding the provisions of Public Law 96–131, the Commission shall order directed service for a period of not to exceed 90 days over any line of the Rock Island Railroad if the Secretary finds and certifies to the Commission that—

(1) a lack of rail service exists which cannot be resolved by a grant of interim operating authority over such line and grains or foods are ready to be shipped to market; or

(2) a lack of rail service exists which cannot be resolved by a grant of interim operating authority over such line and a rail carrier, shipper, State, or other interested party has expressed in writing to the Secretary an interest in purchasing, leasing, or rehabilitating the particular rail line or facility for purposes of providing rail services, and there is a reasonable expectation that such transaction will be consummated.

(b) Availability of funds

(1) Not more than $15,000,000 of the funds available for expenditure by the Secretary out of the Railroad Rehabilitation and Improvement Fund established under title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) may be made available by the Secretary to the Commission for purposes of providing directed service under this section and section 916(b)[1] of this title.

(2) Funds may be made available for directed service under this section without regard to the findings of the Secretary required under title V of the Railroad Revitalization and Regulatory Reform Act of 1976 [45 U.S.C. 821 et seq.], and section 516 of such Act (45 U.S.C. 836) shall not apply to any directed service provided with such funds.

(c) Continuation of compensation terms for trackage rights, joint facilities, etc.

The terms of compensation for all trackage rights, joint facilities, and similar arrangements between other rail carriers and the trustee of the Rock Island Railroad which are in effect on or after March 15, 1980, on portions of the lines of the Rock Island Railroad involved in temporary emergency operations shall be continued in effect during the duration of the temporary emergency operating authority with the carrier providing temporary emergency service substituting for the trustee, except where the Rock Island Railroad has been given more favorable treatment by virtue of its bankruptcy. Such continuation shall not alter or affect the ultimate rights of other rail carriers under trackage rights, joint facilities, or similar arrangements nor prejudice the ultimate determination of any controversy or proceeding concerning rights of the parties with regard to assignment by the trustee of rights in or to the facilities or under the arrangements.

(Pub. L. 96–254, title I, § 104, May 30, 1980, 94 Stat. 400; Pub. L. 104–88, title III, § 329(1), Dec. 29, 1995, 109 Stat. 952.)

[1] See References in Text note below.

REFERENCES IN TEXT

Public Law 96–131, referred to in subsec. (a), is Pub. L. 96–131, Nov. 30, 1979, 93 Stat. 1023, known as the Department of Transportation and Related Agencies Appropriation Act, 1980, which enacted provisions set out as notes under former section 851 of this title, section 92 of Title 14, Coast Guard, and section 106 and former section 10344 of Title 49, Transportation. For complete classification of this Act to the Code, see Tables.

The Railroad Revitalization and Regulatory Reform Act of 1976, referred to in subsec. (b), is Pub. L. 94–210, Feb. 5, 1976, 90 Stat. 31, as amended. Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 is classified generally to subchapter II (§ 821 et seq.) of chapter 17 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

Section 916(b) of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 104–88, title III, § 328, Dec. 29, 1995, 109 Stat. 952.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–88 substituted ''the provisions of Public Law 96–131'' for ''the provisions of section 11125 of title 49 or Public Law 96–131''.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 1004. Railroad hiring

(a) Each person who is an employee of the Rock Island Railroad on August 1, 1979, and who, prior to January 1, 1984, is separated or furloughed (other than for cause) from his employment with such railroad, or from his employment with another rail carrier providing temporary service over lines of the Rock Island Railroad, as a result of a reduction of service by such railroad or such temporary service carrier shall, unless found to be less qualified than other applicants, have the first right of hire by any other rail carrier that is subject to regulation by the Commission for any vacancy that is not covered by (1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulations, or Executive order, or by the order of a Federal or State court or agency, or (2) a permissible voluntary affirmative action plan. For purposes of this section, a rail carrier shall not be considered to be hiring new employees when it recalls any of its own furloughed employees.

(b) The rights afforded to Rock Island Railroad employees by this section shall be coequal to the rights afforded to Chicago, Milwaukee, Saint Paul and Pacific Railroad Company employees by section 907 of this title.

(Pub. L. 96–254, title I, § 105, May 30, 1980, 94 Stat. 400; Pub. L. 97–468, title II, § 236(b), Jan. 14, 1983, 96 Stat. 2547.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 97–468 substituted ''January 1, 1984'' for ''January 1, 1981''.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

EXEMPTION OF NATIONAL RAILROAD PASSENGER CORPORATION IN HIRING QUALIFIED TRAIN AND ENGINE EMPLOYEES

Section inapplicable to National Railroad Passenger Corporation in hiring of qualified train and engine employees holding seniority rights to work in intercity rail passenger service in connection with the assumption by such Corporation of functions previously performed under contract by other carriers, see section 4011(c) of Pub. L. 99–272, set out as a note under section 797b of this title.

§ 1005. Employee protection agreement

(a) Authorization; time for agreement; use of funds

The Secretary and the representatives of the various classes and crafts of employees of the Rock Island Railroad shall, not later than 90 days after January 14, 1983, enter into an agreement providing protection for employees of the Rock Island Railroad who are adversely affected as a result of a reduction in service by such Railroad. Such agreement may provide for the use of funds described in subsection (c) of this section for the following purposes:

(1) Subsistence allowances to employees.

(2) Moving expenses for employees who must make a change in residence.

(3) Retraining expenses for employees who are seeking employment in new areas.

(4) Separation allowances for employees.

(5) Health and welfare insurance premiums.

(6) Such other purposes as may be agreed upon by the parties.

(b) Failure to reach agreement; benefit schedule

If the parties are unable to reach agreement within the time period specified in subsection (a) of this section, the Secretary shall, within 30 days after the expiration of such time period, prescribe a schedule of benefits for employee protection not inconsistent with the provisions of this chapter.

(c) Limitations on funds

Any agreement entered into under subsection (a) of this section, and any benefit schedule prescribed under subsection (b) of this section, shall not require the expenditure of funds in excess of amounts authorized to be appropriated under section 727(f)(1)(C) of this title, nor shall any individual employee receive benefits in excess of $20,000 under such agreement or benefit schedule. No benefits or assistance may be provided under any agreement entered into or benefit schedule prescribed under this section after April 1, 1984.

(d) Administration of funds; promulgation of regulations

The Board shall, in such manner as it shall prescribe by regulation, administer the distribution of funds under any agreement entered into or benefit schedule prescribed under this section, and shall determine the amount for which each employee is eligible under such agreement or benefit schedule. Such regulation shall include procedures to resolve by final and binding arbitration any dispute over an employee's eligibility or claim.

(Pub. L. 96–254, title I, § 106, May 30, 1980, 94 Stat. 401; Pub. L. 96–448, title VII, § 701(b)(1), Oct. 14, 1980, 94 Stat. 1959; Pub. L. 97–468, title II, § 231, Jan. 14, 1983, 96 Stat. 2546.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', which probably was meant to be a reference to ''this title'', meaning title I (§ 101 et seq.) of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, as amended, known as the Rock Island Railroad Transition and Employee Assistance Act, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 1001 of this title and Tables.

CODIFICATION

Prior to the general amendment of section 106 of Pub. L. 96–254 by Pub. L. 97–468, section was comprised of subsecs. (a) to (e) of section 106 of Pub. L. 96–254, and subsec. (f) of section 106 amended section 231f(b)(7) of this title.

AMENDMENTS

1983—Subsec. (a). Pub. L. 97–468 substituted provisions relating to an agreement between the Secretary and the employees for provisions relating to an agreement between the Rock Island Railroad and the employees.

Subsec. (b). Pub. L. 97–468 substituted provisions relating to the prescription of benefits by the Secretary if no agreement is reached with the employees, for provisions relating to imposition of agreement by the Interstate Commerce Commission if none was reached between the Rock Island Railroad and the employees.

Subsec. (c). Pub. L. 97–468 added subsec. (c). Former subsec. (c), which related to direction to the bankruptcy trustee to carry out the agreement between the Rock Island Railroad and the employees, was struck out.

Subsec. (d). Pub. L. 97–468 added subsec. (d). Former subsec. (d), which prescribed conditions for appeals from orders of the Commission or bankruptcy court, limiting them to the Seventh Circuit Court of Appeals, was struck out.

Subsec. (e). Pub. L. 97–468 struck out subsec. (e) which related to prescription of regulations by the Board for the filing and payment of benefits and allowances.

1980—Subsec. (a). Pub. L. 96–448 substituted ''5 days after October 14, 1980'' for ''10 days after May 30, 1980''.

Subsec. (b). Pub. L. 96–448 substituted ''5 days after October 14, 1980'' for ''10 days after May 30, 1980'' and ''15 days after October 14, 1980'' for ''30 days after May 30, 1980''.

Subsec. (c). Pub. L. 96–448 reenacted subsec. (c) without change.

Subsec. (d). Pub. L. 96–448 substituted provision that any order of the Commission or bankruptcy court be

appealed only to the United States Court of Appeals for the Seventh Circuit for provision that an order of the Commission not be stayed by the Commission or any other court, an order by the bankruptcy court not be stayed by any other court, appeals of Commission or bankruptcy court orders only be made to the court of appeals of the United States having jurisdiction to review decisions and orders of the bankruptcy court, and no determinations of the court of appeals be review in any other court.

Subsec. (e). Pub. L. 96–448 reenacted subsec. (e) without change.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

§ 1006. Repealed. Pub. L. 97–35, title XI, § 1144(b), Aug. 13, 1981, 95 Stat. 669

Section, Pub. L. 96–254, title I, § 107, May 30, 1980, 94 Stat. 402, set forth provisions respecting employment of Rock Island Railroad employees. See section 797c of this title.

EFFECTIVE DATE OF REPEAL

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

§ 1007. Election

(a) Assistance received under employee protection agreement; waiver of other employee protection benefits; exception

Any employee who receives any assistance under an employee protection agreement entered into or benefit schedule prescribed under section 1005 of this title or any new career training assistance under section 1014 of this title shall be deemed to waive any employee protection benefits otherwise available to such employee under the Bankruptcy Act, subtitle IV of title 49 or any applicable contract or agreement (other than as provided in the agreement entered into in Washington, District of Columbia, on March 4, 1980, entitled ''Labor Protective Agreement Between Railroads Parties Hereto Involved in Midwest Rail Restructuring and Employees of Such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association'').

(b) Filing of statement

Any employee of the Rock Island Railroad who is entitled to receive assistance under this chapter shall, no later than 120 days after the effective date of any agreement entered into under section 1005(a) of this title or of any benefit schedule prescribed under section 1005(b) of this title, as the case may be, file a statement with the Board indicating whether such employee elects to receive (1) assistance under this chapter; or (2) any employee protection benefits otherwise available to such employee under the Bankruptcy Act, subtitle IV of title 49, or any applicable contract or agreement.

(c) Effect on priority, timing, etc., of employee protection payments

With regard to any employee who elects benefits under subsection (b)(2) of this section, nothing in this chapter shall be deemed to determine or otherwise affect the priority, status, or timing of payment of, or the liability for any claim for, employee protection which might have existed in the absence of this chapter.

(d) Limitation on assistance eligibility

An employee shall not be eligible to receive any assistance (other than moving expenses) under an employee protection agreement entered into or benefit schedule prescribed under section 1005 of this title or any new career training assistance under section 1014 of this title—

(1) during any period in which such employee is employed by any rail carrier providing temporary service over any lines of the Rock Island Railroad; or

(2) at any time after the date such employee receives an offer of employment, in his craft and for which such employee is qualified, from a rail carrier acquiring lines of the Rock Island Railroad.

(Pub. L. 96–254, title I, § 108, May 30, 1980, 94 Stat. 402; Pub. L. 96–448, title VII, § 701(b)(2), Oct. 14, 1980, 94 Stat. 1960; Pub. L. 97–468, title II, § 232, Jan. 14, 1983, 96 Stat. 2547.)

REFERENCES IN TEXT

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

This chapter, referred to in subsecs. (b) and (c), was in the original ''this title'', meaning title I (§ 101 et seq.) of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, as amended, known as the Rock Island Railroad Transition and Employee Assistance Act, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

1983—Subsec. (a). Pub. L. 97–468, § 232(1), substituted ''entered into or benefit schedule prescribed'' for ''or arrangement entered into''.

Subsec. (b). Pub. L. 97–468, § 232(2), substituted ''120 days after the effective date of any agreement entered into under section 1005(a) of this title or of any benefit schedule prescribed under section 1005(b) of this title, as the case may be'' for ''April 1, 1981''.

Subsec. (d). Pub. L. 97–468, § 232(1), substituted ''entered into or benefit schedule prescribed'' for ''or arrangement entered into''.

1980—Subsec. (a). Pub. L. 96–448 inserted reference to the agreement entered into in Washington on Mar. 4, 1980, and included the title of the agreement.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–448 effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as a note under section 1170 of Title 11, Bankruptcy.

§ 1008. Repealed. Pub. L. 97–468, title II, § 234(a), Jan. 14, 1983, 96 Stat. 2547

Section, Pub. L. 96–254, title I, § 110, May 30, 1980, 94 Stat. 403; Pub. L. 96–448, title VII, § 701(a)(2), Oct. 14, 1980, 94 Stat. 1959, related to authorization, etc., for obligation guarantees.

§ 1009. Expedited proceedings

(a) The Commission shall give all proceedings involving the Rock Island Railroad preference

over all other pending proceedings related to rail carriers and make all of its decisions at the earliest practicable time.

(b) The Commission shall, within 100 days of the filing of an application (or such shorter period as the court may set) pursuant to section 915 of this title, reach a decision on all proceedings filed after January 1, 1980, which involve a sale, transfer or lease of any line of the Rock Island Railroad to a solvent carrier.

(Pub. L. 96–254, title I, § 111, May 30, 1980, 94 Stat. 404.)

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 1010. Applicability of National Environmental Policy Act and section 6362(b) of title 42

The provisions of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] and section 6362(b) of title 42 shall not apply to transactions carried out pursuant to this chapter.

(Pub. L. 96–254, title I, § 113, May 30, 1980, 94 Stat. 405.)

REFERENCES IN TEXT

The National Environmental Policy Act, referred to in text, probably means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

This chapter, referred to in text, was in the original ''this title'', meaning title I (§ 101 et seq.) of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, as amended, known as the Rock Island Railroad Transition and Employee Assistance Act, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 1001 of this title and Tables.

§ 1011. Authority of Railroad Retirement Board

(a) The Board may prescribe such regulations as may be necessary to carry out its duties under this chapter.

(b) In carrying out its duties under this chapter, the Board may exercise such of the powers, duties, and remedies provided in subsections (a), (b), and (d) of section 362 of this title as are not inconsistent with the provisions of this chapter.

(Pub. L. 96–254, title I, § 114, May 30, 1980, 94 Stat. 405.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title I (§ 101 et seq.) of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, as amended, known as the Rock Island Railroad Transition and Employee Assistance Act, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 1001 of this title and Tables.

§ 1012. Publications and reports

Within 45 days after May 30, 1980, the Board shall publish, and make available for distribution by the Rock Island Railroad to all eligible employees, a document which describes in detail the rights of such employees under sections 1005, 1006,[1] 1007, and 1014 of this title.

(Pub. L. 96–254, title I, § 115, May 30, 1980, 94 Stat. 405.)

REFERENCES IN TEXT

Section 1006 of this title, referred to in text, was repealed by Pub. L. 97–35, title XI, § 1144(b), Aug. 13, 1981, 95 Stat. 669.

§ 1013. Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 96–254, title I, § 117, May 30, 1980, 94 Stat. 406, authorized Secretary of Transportation to exempt from requirements of the Safety Appliance Acts any railroad equipment when such requirements preclude development or implementation of more efficient railroad transportation equipment or other transportation innovations. See section 20306 of Title 49, Transportation.

§ 1014. New career training assistance

(a) Eligible employees

An employee who elects to receive a separation allowance under an employee protection agreement entered into or a benefit schedule prescribed under section 1005 of this title may, if so provided under such agreement or benefit schedule, receive from the Board reasonable expenses for training in qualified institutions for new career opportunities.

(b) Conditions for assistance

To be eligible for assistance under this section, an employee—

(1) must first exhaust any Federal educational benefits available to such employee under any existing program; and

(2) must begin his course of training within 2 years following the date of such employee's separation from employment with the Rock Island Railroad.

(c) Determination of reasonable expenses by Board

Reasonable expenses for assistance under this section shall be determined by the Board on the basis of an application therefor filed by an employee with the Board.

(d) Assistance prohibited after April 1, 1984

No assistance may be provided under this section after April 1, 1984.

(e) Definitions

As used in this section—

(1) the term ''expenses'' means actual, reasonable expenses paid for room, board, tuition, fees, or educational material in an amount not to exceed $3,000; and

(2) the term ''qualified institution'' means an educational institution accredited for pay-

[1] See References in Text note below.

ment by the Veterans' Administration under chapter 36 of title 38, or a State-accredited institution which has been in existence for not less than 2 years.

(Pub. L. 96–254, title I, § 119(a)–(e), May 30, 1980, 94 Stat. 408; Pub. L. 97–468, title II, § 233, Jan. 14, 1983, 96 Stat. 2547.)

CODIFICATION

Section is comprised of subsecs. (a) to (e) of section 119 of Pub. L. 96–254. Subsec. (f) of section 119 amended section 911 of this title.

AMENDMENTS

1983—Subsec. (a). Pub. L. 97–468 substituted ''under an employee protection agreement entered into or a benefit schedule prescribed under section 1005 of this title may, if so provided under such agreement or benefit schedule,'' for ''from the Rock Island Railroad under an employee protection agreement or arrangement entered into under section 1005 of this title may''.

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

§ 1015. Repealed. Pub. L. 104–88, title III, § 329(2), Dec. 29, 1995, 109 Stat. 952

Section, Pub. L. 96–254, title I, § 120, May 30, 1980, 94 Stat. 408; Pub. L. 97–216, title I, § 101, July 18, 1982, 96 Stat. 188, related to Interstate Commerce Commission ordering directed service over passenger commuter railroad lines that were in operation on Mar. 1, 1980, and had ceased to be in operation.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

§ 1016. Temporary rail banking

During the 180-day period beginning on May 30, 1980, no rail line or facility of the Rock Island Railroad which has been approved for abandonment by the Commission or the bankruptcy court may be downgraded, scrapped, or otherwise disposed of without the approval of the Secretary under this section. In no case before abandonment has been approved and before the 180-day period has elapsed shall the Secretary approve a disposition of such portion of the rail line or related facility to any carrier or other entity not engaged in providing railroad services or not formed for the purpose of providing railroad services. The Secretary, upon application by the Rock Island Railroad, shall grant such approval unless he finds that—

(1) a rail carrier, shipper, State, or other interested party has expressed in writing an interest in purchasing, leasing or rehabilitating the particular rail line or facility for purposes of providing rail service; and

(2) there is a reasonable expectation that such purchase transaction will be consummated.

(Pub. L. 96–254, title I, § 121, May 30, 1980, 94 Stat. 409.)

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 1017. Temporary operating approval

(a) Use of tracks and facilities by other rail carriers; terms of compensation; continuation of service

The Commission may authorize any rail carrier willing to do so voluntarily to use the tracks and facilities of a carrier which, on January 14, 1983, was the subject of a proceeding pending under section 77 of the Bankruptcy Act or under subchapter IV of chapter 11 of title 11. The use of such tracks and facilities shall be under such terms of compensation as the carriers establish between themselves, or if the carriers are unable to agree, under such terms of compensation as the Commission finds to be reasonable. The Commission shall have authority to authorize continued rail service under this section over the lines of any such carrier which has been ordered by the court having jurisdiction over such a carrier to liquidate its properties until the disposition of the properties of the estate of such carrier.

(b) Use of employees

In carrying out the provisions of this section, the Commission shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with the traffic subject to the action of the Commission.

(Pub. L. 96–254, title I, § 122, May 30, 1980, 94 Stat. 409; Pub. L. 97–130, § 5(a), Dec. 29, 1981, 95 Stat. 1690; Pub. L. 97–468, title II, § 214, Jan. 14, 1983, 96 Stat. 2545.)

REFERENCES IN TEXT

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

AMENDMENTS

1983—Subsec. (a). Pub. L. 97–468, § 214(a), substituted ''a carrier which, on January 14, 1983, was the subject of a proceeding pending under section 77 of the Bankruptcy Act or under subchapter IV of chapter 11 of title 11'' for ''the Rock Island Railroad or the Milwaukee Railroad'', and in last sentence substituted ''any such carrier which has been ordered by the court having jurisdiction over such a carrier to liquidate its properties until the disposition of the properties of the estate of such carrier'' for ''the Rock Island Railroad until the disposition of the properties of the estate of the Rock Island Railroad''.

Subsec. (c). Pub. L. 97–468, § 214(b), struck out subsec. (c) which defined ''Milwaukee Railroad''.

1981—Subsec. (a). Pub. L. 97–130 gave the Commission authority to authorize continued rail service under this section over the lines of the Rock Island Railroad until

the disposition of the properties of the estate of the Rock Island Railroad.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

TERMINATION OF APPLICABILITY OF AMENDMENT TO INTERSTATE COMMERCE SERVICE ORDER 1498 ON MAY 15, 1982

Section 5(b) of Pub. L. 97–130 provided that: ''The applicability of the amendment made by subsection (a) [amending subsec. (a) of this section] to Interstate Commerce Commission Service Order 1498 shall expire at the end of May 15, 1982.''

§ 1018. Judicial review

(a) Appeals

Notwithstanding any other provision of law, any appeal from—

(1) any decision of the bankruptcy court with respect to the constitutionality of any provision of this chapter; and

(2) any decision of the court having jurisdiction over the reorganization of the Milwaukee Railroad with respect to the constitutionality of the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.),

shall be taken to the United States Court of Appeals for the Seventh Circuit.

(b) Appellate proceedings

If appeals are taken from decisions described in subsection (a) of this section involving section 1005 or 1008[1] of this title or section 9 or 15 of the Milwaukee Railroad Restructuring Act [45 U.S.C. 908 or 915], the court of appeals shall determine such appeals in a consolidated proceeding, sitting en banc.

(c) Action in United States Court of Claims

Nothing in this chapter or in the Milwaukee Railroad Restructuring Act (45 U.S.C. 901 et seq.) shall limit the right of any person to commence an action in the United States Court of Claims[1] under section 1491 of title 28 (commonly referred to as the Tucker Act).

(Pub. L. 96–254, title I, § 124, as added Pub. L. 96–448, title VII, § 701(a)(1), Oct. 14, 1980, 94 Stat. 1959; amended Pub. L. 98–620, title IV, § 402(49), Nov. 8, 1984, 98 Stat. 3361.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (c), was in the original ''this title'', meaning title I (§ 101 et seq.) of Pub. L. 96–254, May 30, 1980, 94 Stat. 399, as amended, known as the Rock Island Railroad Transition and Employee Assistance Act, which is classified principally to this chapter. For complete classification of title I to the Code, see Short Title note set out under section 1001 of this title and Tables.

[1] See References in Text note below.

The Milwaukee Railroad Restructuring Act, referred to in subsecs. (a)(2) and (c), is Pub. L. 96–101, Nov. 4, 1979, 93 Stat. 736, as amended, which is classified principally to chapter 18 (§ 901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

Section 1008 of this title, referred to in subsec. (b), was repealed by Pub. L. 97–468, title II, § 234(a), Jan. 14, 1983, 96 Stat. 2547.

The United States Court of Claims, referred to in subsec. (c), and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–620 struck out provision requiring the court to render a final decision no later than 60 days after the filing of the last such appeal.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective Oct. 14, 1980, see section 710(d) of Pub. L. 96–448, set out as an Effective Date of 1980 Amendment note under section 1170 of Title 11, Bankruptcy.

CHAPTER 20—NORTHEAST RAIL SERVICE

Sec.
1101. Congressional findings and declarations.
1102. Statement of purpose.
1103. Goals and objectives.
1104. Definitions.
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1106. Exemption from transfer taxes and fees; recordation.
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§ 1101. Congressional findings and declarations

The Congress finds and declares that—

(1) the processes set in motion by the Regional Rail Reorganization Act of 1973 [45 U.S.C. 701 et seq.] have failed to create a self-sustaining railroad system in the Northeast region of the United States and have cost United States taxpayers many billions of dollars over original estimates;

(2) current arrangements for the provision of rail freight and commuter service in the Northeast and Midwest regions of the United States are inadequate to meet the transportation needs of the public and the needs of national security;

(3) although the Federal Government has provided billions of dollars in assistance for Conrail and its employees, the Federal inter-

est in ensuring the flow of interstate commerce through rail service in the private sector has not been achieved, and the protection of interstate commerce requires Federal intervention to preserve essential rail service in the private sector;

(4) the provisions for protection of employees of bankrupt railroads contained in the Regional Rail Reorganization Act of 1973 [45 U.S.C. 701 et seq.] have resulted in the payment of benefits far in excess of levels anticipated at the time of enactment, have imposed an excessive fiscal burden on the Federal taxpayer, and are now an obstacle to the establishment of improved rail service and continued rail employment in the Northeast region of the United States; and

(5) since holding Conrail liable for employee protection payments would destroy its prospects of becoming a profitable carrier and further injure its employees, an alternative employee protection system must be developed and funded.

(Pub. L. 97–35, title XI, § 1132, Aug. 13, 1981, 95 Stat. 644.)

REFERENCES IN TEXT

The Regional Rail Reorganization Act of 1973, referred to in pars. (1) and (4), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

EFFECTIVE DATE

Section 1169 of subtitle E (§§ 1131–1169) of title XI of Pub. L. 97–35 provided that: ''Except as otherwise provided, the provisions of and the amendments made by this subtitle [see Short Title note set out below] shall take effect on the date of the enactment of this subtitle [Aug. 13, 1981].''

SHORT TITLE

Section 1131 of subtitle E (§§ 1131–1169) of title XI of Pub. L. 97–35 provided that: ''This subtitle [enacting this chapter, and sections 159a, 581 to 590, 727 to 729, 744a, 748, 761 to 769c, and 797 to 797m of this title, amending sections 601, 702, 711 to 713, 724, 741, 743, 745, 821, 825, and 829 of this title, repealing sections 771 to 780, 910, and 1006 of this title, and enacting provisions set out as notes under sections 744a, 771, and 1101 of this title] may be cited as the 'Northeast Rail Service Act of 1981'.''

§ 1102. Statement of purpose

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

(1) the removal by a date certain of the Federal Government's obligation to subsidize the freight operations of Conrail;

(2) transfer of Conrail commuter service responsibilities to one or more entities whose principal purpose is the provision of commuter service; and

(3) an orderly return of Conrail freight service to the private sector.

(Pub. L. 97–35, title XI, § 1133, Aug. 13, 1981, 95 Stat. 644.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle E (§§ 1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, as amended, known as the Northeast Rail Service Act of 1981. For complete classification of this subtitle to the Code, see Short Title note set out under section 1101 of this title and Tables.

§ 1103. Goals and objectives

It is the goal of this subtitle to provide Conrail the opportunity to become profitable through the achievement of the following objectives:

(1) Nonagreement personnel

(A) Employees who are not subject to collective bargaining agreements (hereafter in this section referred to as ''nonagreement personnel'') should forego wage increases and benefits in an amount proportionately equivalent to the amount foregone by agreement employees pursuant to paragraph (4) of this section, adjusted annually to reflect inflation.

(B) After May 1, 1981, the number of nonagreement personnel should be reduced proportionately to any reduction in agreement employees (excluding reductions pursuant to the termination program under section 797a of this title).

(2) Suppliers

To facilitate the orderly movement of goods in interstate commerce, materials and services should continue to be available to Conrail, under normal business practices, including the provision of credit and normal financing arrangements.

(3) Shippers

Conrail should utilize the revenue opportunities available to it under the Staggers Rail Act of 1980 and subtitle IV of title 49.

(4) Agreement employees

(A) Conrail should enter into collective bargaining agreements with its employees which would reduce Conrail's costs in an amount equal to $200,000,000 a year, beginning April 1, 1981, adjusted annually to reflect inflation.

(B) Agreements under this subparagraph may provide for reductions in wage increases and for changes in fringe benefits common to agreement employees, including vacations and holidays.

(C) The cost reductions required under this subparagraph in the first year of the agreement may be deferred, but the aggregate cost reductions should be no less than an average of $200,000,000 per year for each of the first three one-year periods beginning April 1, 1981.

(D) The amount of cost reductions provided under this paragraph shall be calculated by subtracting the cost of an agreement entered into under this paragraph from (i) the cost that would otherwise result from the application of the national agreement reached by railroad industry and its employees, or (ii) until such national agreement is reached, the cost which the United States Railway Association estimates would result from the application of such a national agreement.

(Pub. L. 97–35, title XI, § 1134, Aug. 13, 1981, 95 Stat. 645.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle E (§§ 1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95

Stat. 643, as amended, known as the Northeast Rail Service Act of 1981. For complete classification of this subtitle to the Code, see Short Title note set out under section 1101 of this title and Tables.

The Staggers Rail Act of 1980, referred to in par. (3), is Pub. L. 96–448, Oct. 14, 1980, 94 Stat. 1895, as amended. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 10101 of Title 49, Transportation, and Tables.

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

See section 1341 of this title.

§ 1104. Definitions

As used in this subtitle, unless the context otherwise requires, the term:

(1) ''Amtrak'' means the National Railroad Passenger Corporation created under chapter 243 of title 49.

(2) ''Commission'' means the Interstate Commerce Commission.

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

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

(5) ''Conrail'' means the Consolidated Rail Corporation created under title III of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 741 et seq.).

(6) ''Rail carrier'' means a common carrier engaged in interstate or foreign commerce by rail subject to subtitle IV of title 49.

(7) ''Secretary'' means the Secretary of Transportation.

(8) ''Special court'' means the judicial panel established under section 209(b)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719(b)(1)) or, with respect to any proceedings that arise or continue after the panel is abolished pursuant to section 209(b)(2) of such Act [45 U.S.C. 719(b)(2)], the United States District Court for the District of Columbia.

(Pub. L. 97–35, title XI, § 1135(a), Aug. 13, 1981, 95 Stat. 645; Pub. L. 104–317, title VI, § 605(c)(3), Oct. 19, 1996, 110 Stat. 3859.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle E (§§ 1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, as amended, known as the Northeast Rail Service Act of 1981. For complete classification of this subtitle to the Code, see Short Title note set out under section 1101 of this title and Tables.

The Regional Rail Reorganization Act of 1973, referred to in par. (5), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended. Title III of the Regional Rail Reorganization Act of 1973 is classified generally to subchapter III (§ 741 et seq.) of chapter 16 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

CODIFICATION

In par. (1), ''chapter 243 of title 49'' substituted for ''title III of the Rail Passenger Service Act (45 U.S.C. 541 et seq.)'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1996—Par. (8). Pub. L. 104–317 amended par. generally. Prior to amendment, par. read as follows: ''''Special court' means the judicial panel established under section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–317 effective 90 days after Oct. 19, 1996, and except as otherwise provided, applicable proceedings that arise or continue after such effective date, see section 605(e) of Pub. L. 104–317, set out as a note under section 719 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 1105. Judicial review

(a) Special court; exclusive jurisdiction for civil actions

Notwithstanding any other provision of law, the special court shall have original and exclusive jurisdiction over any civil action—

(1) for injunctive, declaratory, or other relief relating to the enforcement, operation, execution, or interpretation of any provision of or amendment made by this subtitle or part 2 of the Conrail Privatization Act [45 U.S.C. 1311 et seq.], or administrative action taken thereunder to the extent such action is subject to judicial review;

(2) challenging the constitutionality of any provision of or amendment made by this subtitle or part 2 of the Conrail Privatization Act [45 U.S.C. 1311 et seq.];

(3) to obtain, inspect, copy, or review any document in the possession or control of the Secretary, Conrail, the United States Railway Association, or Amtrak that would be discoverable in litigation under any provision of or amendment made by this subtitle or part 2 of the Conrail Privatization Act [45 U.S.C. 1311 et seq.]; or

(4) seeking judgment upon any claim against the United States founded upon the Constitu-

tion and resulting from the operation of any provision of or amendment made by this subtitle or part 2 of the Conrail Privatization Act [45 U.S.C. 1311 et seq.].

(b) Appeal

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

(c) Scope of review of administrative actions

Administrative action under the provisions of or amendments made by this subtitle or part 2 of the Conrail Privatization Act [45 U.S.C. 1311 et seq.] which is subject to review shall be upheld unless such action is found to be unlawful under standards established for review of informal agency action under paragraphs (2)(A), (B), (C), and (D) of section 706 of title 5. The requirements of this subtitle or part 2 of the Conrail Privatization Act [45 U.S.C. 1311 et seq.], as the case may be, shall constitute the exclusive procedures required by law for such administrative action.

(Pub. L. 97–35, title XI, § 1152, Aug. 13, 1981, 95 Stat. 676; Pub. L. 99–509, title IV, § 4033(c)(1)(A), Oct. 21, 1986, 100 Stat. 1908; Pub. L. 100–352, § 6(f), June 27, 1988, 102 Stat. 664; Pub. L. 104–317, title VI, § 605(b)(3), (c)(4), Oct. 19, 1996, 110 Stat. 3859.)

REFERENCES IN TEXT

This subtitle, referred to in subsecs. (a) and (c), is subtitle E (§§ 1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, as amended, known as the Northeast Rail Service Act of 1981. For complete classification of this subtitle to the Code, see Short Title note set out under section 1101 of this title and Tables.

The Conrail Privatization Act, referred to in subsecs. (a) and (c), is subtitle A (§§ 4001–4052) of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1892. Part 2 of that Act is classified principally to subchapter II (§ 1311 et seq.) of chapter 22 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–317, § 605(b)(3), added heading and text of subsec. (b) and struck out former subsec. (b) which read as follows: ''A judgment of the special court in any action referred to in this section shall be reviewable only upon petition for a writ of certiorari to the Supreme Court of the United States. Such review is exclusive and any such petition shall be filed in the Supreme Court not more than 20 days after entry of such order or judgment.''

Subsec. (d). Pub. L. 104–317, § 605(c)(4), struck out subsec. (d) which read as follows: ''If the volume of civil actions under subsection (a) of this section so requires, the United States Railway Association shall apply to the judicial panel on multi-district litigation authorized by section 1407 of title 28 for the assignment of additional judges to the special court. Within 30 days after the date of such application, the panel shall assign to the special court such additional judges as may be necessary to exercise the jurisdiction described in subsection (a) of this section.''

1988—Subsec. (b). Pub. L. 100–352 struck out '', except that any order or judgment enjoining the enforcement, or declaring or determining the unconstitutionality or invalidity, of any provision of this subtitle shall be reviewable by direct appeal to the Supreme Court of the United States'' at end of first sentence and substituted ''such petition shall be filed in the Supreme Court'' for ''petition or appeal shall be filed'' in second sentence.

1986—Subsecs. (a), (b). Pub. L. 99–509, § 4033(c)(1)(A)(i), inserted ''or part 2 of the Conrail Privatization Act'' after ''subtitle'' wherever appearing.

Subsec. (c). Pub. L. 99–509, § 4033(c)(1)(A), inserted ''or part 2 of the Conrail Privatization Act'' after ''subtitle'' in first sentence and ''or part 2 of the Conrail Privatization Act, as the case may be,'' after ''subtitle'' in second sentence.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–317 effective 90 days after Oct. 19, 1996, and except as otherwise provided, applicable to proceedings that arise or continue after such effective date, see section 605(e) of Pub. L. 104–317, set out as a note under section 719 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100–352, set out as a note under section 1254 of Title 28, Judiciary and Judicial Procedure.

CASES PENDING IN SPECIAL COURT

For applicability of amendment by Pub. L. 104–317 to cases pending in special court established under section 719(b) of this title, see section 605(d) of Pub. L. 104–317, set out as a note under section 719 of this title.

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

See section 1341 of this title.

§ 1106. Exemption from transfer taxes and fees; recordation

(a)(1) All transfers or conveyances of any interest in rail property (whether real, personal, or mixed) which are made under any provision of or amendment made by this subtitle shall be exempt from any taxes, imposts, or levies now or hereby imposed, by the United States or by any State or any political subdivision of a State, on or in connection with such transfers or conveyances or on the recording of deeds, bills of sale, liens, encumbrances, easements, or other instruments evidencing, effectuating, or incident to any such transfers or conveyances, whether imposed on the transferor or on the transferee. Such transferors and transferees shall be entitled to record any such deeds, bills of sale, liens, encumberances,[1] easements, or other instruments, and to record the release or removal of any preexisting liens or encumbrances of record with respect to properties so transferred or conveyed, upon payment of any appropriate and generally applicable charges to compensate for the cost of the service performed.

(2) This section shall not apply to Federal income tax laws.

(b) Transfer of designated real property (including any interest in real property) authorized by the amendments made by part 2 of this subtitle shall have the same effect for purposes of rights and priorities with respect to such property as recordation on the transfer date of appropriate deeds, or other appropriate instruments, in offices appointed under State law for such recordation, except that acquiring rail carriers and other entities shall proffer such deeds

[1] So in original. Probably should be ''encumbrances,''.

or other instruments for recordation within 36 months after the transfer date as a condition of preserving such rights and priorities beyond the expiration of that period. Conrail shall cooperate in effecting the timely preparation, execution, and proffering for recordation of such deeds and other instruments.

(Pub. L. 97–35, title XI, § 1153, Aug. 13, 1981, 95 Stat. 677.)

REFERENCES IN TEXT

This subtitle, referred to in subsecs. (a)(1) and (b), is subtitle E (§§ 1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, as amended, known as the Northeast Rail Service Act of 1981. Part 2 (§§ 1136–1142) of subtitle E enacted sections 581 to 587, 727, 744a, and 761 to 769a of this title, amended sections 601 and 741 of this title, and enacted provisions set out as a note under section 744a of this title. For complete classification of this subtitle to the Code, see Short Title note set out under section 1101 of this title and Tables.

§ 1107. Repealed. Pub. L. 99–509, title IV, § 4033(c)(1)(C)(i)(I), Oct. 21, 1986, 100 Stat. 1908

Section, Pub. L. 97–35, title XI, § 1154, Aug. 13, 1981, 95 Stat. 677, provided that no distribution of assets of Conrail could be made with respect to any claims of United States until all other valid claims against Conrail were satisfied or until arrangements had been made for their satisfaction.

§ 1108. Concerted economic action

(a) Strikes interfering with rail freight service of Conrail

Any person engaging in concerted economic action over disputes with Amtrak Commuter or any commuter authority shall not be entitled to engage in any strike against, or otherwise to induce any employee of, Conrail, where an effect thereof is to interfere with rail freight service provided by Conrail.

(b) Strikes interfering with Amtrak Commuter's rail passenger service

Any person engaging in concerted economic action over disputes arising out of freight operations provided by Conrail shall not be entitled to engage in any strike against, or otherwise to induce any employee of, Amtrak Commuter or any commuter authority, where an effect thereof is to interfere with rail passenger service.

(c) Railway Labor Act deemed violated

Any concerted action in violation of this section shall be deemed to be a violation of the Railway Labor Act [45 U.S.C. 151 et seq.].

(Pub. L. 97–35, title XI, § 1158, Aug. 13, 1981, 95 Stat. 682.)

REFERENCES IN TEXT

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

§ 1109. Effectuation of cost reductions

Any cost reductions resulting from the provisions of or the amendments made by this subtitle shall not be used to limit the maximum level of any rate charged by Conrail for the provision of rail service, to limit the amount of any increase in any such rate (including rates maintained jointly by Conrail and other rail carriers), or to limit a surcharge or cancellation otherwise lawful under chapter 107[1] of title 49.

(Pub. L. 97–35, title XI, § 1159, Aug. 13, 1981, 95 Stat. 682.)

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle E (§§ 1131–1169) of title XI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, as amended, known as the Northeast Rail Service Act of 1981. For complete classification of this subtitle to the Code, see Short Title note set out under section 1101 of this title and Tables.

Chapter 107 of title 49, referred to in text, was omitted and a new chapter 107 enacted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804, 809.

§ 1110. Repealed. Pub. L. 99–509, title IV, § 4033(c)(1)(C)(i)(II), Oct. 21, 1986, 100 Stat. 1908

Section, Pub. L. 97–35, title XI, § 1161, Aug. 13, 1981, 95 Stat. 682, related to transfer of Conrail light density rail service lines.

§ 1111. Repealed. Pub. L. 105–134, title IV, § 408, Dec. 2, 1997, 111 Stat. 2586

Section, Pub. L. 97–35, title XI, § 1163, Aug. 13, 1981, 95 Stat. 685; Pub. L. 99–272, title IV, § 4017(a)(1), Apr. 7, 1986, 100 Stat. 110, related to Northeast Corridor cost dispute.

§ 1112. Interstate Commerce Commission proceedings

(a) Final decisions involving railroads in bankruptcy

Notwithstanding any other provision of subtitle IV of title 49, in any proceeding before the Commission under section 11324 or 11325 of title 49 involving a railroad in the Region, as defined in section 702 of this title, which was in a bankruptcy proceeding under section 77 of the Bankruptcy Act on November 4, 1979, the Commission shall, with or without a hearing, issue a final decision within a period not to exceed 180 days after receipt of an application under either such section.

(b) Final decisions involving profitable railroads

Notwithstanding any other provision of subtitle IV of title 49, in any proceeding before the Commission under section 11324 or 11325 of title 49 involving a profitable railroad in the Region, as defined in section 702 of this title, which received a loan under section 721(a) of this title, the Commission shall, with or without a hearing, issue a final decision within a period not to exceed 180 days after receipt of an application under either such section.

(c) Interest of United States attaching in bankruptcy, liquidation, abandonment, etc.

(1) If the Secretary determines under subsection (b) of this section that there is an agreement between a profitable railroad in the Region (as defined in section 702 of this title) which received a loan under section 721(a) of this

[1] See References in Text note below.

title and a prospective purchaser for the sale of such railroad, the Secretary shall limit the interest of the United States in any debt of such a railroad to an interest which attaches to such debt in the event of bankruptcy or substantial sale or liquidation of the assets of the railroad. The Secretary may substitute for the evidence of such debt contingency notes payable solely from the railroad operating assets then securing such debt, including reinvestments thereof, or such other contingency notes as the Secretary deems appropriate and which conform to the terms set forth in this subsection.

(2) If the interest of the United States is limited under paragraph (1), any new debt issued by such a railroad subsequent to the issuance of the debt described in paragraph (1) may have such higher priority in the event of bankruptcy, liquidation, or abandonment of the assets of such a railroad than the debt described in such paragraph as the Secretary and the railroad may agree.

(3) In carrying out the duties under this subsection, the Secretary may (A) enter into such agreements, (B) in accordance with any such agreements, cancel or cause to be cancelled or amend or cause to be amended any notes or securities currently held by agencies or instrumentalities of the United States, and (C) accept in exchange as substitution therefor such instruments evidencing the indebtedness owed to such agencies or instrumentalities as, in the Secretary's judgment, will effectuate the purposes of this subsection.

(Pub. L. 97–35, title XI, § 1164, Aug. 13, 1981, 95 Stat. 685; Pub. L. 97–468, title V, § 510, Jan. 14, 1983, 96 Stat. 2554; Pub. L. 104–88, title III, § 331, Dec. 29, 1995, 109 Stat. 953.)

REFERENCES IN TEXT

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

AMENDMENTS

1995—Subsecs. (a), (b). Pub. L. 104–88 substituted ''section 11324 or 11325'' for ''section 11344 or 11345''.

1983—Subsec. (c)(1). Pub. L. 97–468, § 510(1), substituted ''bankruptcy or substantial sale'' for ''bankruptcy, substantial sale,'' after ''in the event of'', and in last sentence substituted permission for the Secretary to substitute contingency notes for evidence of the debt for the requirement that the Secretary substitute contingency notes for evidence of the debt and inserted provision that the contingency notes be payable solely from the railroad operating assets then securing such debt, including reinvestments thereof, or be other contingency notes as the Secretary deems appropriate.

Subsec. (c)(2). Pub. L. 97–468, § 510(2), substituted permission that new debt may have such higher priority in the event of bankruptcy, liquidation, or abandonment of the assets of such a railroad than the debt described in par. (1) as the Secretary and the railroad may agree for the requirement that such debt have higher priority in the event of bankruptcy, liquidation, or abandonment of the assets of Conrail than the debt described in par. (1).

Subsec. (c)(3). Pub. L. 97–468, § 510(3), added par. (3).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 1113. Intercity passenger service

(a) Responsibility of Conrail to provide crews terminated; negotiations for employee transfers

After January 1, 1983, Conrail shall be relieved of the responsibility to provide crews for intercity passenger service on the Northeast Corridor. Amtrak, Amtrak Commuter, and Conrail, and the employees with seniority in both freight and passenger service shall commence negotiations not later than 120 days after August 13, 1981, for the right of such employees to move from one service to the other once each six-month period. Such agreement shall ensure that Conrail, Amtrak, and Amtrak Commuter have the right to furlough one employee in the same class or craft for each employee who returns through the exercise of seniority rights. If agreement is not reached within 360 days, such matter shall be submitted to binding arbitration.

(b) Eligibility of employees for employee protection benefits

Conrail employees who are deprived of employment by an assumption or discontinuance of intercity passenger service by Amtrak shall be eligible for employee protection benefits under section 797[1] of this title, notwithstanding any other provision of law, agreement, or arrangement, and notwithstanding the inability of such employees otherwise to meet the eligibility requirements of such section. Such protection shall be the exclusive protection applicable to Conrail employees deprived of employment or adversely affected by any such assumption or discontinuance.

(Pub. L. 97–35, title XI, § 1165, Aug. 13, 1981, 95 Stat. 686; Pub. L. 97–468, title V, § 505(a), Jan. 14, 1983, 96 Stat. 2553.)

REFERENCES IN TEXT

Section 797 of this title, referred to in subsec. (b), was repealed by Pub. L. 99–509, title IV, § 4024(c), Oct. 21, 1986, 100 Stat. 1904, effective on the sale date (Apr. 2, 1987).

CODIFICATION

''August 13, 1981'', referred to in subsec. (a), was in the original ''the date of the enactment'', which was editorially translated as the date of the enactment of this section, as the probable intent of Congress.

[1] See References in Text note below.

AMENDMENTS

1983—Pub. L. 97–468, § 505(a), designated existing provisions as subsec. (a) and added subsec. (b).

CONRAIL EMPLOYEES ELIGIBLE FOR EMPLOYEE PROTECTION BENEFITS UNDER REGIONAL RAIL REORGANIZATION ACT OF 1973

Pub. L. 97–377, title I, § 137, Dec. 21, 1982, 96 Stat. 1915, provided that: ''Conrail employees who are deprived of employment by assumption or discontinuance of intercity passenger service by Amtrak shall hereafter be eligible for employee protection benefits under section 701 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797), notwithstanding any other provision of law, agreement, or arrangement, and notwithstanding the inability of such employees otherwise to meet the eligibility requirements of such section. Such protection shall be the exclusive protection applicable to Conrail employees deprived of employment or adversely affected by any such assumption or discontinuance.''

§ 1114. Repealed. Pub. L. 99–509, title IV, § 4033(c)(1)(C)(i)(III), Oct. 21, 1986, 100 Stat. 1908

Section, Pub. L. 97–35, title XI, § 1166, Aug. 13, 1981, 95 Stat. 686, related to grant of trackage rights to any terminal railroad operating primarily in Philadelphia.

§ 1115. Redemption of stock

For the purpose of computing the amount for which certificates of value shall be redeemable under section 746 of this title, the series B preferred stock and the common stock conveyed to the Secretary under section 1107[1] of this title shall be deemed to be without fair market value unless in a proceeding brought under section 1105(a)(4) of this title the special court shall have determined that such securities had a value and shall have entered a judgment against the United States for that value. In such an event, the securities shall for purposes of section 746 of this title be deemed to have that value found by the special court.

(Pub. L. 97–35, title XI, § 1167(b), Aug. 13, 1981, 95 Stat. 686.)

REFERENCES IN TEXT

Section 1107 of this title, referred to in text, was repealed by Pub. L. 99–509, title IV, § 4033(c)(1)(C)(i)(I), Oct. 21, 1986, 100 Stat. 1908.

CODIFICATION

Section is comprised of subsec. (b) of section 1167 of Pub. L. 97–35. Subsec. (a) of section 1167 amended section 743 of this title. Subsec. (c) of section 1167, which was set out as subsec. (b) of this section and which provided that the clerk of the special court convey to the Secretary certain series B preferred stock and common stock of Conrail on deposit with the court, and authorized the Secretary to hold and exercise all rights to such Conrail securities, was repealed by Pub. L. 99–509, title IV, § 4033(c)(1)(C)(i)(IV), Oct. 21, 1986, 100 Stat. 1908.

§ 1116. Applicability of other laws

(a) The provisions of chapters 5 and 7 of title 5 (popularly known as the Administrative Procedure Act and including provisions popularly known as the Government in the Sunshine Act), the Federal Advisory Committee Act, section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)], the National Historic Preservation Act of 1966 [16 U.S.C. 470 et seq.], and section 303 of title 49 are inapplicable to actions taken in negotiating, approving, or implementing service transfers under title IV of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 761 et seq.][1] and to the implementation of the sale of the interest of the United States in Conrail under the Conrail Privatization Act [45 U.S.C. 1301 et seq.].

(b) The operation of trains by Conrail shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members who must be employed in connection with the operation of such trains.

(Pub. L. 97–35, title XI, § 1168, Aug. 13, 1981, 95 Stat. 687; Pub. L. 99–509, title IV, § 4033(c)(1)(B), Oct. 21, 1986, 100 Stat. 1908.)

REFERENCES IN TEXT

The Administrative Procedure Act, referred to in subsec. (a), is act June 11, 1946, ch. 324, 60 Stat. 237, as amended, which was classified to sections 1001 to 1011 of former title 5 and which was repealed and reenacted as subchapter II (§ 551 et seq.) of chapter 5, and chapter 7 (§ 701 et seq.), of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

The Government in the Sunshine Act, referred to in subsec. (a), is Pub. L. 94–409, Sept. 13, 1976, 90 Stat. 1241, which enacted section 552b of Title 5, amended sections 551, 552, 556, and 557 of Title 5, section 10 of Pub. L. 92–463, set out in the Appendix to Title 5, and section 410 of Title 39, Postal Service, and enacted provisions set out as notes under section 552b of Title 5. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 552b of Title 5 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (a), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

The National Historic Preservation Act of 1966, referred to in subsec. (a), probably means the National Historic Preservation Act, Pub. L. 89–665, Oct. 15, 1966, 80 Stat. 915, as amended, which is classified generally to subchapter II (§ 470 et seq.) of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code, see section 470(a) of Title 16 and Tables.

The Regional Rail Reorganization Act of 1973, referred to in subsec. (a), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended. Title IV of the Regional Rail Reorganization Act of 1973 was classified generally to subchapter IV (§ 761 et seq.) of chapter 16 of this title, and was repealed by Pub. L. 99–509, title IV, § 4033(a)(1), Oct. 21, 1986, 100 Stat. 1908. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

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

CODIFICATION

In subsec. (a), ''section 303 of title 49'' substituted for ''section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 1653(f)]'' on authority of Pub. L. 97–449, § 6(b), Jan. 12, 1983, 96 Stat. 2443, the first section of which enacted subtitle I (§ 101 et seq.) and chapter 31 (§ 3101 et seq.) of subtitle II of Title 49, Transportation.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–509 inserted ''and to the implementation of the sale of the interest of the United States in Conrail under the Conrail Privatization Act''.

[1] See References in Text note below.

[1] See References in Text note below.

CHAPTER 21—ALASKA RAILROAD TRANSFER

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§ 1201. Findings

The Congress finds that—

(1) the Alaska Railroad, which was built by the Federal Government to serve the transportation and development needs of the Territory of Alaska, presently is providing freight and passenger services that primarily benefit residents and businesses in the State of Alaska;

(2) many communities and individuals in Alaska are wholly or substantially dependent on the Alaska Railroad for freight and passenger service and provision of such service is an essential governmental function;

(3) continuation of services of the Alaska Railroad and the opportunity for future expansion of those services are necessary to achieve Federal, State, and private objectives; however, continued Federal control and financial support are no longer necessary to accomplish these objectives;

(4) the transfer of the Alaska Railroad and provision for its operation by the State in the manner contemplated by this chapter is made pursuant to the Federal goal and ongoing program of transferring appropriate activities to the States;

(5) the State's continued operation of the Alaska Railroad following the transfer contemplated by this chapter, together with such expansion of the railroad as may be necessary or convenient in the future, will constitute an appropriate public use of the rail system and associated properties, will provide an essential governmental service, and will promote the general welfare of Alaska's residents and visitors; and

(6) in order to give the State government the ability to determine the Alaska Railroad's role in serving the State's transportation needs in the future, including the opportunity to extend rail service, and to provide a savings to the Federal Government, the Federal Government should offer to transfer the railroad to the State, in accordance with the provisions of this chapter, in the same manner in which other Federal transportation functions (including highways and airports) have been transferred since Alaska became a State in 1959.

(Pub. L. 97–468, title VI, § 602, Jan. 14, 1983, 96 Stat. 2556.)

REFERENCES IN TEXT

This chapter, referred to in pars. (4) to (6), was in the original ''this title'', meaning title VI (§ 601 et seq.) of Pub. L. 97–468, Jan. 14, 1983, 96 Stat. 2556, known as the Alaska Railroad Transfer Act of 1982, which is classified principally to this chapter (§ 1201 et seq.). For complete classification of title VI to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 601 of title VI of Pub. L. 97–468 provided that: ''This title [enacting this chapter, amending sections 231, 712, and 802 of this title, sections 305, 3401, 5102, 5342, and 7327 of Title 5, Government Organization and Employees, section 410hh–1 of Title 16, Conservation, section 251 of Title 42, The Public Health and Welfare, section 10749 of Title 49, Transportation, and section 1655 of the Appendix to Title 49, repealing section 353a of Title 16, section 208a of Title 30, Mineral Lands and Mining, sections 975, 975a, and 975c to 975g of Title 43, Public Lands, and section 301a of Title 48, Territories and Insular Possessions, and amending provisions set out as a note under section 1611 of Title 43] may be cited as the 'Alaska Railroad Transfer Act of 1982'.''

§ 1202. Definitions

As used in this chapter, the term—

(1) ''Alaska Railroad'' means the agency of the United States Government that is operated by the Department of Transportation as a rail carrier in Alaska under authority of the Act of March 12, 1914 (43 U.S.C. 975 et seq.) (popularly referred to as the ''Alaska Railroad Act'') and section 6(i)[1] of the Department of Transportation Act, or, as the context requires, the railroad operated by that agency;

(2) ''Alaska Railroad Revolving Fund'' means the public enterprise fund maintained by the Department of the Treasury into which revenues of the Alaska Railroad and appropriations for the Alaska Railroad are deposited, and from which funds are expended for Alaska Railroad operation, maintenance and construction work authorized by law;

(3) ''claim of valid existing rights'' means any claim to the rail properties of the Alaska Railroad on record in the Department of the Interior as of January 13, 1983;

(4) ''date of transfer'' means the date on which the Secretary delivers to the State the four documents referred to in section 1203(b)(1) of this title;

(5) ''employees'' means all permanent personnel employed by the Alaska Railroad on the date of transfer, including the officers of the Alaska Railroad, unless otherwise indicated in this chapter;

(6) ''exclusive-use easement'' means an easement which affords to the easement holder the following:

(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;

(C) subjacent and lateral support of the lands subject to the easement; and

[1] See References in Text note below.

(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

(7) ''Native Corporation'' has the same meaning as such term has under section 102(6) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(6));

(8) ''officers of the Alaska Railroad'' means the employees occupying the following positions at the Alaska Railroad as of the day before the date of transfer: General Manager; Assistant General Manager; Assistant to the General Manager; Chief of Administration; and Chief Counsel;

(9) ''public lands'' has the same meaning as such term has under section 3(e) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(e));

(10) ''rail properties of the Alaska Railroad'' means all right, title, and interest of the United States to lands, buildings, facilities, machinery, equipment, supplies, records, rolling stock, trade names, accounts receivable, goodwill, and other real and personal property, both tangible and intangible, in which there is an interest reserved, withdrawn, appropriated, owned, administered or otherwise held or validly claimed for the Alaska Railroad by the United States or any agency or instrumentality thereof as of January 14, 1983, but excluding any such properties disposed of, and including any such properties acquired, in the ordinary course of business after that date but before the date of transfer, and also including the exclusive-use easement within the Denali National Park and Preserve conveyed to the State pursuant to this chapter and also excluding the following:

(A) the unexercised reservation to the United States for future rights-of-way required in all patents for land taken up, entered, or located in Alaska, as provided by the Act of March 12, 1914 (43 U.S.C. 975 et seq.);

(B) the right of the United States to exercise the power of eminent domain;

(C) any moneys in the Alaska Railroad Revolving Fund which the Secretary demonstrates, in consultation with the State, are unobligated funds appropriated from general tax revenues or are needed to satisfy obligations incurred by the United States in connection with the operation of the Alaska Railroad which would have been paid from such Fund but for this chapter and which are not assumed by the State pursuant to this chapter;

(D) any personal property which the Secretary demonstrates, in consultation with the State, prior to the date of transfer under section 1203 of this title, to be necessary to carry out functions of the United States after the date of transfer; and

(E) any lands or interest therein (except as specified in this chapter) within the boundaries of the Denali National Park and Preserve;

(11) ''right-of-way'' means, except as used in section 1208 of this title—

(A) an area extending not less than one hundred feet on both sides of the center line of any main line or branch line of the Alaska Railroad; or

(B) an area extending on both sides of the center line of any main line or branch line of the Alaska Railroad appropriated or retained by or for the Alaska Railroad that, as a result of military jurisdiction over, or non-Federal ownership of, lands abutting the main line or branch line, is of a width less than that described in subparagraph (A) of this paragraph;

(12) ''Secretary'' means the Secretary of Transportation;

(13) ''State'' means the State of Alaska or the State-owned railroad, as the context requires;

(14) ''State-owned railroad'' means the authority, agency, corporation or other entity which the State of Alaska designates or contracts with to own, operate or manage the rail properties of the Alaska Railroad or, as the context requires, the railroad owned, operated, or managed by such authority, agency, corporation, or other entity; and

(15) ''Village Corporation'' has the same meaning as such term has under section 3(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(j)).

(Pub. L. 97–468, title VI, § 603, Jan. 14, 1983, 96 Stat. 2556.)

REFERENCES IN TEXT

Act of March 12, 1914 (43 U.S.C. 975 et seq.) (popularly referred to as the ''Alaska Railroad Act''), referred to in pars. (1) and (10)(A), is act Mar. 12, 1914, ch. 37, 38 Stat. 305, as amended, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97–468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title.

Section 6(i) of the Department of Transportation Act, referred to in par. (1), is section 6(i) of Pub. L. 89–670, which was classified to section 1655(i) of former Title 49, Transportation, prior to repeal by Pub. L. 97–468, title VI, § 615(a)(4), Jan. 14, 1983, 96 Stat. 2578.

§ 1203. Transfer authorization

(a) Authority of Secretary; time, manner, etc., of transfer

Subject to the provisions of this chapter, the United States, through the Secretary, shall transfer all rail properties of the Alaska Railroad to the State. Such transfer shall occur as soon as practicable after the Secretary has made the certifications required by subsection (d) of this section and shall be accomplished in the manner specified in subsection (b) of this section.

(b) Simultaneous and interim transfers, conveyances, etc.

(1) On the date of transfer, the Secretary shall simultaneously:

(A) deliver to the State a bill of sale conveying title to all rail properties of the Alaska Railroad except any interest in real property;

(B) deliver to the State an interim conveyance of the rail properties of the Alaska Railroad that are not conveyed pursuant to subparagraph (A) of this paragraph and are not subject to unresolved claims of valid existing rights;

(C) deliver to the State an exclusive license granting the State the right to use all rail properties of the Alaska Railroad not conveyed pursuant to subparagraphs (A) or (B) of this paragraph pending conveyances in accordance with the review and settlement or final administrative adjudication of claims of valid existing rights;

(D) convey to the State a deed granting the State (i) an exclusive-use easement for that portion of the right-of-way of the Alaska Railroad within the Denali National Park and Preserve extending not less than one hundred feet on either side of the main or branch line tracks, and eight feet on either side of the centerline of the ''Y'' track connecting the main line of the railroad to the power station at McKinley Park Station and (ii) title to railroad-related improvements within such right-of-way.

Prior to taking the action specified in subparagraphs (A) through (D) of this paragraph, the Secretary shall consult with the Secretary of the Interior. The exclusive-use easement granted pursuant to subparagraph (D) of this paragraph and all rights afforded by such easement shall be exercised only for railroad purposes, and for such other transportation, transmission, or communication purposes for which lands subject to such easement were utilized as of January 14, 1983.

(2) The Secretary shall deliver to the State an interim conveyance of rail properties of the Alaska Railroad described in paragraph (1)(C) of this subsection that become available for conveyance to the State after the date of transfer as a result of settlement, relinquishment, or final administrative adjudication pursuant to section 1205 of this title. Where the rail properties to be conveyed pursuant to this paragraph are surveyed at the time they become available for conveyance to the State, the Secretary shall deliver a patent therefor in lieu of an interim conveyance.

(3) The force and effect of an interim conveyance made pursuant to paragraphs (1)(B) or (2) of this subsection shall be to convey to and vest in the State exactly the same right, title, and interest in and to the rail properties identified therein as the State would have received had it been issued a patent by the United States. The Secretary of the Interior shall survey the land conveyed by an interim conveyance to the State pursuant to paragraphs (1)(B) or (2) of this subsection and, upon completion of the survey, the Secretary shall issue a patent therefor.

(4) The license granted pursuant to paragraph (1)(C) of this subsection shall authorize the State to use, occupy, and directly receive all benefits of the rail properties described in the license for the operation of the State-owned railroad in conformity with the Memorandum of Understanding referred to in section 1205(b)(3) of this title. The license shall be exclusive, subject only to valid leases, permits, and other instruments issued before the date of transfer and easements reserved pursuant to subsection (c)(2) of this section. With respect to any parcel conveyed pursuant to this chapter, the license shall terminate upon conveyance of such parcel.

(c) Reservations to United States in interim conveyances and patents

(1) Interim conveyances and patents issued to the State pursuant to subsection (b) of this section shall confirm, convey and vest in the State all reservations to the United States (whether or not expressed in a particular patent or document of title), except the unexercised reservations to the United States for future rights-of-way made or required by the first section of the Act of March 12, 1914 (43 U.S.C. 975d). The conveyance to the State of such reservations shall not be affected by the repeal of such Act under section 615 of this title.[1]

(2) In the license granted under subsection (b)(1)(C) of this section and in all conveyances made to the State under this chapter, there shall be reserved to the Secretary of the Interior, the Secretary of Defense and the Secretary of Agriculture, as appropriate, existing easements for administration (including agency transportation and utility purposes) that are identified in the report required by section 1204(a) of this title. The appropriate Secretary may obtain, only after consent of the State, such future easements as are necessary for administration. Existing and future easements and use of such easements shall not interfere with operations and support functions of the State-owned railroad.

(3) There shall be reserved to the Secretary of the Interior the right to use and occupy, without compensation, five thousand square feet of land at Talkeetna, Alaska, as described in ARR lease numbered 69–25–0003–5165 for National Park Service administrative activities, so long as the use or occupation does not interfere with the operation of the State-owned railroad. This reservation shall be effective on the date of transfer under this section or the expiration date of such lease, whichever is later.

(d) Certifications by Secretary; scope, subject matter, etc.

(1) Prior to the date of transfer, the Secretary shall certify that the State has agreed to operate the railroad as a rail carrier in intrastate and interstate commerce.

(2)(A) Prior to the date of transfer, the Secretary shall also certify that the State has agreed to assume all rights, liabilities, and obligations of the Alaska Railroad on the date of transfer, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, and accounts payable, except as otherwise provided by this chapter.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the United States shall be solely responsible for—

(i) all claims and causes of action against the Alaska Railroad that accrue on or before the date of transfer, regardless of the date on which legal proceedings asserting such claims were or may be filed, except that the United

[1] See References in Text note below.

States shall, in the case of any tort claim, only be responsible for any such claim against the United States that accrues before the date of transfer and results in an award, compromise, or settlement of more than $2,500, and the United States shall not compromise or settle any claim resulting in State liability without the consent of the State, which consent shall not be unreasonably withheld; and

(ii) all claims that resulted in a judgment or award against the Alaska Railroad before the date of transfer.

(C) For purposes of subparagraph (B) of this paragraph, the term ''accrue'' shall have the meaning contained in section 2401 of title 28.

(D) Any hazardous substance, petroleum or other contaminant release at or from the State-owned rail properties that began prior to January 5, 1985, shall be and remain the liability of the United States for damages and for the costs of investigation and cleanup. Such liability shall be enforceable under 42 U.S.C. 9601 et seq.[1] for any release described in the preceding sentence.

(3)(A) Prior to the date of transfer, the Secretary shall also certify that the State-owned railroad has established arrangements pursuant to section 1206 of this title to protect the employment interests of employees of the Alaska Railroad during the two-year period commencing on the date of transfer. These arrangements shall include provisions—

(i) which ensure that the State-owned railroad will adopt collective bargaining agreements in accordance with the provisions of subparagraph (B) of this paragraph;

(ii) for the retention of all employees, other than officers of the Alaska Railroad, who elect to transfer to the State-owned railroad in their same positions for the two-year period commencing on the date of transfer, except in cases of reassignment, separation for cause, resignation, retirement, or lack of work;

(iii) for the payment of compensation to transferred employees (other than employees provided for in subparagraph (E) of this paragraph), except in cases of separation for cause, resignation, retirement, or lack of work, for two years commencing on the date of transfer at or above the base salary levels in effect for such employees on the date of transfer, unless the parties otherwise agree during that two-year period;

(iv) for priority of reemployment at the State-owned railroad during the two-year period commencing on the date of transfer for transferred employees who are separated for lack of work, in accordance with subparagraph (C) of this paragraph (except for officers of the Alaska Railroad, who shall receive such priority for one year following the date of transfer);

(v) for credit during the two-year period commencing on the date of transfer for accrued annual and sick leave, seniority rights, and relocation and turnaround travel allowances which have been accrued during their period of Federal employment by transfered[2] employees retained by the State-owned railroad (except for officers of the Alaska Railroad, who shall receive such credit for one year following the date of transfer);

(vi) for payment to transferred employees retained by the State-owned railroad during the two-year period commencing on the date of transfer, including for one year officers retained or separated under subparagraph (E) of this paragraph, of an amount equivalent to the cost-of-living allowance to which they are entitled as Federal employees on the day before the date of transfer, in accordance with the provisions of subparagraph (D) of this paragraph; and

(vii) for health and life insurance programs for transferred employees retained by the State-owned railroad during the two-year period commencing on the date of transfer, substantially equivalent to the Federal health and life insurance programs available to employees on the day before the date of transfer (except for officers of the Alaska Railroad, who shall receive such credit for one year following the date of transfer).

(B) The State-owned railroad shall adopt all collective bargaining agreements which are in effect on the date of transfer. Such agreements shall continue in effect for the two-year period commencing on the date of transfer, unless the parties agree to the contrary before the expiration of that two-year period. Such agreements shall be renegotiated during the two-year period, unless the parties agree to the contrary. Any labor-management negotiation impasse declared before the date of transfer shall be settled in accordance with chapter 71 of title 5. Any impasse declared after the date of transfer shall be subject to applicable State law.

(C) Federal service shall be included in the computation of seniority for transferred employees with priority for reemployment, as provided in subparagraph (A)(iv) of this paragraph.

(D) Payment to transferred employees pursuant to subparagraph (A)(vi) of this paragraph shall not exceed the percentage of any transferred employee's base salary level provided by the United States as a cost-of-living allowance on the day before the date of transfer, unless the parties agree to the contrary.

(E) Prior to the date of transfer, the Secretary shall also certify that the State-owned railroad has agreed to the retention, for at least one year from the date of transfer, of the offices of the Alaska Railroad, except in cases of separation for cause, resignation, retirement, or lack of work, at or above their base salaries in effect on the date of transfer, in such positions as the State-owned railroad may determine; or to the payment of lump-sum severance pay in an amount equal to such base salary for one year to officers not retained by the State-owned railroad upon transfer or, for officers separated within one year on or after the date of transfer, of a portion of such lump-sum severance payment (diminished pro rata for employment by the State-owned railroad within one year of the date of transfer prior to separation).

(4) Prior to the date of transfer, the Secretary shall also certify that the State has agreed to allow representatives of the Secretary adequate access to employees and records of the Alaska

[2] So in original.

Railroad when needed for the performance of functions related to the period of Federal ownership.

(5) Prior to the date of transfer, the Secretary shall also certify that the State has agreed to compensate the United States at the value, if any, determined pursuant to section 1204(d) of this title.

(Pub. L. 97–468, title VI, § 604, Jan. 14, 1983, 96 Stat. 2559; Pub. L. 108–7, div. I, title III, § 345(5), Feb. 20, 2003, 117 Stat. 418; Pub. L. 108–447, div. H, title I, § 152(3), Dec. 8, 2004, 118 Stat. 3222.)

REFERENCES IN TEXT

Act of March 12, 1914, and such Act, referred to in subsec. (c)(1), is act Mar. 12, 1914, ch. 37, 38 Stat. 305, as amended, popularly known as the Alaska Railroad Act, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97–468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to this section.

Section 615 of this title, referred to in subsec. (c)(1), means section 615 of title VI of Pub. L. 97–468, Jan. 14, 1983, 96 Stat. 2577. Title VI of Pub. L. 97–468 is known as the Alaska Railroad Transfer Act of 1982 and is classified principally to this chapter. Under section 615, the repeal is effective on the date of transfer to the State of Alaska (pursuant to section 1203 of this title) or other disposition (pursuant to section 1210 of this title), whichever first occurs.

42 U.S.C. 9601 et seq., referred to in subsec. (d)(2)(D), probably means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (d)(2)(D). Pub. L. 108–447 added subpar. (D).

2003—Subsec. (b)(1). Pub. L. 108–7 struck out at end: ''In the event of reversion to the United States, pursuant to section 1209 of this title, of the State's interests in all or part of the lands subject to such easement, such easement shall terminate with respect to the lands subject to such reversion, and no new exclusive-use easement with respect to such reverted lands shall be granted except by Act of Congress.''

TRANSFER OF ALASKA RAILROAD TO STATE OF ALASKA

The State of Alaska accepted the certification requirements of the Alaska Railroad Transfer Act [this chapter] by 1984 SLA ch. 54, eff. May 19, 1984. Thereafter, by 1984 SLA ch. 153, eff. July 6, 1984, the Alaska Railroad Corporation was established to manage and operate the Alaska Railroad. The transfer of the Alaska Railroad to the State of Alaska was carried out on January 5, 1985.

§ 1204. Transition period

(a) Joint report by Secretary and Governor of Alaska; contents, preparation, etc.

Within 6 months after January 14, 1983, the Secretary and the Governor of Alaska shall jointly prepare and deliver to the Congress of the United States and the legislature of the State a report that describes to the extent possible the rail properties of the Alaska Railroad, the liabilities and obligations to be assumed by the State, the sum of money, if any, in the Alaska Railroad Revolving Fund to be withheld from the State pursuant to section 1202(10)(C)[1] of this title, and any personal property to be withheld pursuant to section 1202(10)(D)[1] of this title. The report shall separately identify by the best available descriptions (1) the rail properties of the Alaska Railroad to be transferred pursuant to section 1203(b)(1)(A), (B), and (D) of this title; (2) the rail properties to be subject to the license granted pursuant to section 1203(b)(1)(C) of this title; and (3) the easements to be reserved pursuant to section 1203(c)(2) of this title. The Secretaries of Agriculture, Defense, and the Interior and the Administrator of the General Services Administration shall provide the Secretary with all information and assistance necessary to allow the Secretary to complete the report within the time required.

(b) Inspection, etc., of rail properties and records; terms and conditions; restrictions

During the period from January 14, 1983, until the date of transfer, the State shall have the right to inspect, analyze, photograph, photocopy and otherwise evaluate all of the rail properties of the Alaska Railroad and all records related to the rail properties of the Alaska Railroad maintained by any agency of the United States under conditions established by the Secretary to protect the confidentiality of proprietary business data, personnel records, and other information, the public disclosure of which is prohibited by law. During that period, the Secretary and the Alaska Railroad shall not, without the consent of the State and only in conformity with applicable law and the Memorandum of Understanding referred to in section 1205(b)(3) of this title—

(1) make or incur any obligation to make any individual capital expenditure of money from the Alaska Railroad Revolving Fund in excess of $300,000;

(2) (except as required by law) sell, exchange, give, or otherwise transfer any real property included in the rail properties of the Alaska Railroad; or

(3) lease any rail property of the Alaska Railroad for a term in excess of five years.

(c) Format for accounting practices and systems

Prior to transfer of the rail properties of the Alaska Railroad to the State, the Alaska Railroad's accounting practices and systems shall be capable of reporting data to the Interstate Commerce Commission in formats required of comparable rail carriers subject to the jurisdiction of the Interstate Commerce Commission.

(d) Fair market value; determination, terms and conditions, etc.

(1) Within nine months after January 14, 1983, the United States Railway Association (hereinafter in this section referred to as the ''Association'') shall determine the fair market value of the Alaska Railroad under the terms and conditions of this chapter, applying such procedures, methods and standards as are generally accepted as normal and common practice. Such determination shall include an appraisal of the real and personal property to be transferred to the State pursuant to this chapter. Such appraisal by the Association shall be conducted in the usual manner in accordance with generally accepted industry standards, and shall consider the current fair market value and potential fu-

[1] See Codification note below.

ture value if used in whole or in part for other purposes. The Association shall take into account all obligations imposed by this chapter and other applicable law upon operation and ownership of the State-owned railroad. In making such determination, the Association shall use to the maximum extent practicable all relevant data and information, including, if relevant, that contained in the report prepared pursuant to subsection (a) of this section.

(2) The determination made pursuant to paragraph (1) of this subsection shall not be construed to affect, enlarge, modify, or diminish any inventory, valuation, or classification required by the Interstate Commerce Commission pursuant to subchapter V[2] of chapter 107 of title 49.

(Pub. L. 97–468, title VI, § 605(a)–(d), Jan. 14, 1983, 96 Stat. 2562, 2563.)

REFERENCES IN TEXT

Subchapter V of chapter 107 of title 49, referred to in subsec. (d)(2), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804.

CODIFICATION

In subsec. (a), references to section 1202(10)(C) and (D) of this title were in the original references to section 603(8)(C) and (D) of title VI of Pub. L. 97–468, and were editorially translated as section 1202(10)(C) and (D), as the probable intent of Congress, in view of section 1202(8) containing no subpars. (C) and (D) and the subject matter of section 1202(10)(C), which relates to money in the Alaska Railroad Revolving Fund being withheld from the State, and section 1202(10)(D), which relates to personal property being withheld.

Section is comprised of subsecs. (a) to (d) of section 605 of Pub. L. 97–468. Subsec. (e) of section 605 of Pub. L. 97–468 amended section 712 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

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

See section 1341 of this title.

§ 1205. Lands to be transferred

(a) Availability of lands among rail properties

Lands among the rail properties of the Alaska Railroad shall not be—

(1) available for selection under section 12 of the Act of January 2, 1976, as amended (43 U.S.C. 1611, note), subject to the exception contained in section 12(b)(8)(i)(D) of such Act, as amended by subsection (d)(5) of this section;

(2) available for conveyance under section 1425 of the Alaska National Interest Lands Conservation Act (Public Law 96–487; 94 Stat. 2515);

(3) available for conveyance to Chugach Natives, Inc., under sections 1429 or 1430 of the Alaska National Interest Lands Conservation Act (Public Law 96–487; 94 Stat. 2531) or under sections 12(c) or 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1611(c) and 1613(h)(8), respectively); or

(4) available under any law or regulation for entry, location, or for exchange by the United States, or for the initiation of a claim or selection by any party other than the State or other transferee under this chapter, except that this paragraph shall not prevent a conveyance pursuant to section 12(b)(8)(i)(D) of the Act of January 2, 1976 (43 U.S.C. 1611, note), as amended by subsection (d)(5) of this section.

(b) Review and settlement of claims; administrative adjudication; management of lands; procedures applicable

(1)(A) During the ten months following January 14, 1983, so far as practicable consistent with the priority of preparing the report required pursuant to section 1204(a) of this title, the Secretary of the Interior, Village Corporations with claims of valid existing rights, and the State shall review and make a good faith effort to settle as many of the claims as possible. Any agreement to settle such claims shall take effect and bind the United States, the State, and the Village Corporation only as of the date of transfer of the railroad.

(B) At the conclusion of the review and settlement process provided in subparagraph (A) of this paragraph, the Secretary of the Interior shall prepare a report identifying lands to be conveyed in accordance with settlement agreements under this chapter or applicable law. Such settlement shall not give rise to a presumption as to whether a parcel of land subject to such agreement is or is not public land.

(2) The Secretary of the Interior shall have the continuing jurisdiction and duty to adjudicate unresolved claims of valid existing rights pursuant to applicable law and this chapter. The Secretary of the Interior shall complete the final administrative adjudication required under this subsection not later than three years after January 14, 1983, and shall complete the survey of all lands to be conveyed under this chapter not later than five years after January 14, 1983, and after consulting with the Governor of the State of Alaska to determine priority of survey with regard to other lands being processed for patent to the State. The Secretary of the Interior shall give priority to the adjudication of Village Corporation claims as required in this section. Upon completion of the review and settlement process required by paragraph (1)(A) of this subsection, with respect to lands not subject to an agreement under such paragraph, the Secretary of the Interior shall adjudicate which lands subject to claims of valid existing rights filed by Village Corporations, if any, are public lands and shall complete such final administrative adjudication within two years after January 14, 1983.

(3) Pending settlement or final administrative adjudication of claims of valid existing rights filed by Village Corporations prior to the date of transfer or while subject to the license granted

[2] See References in Text note below.

to the State pursuant to section 1203(b)(1)(C) of this title, lands subject to such claims shall be managed in accordance with the Memorandum of Understanding among the Federal Railroad Administration, the State, Eklutna, Incorporated, Cook Inlet Region, Incorporated (as that term is used in section 12 of the Act of January 2, 1976 (Public Law 94–204; 89 Stat. 1150)), and Toghotthele Corporation, executed by authorized officers or representatives of each of these entities. Duplicate originals of the Memorandum of Understanding shall be maintained and made available for public inspection and copying in the Office of the Secretary, at Washington, District of Columbia, and in the Office of the Governor of the State of Alaska, at Juneau, Alaska.

(4) The following procedures and requirements are established to promote finality of administrative adjudication of claims of valid existing rights filed by Village Corporations, to clarify and simplify the title status of lands subject to such claims, and to avoid potential impairment of railroad operations resulting from joint or divided ownership in substantial segments of right-of-way:

(A)(i) Prior to final administrative adjudication of Village Corporation claims of valid existing rights in land subject to the license granted under section 1203(b)(1)(C) of this title, the Secretary of the Interior may, notwithstanding any other provision of law, accept relinquishment of so much of such claims as involved lands within the right-of-way through execution of an agreement with the appropriate Village Corporation effective on or after the date of transfer. Upon such relinquishment, the interest of the United States in the right-of-way shall be conveyed to the State pursuant to section 1203(b)(1)(B) or (2) of this title.

(ii) With respect to a claim described in clause (i) of this subparagraph that is not settled or relinquished prior to final administrative adjudication, the Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad. Upon failure of the interested Village Corporation to relinquish so much of its claims as involve lands within the right-of-way prior to final adjudication of valid existing rights, the Secretary shall convey to the State pursuant to section 1203(b)(1)(B) or (2) of this title all right, title and interest of the United States in and to the right-of-way free and clear of such Village Corporation's claim to and interest in lands within such right-of-way.

(B) Where lands within the right-of-way, or any interest in such lands, have been conveyed from Federal ownership prior to January 14, 1983, or is subject to a claim of valid existing rights by a party other than a Village Corporation, the conveyance to the State of the Federal interest in such properties pursuant to section 1203(b)(1)(B) or (2) of this title shall grant not less than an exclusive-use easement in such properties. The foregoing requirements shall not be construed to permit the conveyance to the State of less than the entire Federal interest in the rail properties of the Alaska Railroad required to be conveyed by section 1203(b) of this title. If an action is commenced against the State or the United States contesting the validity or existence of a reservation of right-of-way for the use or benefit of the Alaska Railroad made prior to January 14, 1983, the Secretary of the Interior, through the Attorney General, shall appear in and defend such action.

(c) Judicial review; remedies available; standing of State

(1) The final administrative adjudication pursuant to subsection (b) of this section shall be final agency action and subject to judicial review only by an action brought in the United States District Court for the District of Alaska.

(2) No administrative or judicial action under this chapter shall enjoin or otherwise delay the transfer of the Alaska Railroad pursuant to this chapter, or substantially impair or impede the operations of the Alaska Railroad or the State-owned railroad.

(3) Before the date of transfer, the State shall have standing to participate in any administrative determination or judicial review pursuant to this chapter. If transfer to the State does not occur pursuant to section 1203 of this title, the State shall not thereafter have standing to participate in any such determination or review.

(d) Omitted

(e) Liability of State for damage to land while used under license

The State shall be liable to a party receiving a conveyance of land among the rail properties of the Alaska Railroad subject to the license granted pursuant to section 1203(b)(1)(C) of this title for damage resulting from use by the State of the land under such license in a manner not authorized by such license.

(Pub. L. 97–468, title VI, § 606(a)–(c), (e), Jan. 14, 1983, 96 Stat. 2564–2566, 2571; Pub. L. 98–620, title IV, § 402(52), Nov. 8, 1984, 98 Stat. 3361.)

REFERENCES IN TEXT

Section 12 of the Act of January 2, 1976, as amended, referred to in subsecs. (a)(1), (4) and (b)(3), is section 12 of Pub. L. 94–204, Jan. 2, 1976, 89 Stat. 1150, as amended, which is set out as a note under section 1611 of Title 43, Public Lands. Section 12(b)(8)(i)(D) of such Act as amended by subsection (d)(5) of this section is the amendment of subsection (b)(8)(i)(D) of section 12 of Pub. L. 94–204 by section 606(d)(5) of Pub. L. 97–468, title VI, Jan. 14, 1983, 96 Stat. 2566.

The Alaska National Interest Lands Conservation Act, referred to in subsecs. (a)(2) and (c), is Pub. L. 96–497, Dec. 2, 1980, 94 Stat. 2371, as amended. Sections 1425, 1429, and 1430 of the Act (94 Stat. 2515, 2531) were not classified to the Code. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 16, Conservation, and Tables.

CODIFICATION

Section is comprised of subsecs. (a)–(c) and (e) of section 606 of Pub. L. 97–468. Subsec. (d) of section 606 of Pub. L. 97–468 amended section 12 of Pub. L. 94–204, which is set out as a note under section 1611 of Title 43, Public Lands.

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98–620 struck out provision that required review of agency action pursuant to

this chapter to be expedited to same extent as expedited review provided by section 1108 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3168).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 1206. Employees of Alaska Railroad

(a) Coverage under Federal civil service retirement laws; election, funding, nature of benefits, etc., for employees transferring to State-owned railroad; voluntary separation incentives

(1) Any employees who elect to transfer to the State-owned railroad and who on the day before the date of transfer are subject to the civil service retirement law (subchapter III of chapter 83 of title 5) shall, so long as continually employed by the State-owned railroad without a break in service, continue to be subject to such law, except that the State-owned railroad shall have the option of providing benefits in accordance with the provisions of paragraph (2) of this subsection. Employment by the State-owned railroad without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5. The State-owned railroad shall be the employing agency for purposes of section 8334(a) of title 5 and shall contribute to the Civil Service Retirement and Disability Fund a sum as provided by such section, except that such sum shall be determined by applying to the total basic pay (as defined in section 8331(3) of title 5) paid to the employees of the State-owned railroad who are covered by the civil service retirement law, the per centum rate determined annually by the Director of the Office of Personnel Management to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of title 5. The State-owned railroad shall pay into the Federal Civil Service Retirement and Disability Fund that portion of the cost of administration of such Fund which is demonstrated by the Director of the Office of Personnel Management to be attributable to its employees.

(2) At any time during the two-year period commencing on the date of transfer, the State-owned railroad shall have the option of providing to transferred employees retirement benefits, reflecting prior Federal service, in or substantially equivalent to benefits under the retirement program maintained by the State for State employees. If the State decides to provide benefits under this paragraph, the State shall provide such benefits to all transferred employees, except those employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5 within five years after the date of transfer and who elect to remain participants in the Federal retirement program.

(3) If the State provides benefits under paragraph (2) of this subsection—

(A) the provisions of paragraph (1) of this subsection regarding payments into the Civil Service Retirement and Disability Fund for those employees who are transferred to the State program shall have no further force and effect (other than for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5 within five years after the date of transfer and who elect to remain participants in the Federal retirement program); and

(B) all of the accrued employee and employer contributions and accrued interest on such contributions made by and on behalf of the transferred employees during their prior Federal service (other than amounts for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5 within five years after the date of transfer and who elect to remain participants in the Federal retirement program) shall be withdrawn from the Federal Civil Service Retirement and Disability Fund and shall be paid into the retirement fund utilized by the State-owned railroad for the transferred employees, in accordance with the provisions of paragraph (2) of this subsection. Upon such payment, credit for prior Federal service under the Federal civil service retirement system shall be forever barred, notwithstanding the provisions of section 8334 of title 5.

(4)(A) The State-owned railroad shall be included in the definition of ''agency'' for purposes of section 3(a), (b), (c), and (e) of the Federal Workforce Restructuring Act of 1994 and may elect to participate in the voluntary separation incentive program established under such Act. Any employee of the State-owned railroad who meets the qualifications as described under the first sentence of paragraph (1) shall be deemed an employee under such Act.

(B) An employee who has received a voluntary separation incentive payment under this paragraph and accepts employment with the State-owned railroad within 5 years after the date of separation on which payment of the incentive is based shall be required to repay the entire amount of the incentive payment unless the head of the State-owned railroad determines that the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(b) Coverage for employees not transferring to State-owned railroad

Employees of the Alaska Railroad who do not transfer to the State-owned railroad shall be entitled to all of the rights and benefits available to them under Federal law for discontinued employees.

(c) Rights and benefits of transferred employees whose employment with State-owned railroad is terminated

Transferred employees whose employment with the State-owned railroad is terminated during the two-year period commencing on the date of transfer shall be entitled to all of the rights and benefits of discontinued employees that such employees would have had under Federal law if their termination had occurred immediately before the date of the transfer, except

that financial compensation paid to officers of the Alaska Railroad shall be limited to that compensation provided pursuant to section 1203(d)(3)(E) of this title. Such employees shall also be entitled to seniority and other benefits accrued under Federal law while they were employed by the State-owned railroad on the same basis as if such employment had been Federal service.

(d) Lump-sum payment for unused annual leave for employees transferring to State-owned railroad

Any employee who transfers to the State-owned railroad under this chapter shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, but shall be credited by the State with the unused annual leave balance at the time of transfer.

(e) Continued coverage for certain employees and annuitants in Federal health benefits plans and life insurance plans

(1) Any person described under the provisions of paragraph (2) may elect life insurance coverage under chapter 87 of title 5 and enroll in a health benefits plan under chapter 89 of title 5 in accordance with the provisions of this subsection.

(2) The provisions of paragraph (1) shall apply to any person who—

(A) on March 30, 1994, is an employee of the State-owned railroad;

(B) has 20 years or more of service (in the civil service as a Federal employee or as an employee of the State-owned railroad, combined) on the date of retirement from the State-owned railroad; and

(C)(i) was covered under a life insurance policy pursuant to chapter 87 of title 5 on January 4, 1985, for the purpose of electing life insurance coverage under the provisions of paragraph (1); or

(ii) was enrolled in a health benefits plan pursuant to chapter 89 of title 5 on January 4, 1985, for the purpose of enrolling in a health benefits plan under the provisions of paragraph (1).

(3) For purposes of this section, any person described under the provisions of paragraph (2) shall be deemed to have been covered under a life insurance policy under chapter 87 of title 5 and to have been enrolled in a health benefits plan under chapter 89 of title 5 during the period beginning on January 5, 1985, through the date of retirement of any such person.

(4) The provisions of paragraph (1) shall not apply to any person described under paragraph (2) until the date such person retires from the State-owned railroad.

(Pub. L. 97–468, title VI, § 607, Jan. 14, 1983, 96 Stat. 2571; Pub. L. 100–238, title I, § 136(a), Jan. 8, 1988, 101 Stat. 1766; Pub. L. 103–226, § 10, Mar. 30, 1994, 108 Stat. 122.)

REFERENCES IN TEXT

The Federal Workforce Restructuring Act of 1994, referred to in subsec. (a)(4)(A), is Pub. L. 103–226, Mar. 30, 1994, 108 Stat. 111. Section 3 of the Act is set out as a note under section 5597 of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 2101 of Title 5 and Tables.

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103–226, § 10(a), added par. (4).

Subsec. (e). Pub. L. 103–226, § 10(b), added subsec. (e) and struck out former subsec. (e) which related to continued coverage for certain employees and annuitants in Federal health benefits and life insurance plans.

1988—Subsec. (e). Pub. L. 100–238 added subsec. (e).

ADMINISTRATIVE PROVISION

Section 136(b) of Pub. L. 100–238 provided that: ''Within 180 days after the date of enactment of this section [Jan. 8, 1988], the Director of the Office of Personnel Management shall notify any person described under the provisions of section 607(e)(2)(A) of such Act [45 U.S.C. 1206(e)(2)(A)], for the purpose of the election of a life insurance policy or the enrollment in a health benefits plan pursuant to the provisions of section 607(e)(1) of the Alaska Railroad Transfer Act of 1982 [45 U.S.C. 1206(e)(1)] (as amended by subsection (a) of this section).''

§ 1207. State operation

(a) Laws, authorities, etc., applicable to State-owned railroad with status as rail carrier engaged in interstate and foreign commerce

(1) After the date of transfer to the State pursuant to section 1203 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to part A of subtitle IV of title 49 and all other Acts applicable to rail carriers subject to that chapter,[1] including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), the Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the ''Federal Employers' Liability Act''), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). Nothing in this chapter shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

(2) The transfer to the State authorized by section 1203 of this title and the conferral of jurisdiction to the Interstate Commerce Commission pursuant to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713[2] of title 49, notwithstanding any participation in such agreements by connecting water carriers.

(3) All memoranda which sanction noncompliance with Federal railroad safety regulations contained in 49 CFR Parts 209–236, and which are in effect on the date of transfer, shall continue in effect according to their terms as ''waivers of compliance'' (as that term is used in section 20103(d) of title 49).

(4) The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the

[1] So in original. Probably should be ''that part,''.

[2] See References in Text note below.

minimum number of crew members which must be employed in connection with the operation of such trains.

(5) Revenues generated by the State-owned railroad, including any amount appropriated or otherwise made available to the State-owned railroad, shall be retained and managed by the State-owned railroad for railroad and related purposes.

(6)(A) After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of title 26. Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1)[2] of title 26, but not obligations within the meaning of section 103(b)(2)[2] of title 26.

(B) Nothing in this chapter shall be deemed or construed to affect customary tax treatment of private investment in the equipment or other assets that are used or owned by the State-owned railroad.

(b) Procedures for issuance of certificate of public convenience and necessity; inventory, valuation, or classification of property; additional laws, authorities, etc., applicable

As soon as practicable after January 14, 1983, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V[2] of chapter 107 of title 49 shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 382(b) of the Energy Policy and Conservation Act (42 U.S.C. 6362(b)) shall not apply to actions of the Commission under this subsection.

(c) Eligibility for participation in Federal railroad assistance programs

The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to part A of subtitle IV of title 49.

(d) Laws and regulations applicable to national forest and park lands; limitations on Federal actions

After the date of transfer to the State pursuant to section 1203 of this title, the portion of the rail properties within the boundaries of the Chugach National Forest and the exclusive-use easement within the boundaries of the Denali National Park and Preserve shall be subject to laws and regulations for the protection of forest and park values. The right to fence the exclusive-use easement within Denali National Park and Preserve shall be subject to the concurrence of the Secretary of the Interior. The Secretary of the Interior, or the Secretary of Agriculture where appropriate, shall not act pursuant to this subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under this chapter.

(e) Preservation and protection of rail properties

The State-owned railroad may take any necessary or appropriate action, consistent with Federal railroad safety laws, to preserve and protect its rail properties in the interests of safety.

(Pub. L. 97–468, title VI, § 608, Jan. 14, 1983, 96 Stat. 2573; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–88, title III, § 326, Dec. 29, 1995, 109 Stat. 951; Pub. L. 108–447, div. H, title I, § 152(1), (2), Dec. 8, 2004, 118 Stat. 3222.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

The Railroad Retirement Tax Act, referred to in subsec. (a)(1), is act Aug. 16, 1954, ch. 736, §§ 3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, as amended, which is classified generally to chapter 22 (§ 3201 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

The Railway Labor Act, referred to in subsec. (a)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the ''Federal Employers' Liability Act''), referred to in subsec. (a)(1), is act Apr. 22, 1908, ch. 149, 35 Stat. 65, as amended, and is classified generally to chapter 2 (§ 51 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 51 of this title and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (a)(1), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§ 351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

Section 10713 of title 49, referred to in subsec. (a)(2), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804. Provisions similar to those in section 10713 are contained in section 10709 of Title 49.

Section 103, referred to in subsec. (a)(6)(A), which related to interest on certain governmental obligations was amended generally by Pub. L. 99–514, title XIII, § 1301(a), Oct. 22, 1986, 100 Stat. 2602, and as so amended relates to interest on State and local bonds. Section 103(b)(2), which prior to the general amendment defined industrial development bond, relates to the applicability of the interest exclusion to arbitrage bonds.

Subchapter V of chapter 107 of title 49, referred to in subsec. (b), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804.

The National Environmental Policy Act of 1969, referred to in subsec. (b), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

CODIFICATION

In subsec. (a)(3), ''section 20103(d) of title 49'' substituted for ''section 202(c) of the Federal Railroad

Safety Act of 1970 (45 U.S.C. 431(c))'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

2004—Subsec. (a)(5). Pub. L. 108–447, § 152(1), inserted '', including any amount appropriated or otherwise made available to the State-owned railroad,'' before ''shall be retained''.

Subsec. (e). Pub. L. 108–447, § 152(2), added subsec. (e).

1995—Subsecs. (a)(1), (c). Pub. L. 104–88 substituted ''part A'' for ''the jurisdiction of the Interstate Commerce Commission under chapter 105''.

1986—Subsec. (a)(6)(A). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

ALASKA RAILROAD

Pub. L. 109–59, title IX, § 9006, Aug. 10, 2005, 119 Stat. 1925, provided that:

''(a) GRANTS.—The Secretary [of Transportation] shall make grants to the Alaska Railroad for capital rehabilitation and improvements benefiting its passenger operations.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.''

Similar provisions were contained in Pub. L. 105–178, title VII, § 7204, June 9, 1998, 112 Stat. 477.

§ 1208. Future rights-of-way

(a) Access across Federal lands; application approval

After January 14, 1983, the State or State-owned railroad may request the Secretary of the Interior or the Secretary of Agriculture, as appropriate under law, to expeditiously approve an application for a right-of-way in order that the Alaska Railroad or State-owned railroad may have access across Federal lands for transportation and related purposes. The State or State-owned railroad may also apply for a lease, permit, or conveyance of any necessary or convenient terminal and station grounds and material sites in the vicinity of the right-of-way for which an application has been submitted.

(b) Consultative requirements prior to approval of application; conformance of rights-of-way, etc.

Before approving a right-of-way application described in subsection (a) of this section, the Secretary of the Interior or the Secretary of Agriculture, as appropriate, shall consult with the Secretary. Approval of an application for a right-of-way, permit, lease, or conveyance described in subsection (a) of this section shall be pursuant to applicable law. Rights-of-way, grounds, and sites granted pursuant to this section and other applicable law shall conform, to the extent possible, to the standards provided in the Act of March 12, 1914 (43 U.S.C. 975 et seq.) and section 1202(6) of this title. Such conformance shall not be affected by the repeal of such Act under section 615 of this title.[1]

(Pub. L. 97–468, title VI, § 609, Jan. 14, 1983, 96 Stat. 2574; Pub. L. 108–7, div. I, title III, § 345(5), Feb. 20, 2003, 117 Stat. 418.)

REFERENCES IN TEXT

Act of March 12, 1914 (43 U.S.C. 975 et seq.), referred to in subsec. (b), is act Mar. 12, 1914, ch. 37, 38 Stat. 305, as amended, popularly known as the Alaska Railroad Act, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97–468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title.

Section 615 of this title, referred to in subsec. (b), means section 615 of title VI of Pub. L. 97–468, Jan. 14, 1983, 96 Stat. 2577. Title VI of Pub. L. 97–468 is known as the Alaska Railroad Transfer Act of 1982 and is classified principally to this chapter. Under section 615, the repeal is effective on the date of transfer to the State of Alaska (pursuant to section 1203 of this title) or other disposition (pursuant to section 1210 of this title), whichever first occurs.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–7 struck out subsec. (c) which read as follows: ''Reversion to the United States of any portion of any right-of-way or exclusive-use easement granted to the State or State-owned railroad shall occur only as provided in section 1209 of this title. For purposes of such section, the date of the approval of any such right-of-way shall be deemed the 'date of transfer'.''

§ 1209. Repealed. Pub. L. 108–7, div. I, title III, § 345(5), Feb. 20, 2003, 117 Stat. 418

Section, Pub. L. 97–468, title VI, § 610, Jan. 14, 1983, 96 Stat. 2575, related to reversion from the State of railroad property to the United States.

§ 1210. Other disposition

If the Secretary has not certified that the State has satisfied the conditions under section 1203 of this title within one year after the date of delivery of the report referred to in section 1204(a) of this title, the Secretary may dispose of the rail properties of the Alaska Railroad. Any disposal under this section shall give preference to a buyer or transferee who will continue to operate rail service, except that—

(1) such preference shall not diminish or modify the rights of the Cook Inlet Region, Incorporated (as that term is used in section 12 of the Act of January 2, 1976 (Public Law 94–204; 89 Stat. 1150)), pursuant to such section, as amended by section 606(d) of this title;[1] and

(2) this section shall not be construed to diminish or modify the powers of consent of the

[1] See References in Text note below.

[1] See References in Text note below.

Secretary or the State under section 12(b)(8) of such Act, as amended by section 606(d)(5) of this title.[1]

Any disposal under this section shall be subject to valid existing rights.

(Pub. L. 97–468, title VI, § 611, Jan. 14, 1983, 96 Stat. 2576.)

REFERENCES IN TEXT

Section 12 of the Act of January 2, 1976, referred to in pars. (1) and (2), is section 12 of Pub. L. 94–204, Jan. 2, 1976, 89 Stat. 1150, as amended, which is set out as a note under section 1611 of Title 43, Public Lands.

Section 606(d) of this title, referred to in pars. (1) and (2), means section 606(d) of title VI of Pub. L. 97–468, Jan. 14, 1983, 96 Stat. 2566.

§ 1211. Denali National Park and Preserve lands

On the date of transfer to the State (pursuant to section 1203 of this title) or other disposition (pursuant to section 1210 of this title), that portion of rail properties of the Alaska Railroad within the Denali National Park and Preserve shall, subject to the exclusive-use easement granted pursuant to section 1203(b)(1)(D) of this title, be transferred to the Secretary of the Interior for administration as part of the Denali National Park and Preserve, except that a transferee under section 1210 of this title shall receive the same interest as the State under section 1203(b)(1)(D) of this title.

(Pub. L. 97–468, title VI, § 612, Jan. 14, 1983, 96 Stat. 2576.)

§ 1212. Applicability of other laws

(a) Actions subject to other laws

The provisions of chapter 5 of title 5 (popularly known as the Administrative Procedure Act, and including provisions popularly known as the Government in the Sunshine Act), the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), section 303 of title 49, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to actions taken pursuant to this chapter, except to the extent that such laws may be applicable to granting of rights-of-way under section 1208 of this title.

(b) Federal surplus property disposal; withdrawal or reservation of land for use of Alaska Railroad

The enactment of this chapter, actions taken during the transition period as provided in section 1204 of this title, and transfer of the rail properties of the Alaska Railroad under authority of this chapter shall be deemed not to be the disposal of Federal surplus property under the Federal Property and Administrative Services Act of 1949[1] or the Act of October 3, 1944, popularly referred to as the ''Surplus Property Act of 1944'' (50 U.S.C. App. 1622). Such events shall not constitute or cause the revocation of any prior withdrawal or reservation of land for the use of the Alaska Railroad under the Act of March 12, 1914 (43 U.S.C. 975 et seq.), the Alaska Statehood Act (note preceding 48 U.S.C. 21), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), the Act of January 2, 1976 (Public Law 94–204; 89 Stat. 1145), the Alaska National Interest Lands Conservation Act (Public Law 96–487; 94 Stat. 2371), and the general land and land management laws of the United States.

(c) Ceiling on Government contributions for Federal employees health benefits insurance premiums

Beginning on January 14, 1983, the ceiling on Government contributions for Federal employees health benefits insurance premiums under section 8906(b)(2) of title 5 shall not apply to the Alaska Railroad.

(d) Acreage entitlement of State or Native Corporation

Nothing in this chapter is intended to enlarge or diminish the acreage entitlement of the State or any Native Corporation pursuant to existing law.

(e) Judgments involving interests, etc., of Native Corporations

With respect to interests of Native Corporations under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) and the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), except as provided in this chapter, nothing contained in this chapter shall be construed to deny, enlarge, grant, impair, or otherwise affect any judgment heretofore entered in a court of competent jurisdiction, or valid existing right or claim of valid existing right.

(Pub. L. 97–468, title VI, § 613, Jan. 14, 1983, 96 Stat. 2577.)

REFERENCES IN TEXT

The Administrative Procedure Act, referred to in subsec. (a), is act June 11, 1946, ch. 324, 60 Stat. 237, as amended, which was classified to sections 1001 to 1011 of former title 5 and which was repealed and reenacted as subchapter II (§ 551 et seq.) of chapter 5, and chapter 7 (§ 701 et seq.), of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

The Government in the Sunshine Act, referred to in subsec. (a), is Pub. L. 94–409, Sept. 13, 1976, 90 Stat. 1241, which enacted section 552b of Title 5, Government Organization and Employees, amended sections 551, 552, 556, and 557 of Title 5, section 10 of Pub. L. 92–463, set out in the Appendix to Title 5, and section 410 of Title 39, Postal Service, and enacted provisions set out as notes under section 552b of Title 5. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 552b of Title 5 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (a), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

The National Historic Preservation Act, referred to in subsec. (a), is Pub. L. 89–665, Oct. 15, 1966, 80 Stat. 915, as amended, which is classified generally to subchapter II (§ 470 et seq.) of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code, see section 470(a) of Title 16 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (b), was in the origi-

[1] See References in Text note below.

nal ''the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484)''. The Federal Property and Administrative Services Act of 1949 is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works. Section 203 of the Act, which was classified to section 484 of former Title 40, Public Buildings, Property, and Works, was repealed and reenacted as sections 541 to 555 of Title 40.

Act of October 3, 1944, popularly referred to as the ''Surplus Property Act of 1944'', referred to in subsec. (b), is act Oct. 3, 1944, ch. 479, 58 Stat. 765, known as the Surplus Property Act of 1944, which was classified principally to sections 1611 to 1646 of Title 50, Appendix, War and National Defense, and was repealed effective July 1, 1949, with the exception of sections 1622, 1631, 1637, and 1641 of Title 50, Appendix, by act June 30, 1949, ch. 288, title VI, § 602(a)(1), 63 Stat. 399, renumbered Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583. Sections 1622 and 1641 were partially repealed by the 1949 act, and section 1622 is still set out in part in Title 50, Appendix. Section 1622(g) was repealed and reenacted as sections 47151 to 47153 of Title 49, Transportation, by Pub. L. 103–272, §§ 1(e), 7(b), July 5, 1994, 108 Stat. 1278–1280, 1379. Section 1631 was repealed by act June 7, 1939, ch. 190, § 6(e), as added by act July 23, 1946, ch. 590, 60 Stat. 599, and is covered by sections 98 et seq. of Title 50. Section 1637 was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948, and is covered by section 3287 of Title 18, Crimes and Criminal Procedure. Provisions of section 1641 not repealed by the 1949 act were repealed by Pub. L. 87–256, § 111(a)(1), Sept. 21, 1961, 75 Stat. 538, and are covered by chapter 33 (§ 2451 et seq.) of Title 22, Foreign Relations and Intercourse.

Act of March 12, 1914, referred to in subsec. (b), is act Mar. 12, 1914, ch. 37, 38 Stat. 305, as amended, popularly known as the Alaska Railroad Act, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97–468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title.

The Alaska Statehood Act, referred to in subsec. (b), is Pub. L. 85–508, July 7, 1958, 72 Stat. 339, as amended, which is set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For complete classification of this Act to the Code, see Tables.

The Alaska Native Claims Settlement Act, referred to in subsecs. (b) and (e), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Act of January 2, 1976 (Public Law 94–204; 89 Stat. 1145), referred to in subsec. (b), amended the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). For complete classification of this Act to the Code, see Tables.

The Alaska National Interest Lands Conservation Act, referred to in subsecs. (b) and (e), is Pub. L. 96–487, Dec. 2, 1980, 94 Stat. 2371, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 16, Conservation, and Tables.

The general land and land management laws of the United States, referred to in subsec. (b), are classified generally to Title 43, Public Lands.

CODIFICATION

In subsec. (a), ''section 303 of title 49'' substituted for ''section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f))'' on authority of Pub. L. 97–449, § 6(b), Jan. 12, 1983, 96 Stat. 2443, the first section of which enacted subtitle I (§ 101 et seq.) and chapter 31 (§ 3101 et seq.) of subtitle II of Title 49, Transportation.

§ 1213. Conflict with other laws

The provisions of this chapter shall govern if there is any conflict between this chapter and any other law.

(Pub. L. 97–468, title VI, § 614, Jan. 14, 1983, 96 Stat. 2577.)

§ 1214. Separability

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

(Pub. L. 97–468, title VI, § 616, Jan. 14, 1983, 96 Stat. 2578.)

CHAPTER 22—CONRAIL PRIVATIZATION

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SUBCHAPTER I—GENERAL PROVISIONS

§ 1301. Findings

The Congress finds that—

(1) the bankruptcy of the Penn Central and other railroads in the Northeast and Midwest resulted in a transportation emergency which required the intervention of the Federal Government;

(2) the United States Government created the Consolidated Rail Corporation, which provides essential rail service to the Northeast and Midwest;

(3) the future of rail service in the Northeast and Midwest is essential and must be protected through rail service obligations, consistent with the transfer of the Corporation to the private sector;

(4) the Northeast Rail Service Act of 1981 has achieved its purpose in allowing the Corporation to become financially self-sustaining;

(5) the Federal Government has invested over $7,000,000,000 in providing rail service to the Northeast and Midwest;

(6) the Government, as a result of its ownership and investment of taxpayer dollars in the Corporation, controls substantial assets, including cash of approximately $1,000,000,000;

(7) the Corporation's viability and sound performance allow it to be sold to the American public for a substantial sum through a public offering;

(8) a public offering of the Corporation's stock will preserve competitive rail service in the region, provide a reasonable return to the Government, and protect employment;

(9) the Corporation's employees contributed significantly to the turnaround in the Corporation's financial performance and they should share in the Corporation's success through a settlement of their claims for reimbursement for wages below industry standard, and a share in the common equity of the Corporation;

(10) the requirements of section 761(e)[1] of this title are met by this chapter; and

(11) the Secretary of Transportation has discharged the responsibilities of the Department of Transportation under the Northeast Rail Service Act of 1981 with respect to the sale of the Corporation as a single entity.

(Pub. L. 99–509, title IV, § 4002, Oct. 21, 1986, 100 Stat. 1893.)

REFERENCES IN TEXT

The Northeast Rail Service Act of 1981, referred to in pars. (4) and (11), is subtitle E of title XI of Pub. L. 97–35, §§ 1131–1169, Aug. 13, 1981, 95 Stat. 643, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Section 761 of this title, referred to in par. (10), was repealed by Pub. L. 99–509, title IV, § 4033(a)(1), Oct. 21, 1986, 100 Stat. 1908.

This chapter, referred to in par. (10), was in the original "this subtitle" meaning subtitle A (§§ 4001–4052) of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1892, known as the Conrail Privatization Act, which is classified principally to this chapter. For complete classification of subtitle A to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 4001(a) of subtitle A (§§ 4001–4052) of title IV of Pub. L. 99–509 provided that: "This subtitle [enacting this chapter, amending sections 702, 726, 727, 741, 797, 821, 825, 829, 831, 1105, 1115, and 1116 of this title and sections 10362 and 10713 of Title 49, Transportation, repealing sections 761 to 769c, 797*l*, 825a, 1107, 1110, and 1114 of this title, and enacting provisions set out as a note under section 797 of this title] may be cited as the 'Conrail Privatization Act'."

§ 1302. Purposes

The purposes of this chapter are to transfer the interest of the United States in the common stock of the Corporation to the private sector in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of its rail service in the Northeast and Midwest, provides for the protection of the public interest in a sound rail transportation system, and, to the extent not inconsistent with such purposes, secures the maximum proceeds to the United States.

[1] See References in Text note below.

(Pub. L. 99–509, title IV, § 4003, Oct. 21, 1986, 100 Stat. 1893.)

§ 1303. Definitions

For the purposes of this chapter—

(1) the term "capital expenditures" means amounts expended by the Corporation and its subsidiaries for replacement or rehabilitation of, or enhancements to, the railroad plant, property, trackage, and equipment of the Corporation and its subsidiaries, as determined in accordance with generally accepted accounting principles, and in interpreting generally accepted accounting principles, no amount spent on normal repair, maintenance, and upkeep of such railroad plant, property, trackage, and equipment in the ordinary course of business shall constitute capital expenditures;

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

(3) the term "consolidated funded debt" means the aggregate, after eliminating intercompany items, of all funded debt of the Corporation and its consolidated subsidiaries, consolidated in accordance with generally accepted accounting principles;

(4) the term "consolidated tangible net worth" means the market value of the common equity of the Corporation as of the sale date, plus or minus the change from the sale date to the date of measurement in the excess, after making appropriate deductions for any minority interest in the net worth of subsidiaries, of—

(A) the assets of the Corporation and its subsidiaries (excluding intercompany items) which, in accordance with generally accepted accounting principles, are tangible assets, after deducting adequate reserves in each case where, in accordance with generally accepted accounting principles, a reserve is proper, over

(B) all liabilities of the Corporation and its subsidiaries (excluding intercompany items),

taking into account inventory and securities on the basis of the cost or current market value, whichever is lower, and not taking into account patents, trademarks, trade names, copyrights, licenses, goodwill, treasury stock, or any write-up in the book value of any assets;

(5) the term "Corporation" means the Consolidated Rail Corporation;

(6) the term "cumulative net income" means, for any period, the net income of the Corporation and its consolidated subsidiaries as determined in accordance with generally accepted accounting principles, before provision for expenses (net of income tax effect) related to—

(A) amounts paid by the Corporation under section 4024(e), and comparable payments made to present and former employees of the Corporation not covered by such section; and

(B) the aggregate value of any shares and cash distributed by the Corporation under section 4024(f);

(7) the term "debt" means (A) indebtedness, whether or not represented by bonds, debentures, notes, or other securities, for the repay-

ment of money borrowed, (B) deferred indebtedness for the payment of the purchase price of property or assets purchased, (C) guarantees, endorsements, assumptions, and other contingent obligations in respect of, or to purchase or to otherwise acquire, indebtedness of others, and (D) indebtedness secured by any mortgage, pledge, or lien existing on property owned, subject to such mortgage, pledge, or lien, whether or not indebtedness secured thereby shall have been assumed;

(8) the term ''funded debt'' means all debt created, assumed, or guaranteed, directly or indirectly, by the Corporation and its subsidiaries which matures by its terms, or is renewable at the option of the Corporation or any such subsidiary to a date, more than 1 year after the date of the original creation, assumption, or guarantee of such debt by the Corporation or such subsidiary;

(9) the term ''liabilities'' means all items of indebtedness or liability which, in accordance with generally accepted accounting principles, would be included in determining total liabilities as shown on the liabilities side of a balance sheet as at the date as of which liabilities are to be determined;

(10) the term ''person'' means an individual, corporation, partnership, association, trust, or other entity or organization, including a government or political subdivision thereof or a governmental body;

(11) the term ''preferred stock'' means any class or series of preferred stock, and any class or series of common stock having liquidation and dividend rights and preferences superior to the common stock of the Corporation offered for sale under section 1312 of this title;

(12) the term ''public offering'' means an underwritten offering to the public of such common stock of the Corporation as the Secretary of Transportation determines to sell under section 1312 of this title;

(13) the term ''sale date'' means the date on which the initial public offering is closed;

(14) the term ''subsidiary'' means any corporation more than 50 percent of whose outstanding voting securities are directly or indirectly owned by the Corporation; and

(15) the term ''United States share'' means a share of common stock of the Corporation held by the United States Government on October 21, 1986, or as a result of any split required pursuant to section 1312(d) of this title.

(Pub. L. 99–509, title IV, § 4004, Oct. 21, 1986, 100 Stat. 1894.)

REFERENCES IN TEXT

Section 4024(e) and section 4024(f), referred to in par. (6), are section 4024(e) and (f) of Pub. L. 99–509, and are set out as a note under section 797 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

SUBCHAPTER II—CONRAIL

PART A—SALE OF CONRAIL

§ 1311. Preparation for public offering

(a) Public offering managers

(1) Not later than 30 days after October 21, 1986, the Secretary of Transportation, in consultation with the Secretary of the Treasury and the Chairman of the Board of Directors of the Corporation, shall retain the services of investment banking firms to serve jointly and be compensated equally as co-lead managers of the public offering (hereafter in this part referred to as the ''co-lead managers'') and to establish a syndicate to underwrite the public offering. The total number of co-lead managers shall be no fewer than 4 nor greater than 6. The Secretary shall designate one co-lead manager to coordinate and administer the public offering.

(2) In selecting the investment banking firms to serve as co-lead managers of the public offering under paragraph (1), consideration shall be given to the firm's institutional and retail distribution capabilities, financial strength, knowledge of the railroad industry, experience in large scale public offerings, research capability, and reputation. In addition, recognition shall also be given to contributions made by particular investment banking firms before October 21, 1986, in demonstrating and promoting the long-term financial viability of the Corporation.

(b) Payment to United States

(1) Not later than 30 days after October 21, 1986, the Corporation shall transfer to the Secretary of the Treasury $200,000,000.

(2) On or before February 1, 1987, or 30 days before the sale date, whichever occurs first, the Secretary of Transportation shall determine whether to require the Corporation to transfer to the Secretary of the Treasury, in addition to amounts transferred under paragraph (1), not to exceed $100,000,000, taking into account the viability of the Corporation. The Corporation shall transfer such funds as are required to be transferred under this paragraph.

(c) Registration statement

The Corporation shall prepare and cause to be filed with the Securities and Exchange Commission a registration statement with respect to the securities to be offered and sold in accordance with the securities laws and the rules and regulations thereunder in connection with the initial and any subsequent public offering.

(d) Omitted

(Pub. L. 99–509, title IV, § 4011, Oct. 21, 1986, 100 Stat. 1895.)

REFERENCES IN TEXT

This part, referred to in subsec. (a), was in the original ''this subpart'' meaning subpart A (§§ 4011–4013) of part 2 of subtitle A of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1895, which enacted this part and amended section 726 of this title. For complete classification of subpart A to the Code, see Tables.

CODIFICATION

Subsec. (d) of this section amended section 726 of this title.

§ 1312. Public offering

(a) Structure of public offering

(1) After the registration statement referred to in section 1311(c) of this title is declared effective by the Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-lead managers, shall offer the United States shares for sale in a public offering, except as provided in paragraphs (2) and (3).

(2) The Secretary of Transportation, after such consultation, may elect to offer less than all of the United States shares for sale at the time of the initial sale.

(3) Under no circumstances shall the Secretary of Transportation offer any of the United States shares for sale unless, before the sale date, the Secretary determines, after such consultation, that the estimated sum of the gross proceeds from the sale of all the United States shares will be an adequate amount. A determination by the Secretary under this paragraph shall not be reviewable.

(4) In making a determination under paragraph (3), the Secretary shall have the goal of obtaining at least $2,000,000,000 in aggregate gross proceeds for the United States from the public offering and any payments made under section 1311(b) of this title.

(b) Subsequent sales

If the Secretary of Transportation elects to offer for sale less than all the United States shares, the Secretary shall sell the remaining United States shares in subsequent public offerings.

(c) Consent of Corporation not required

Any public offering under this section may be made without the consent of the Corporation.

(d) Authority to require stock splits

(1) The Secretary of Transportation, in consultation with the co-lead managers and the Chairman of the Board of Directors of the Corporation, may, in connection with the initial public offering described in subsection (a) of this section, before the filing of the registration statement referred to in section 1311(c) of this title, require the Corporation to declare a stock split or reverse stock split.

(2) The Corporation shall take such action as may be necessary to comply with the Secretary's requirements under this subsection.

(e) Cancellation of other securities held by United States

(1) In consideration for amounts transferred to the United States under section 1311(b) of this title, the Secretary of Transportation shall, concurrent with the initial public offering described in subsection (a) of this section, deliver to the Corporation all preferred stock, 7.5 percent debentures, and contingent interest notes of the Corporation. The Corporation shall immediately cancel such debentures, preferred stock, and contingent interest notes, and any interest of the United States in such debentures, preferred stock, and contingent interest notes shall be thereby extinguished.

(2) For purposes of regulation by the Commission and State public utility regulation, the actions authorized by this subsection, the public offering, and the value of the consideration received therefor shall not change the value of the Corporation's assets net of depreciation and shall not be used to alter the calculation of the Corporation's stock or asset values, rate base, expenses, costs, returns, profits, or revenues, or otherwise affect or be the basis for a change in the regulation of any railroad service, rate, or practice provided or established by the Corporation, or any change in the financial reporting practice of the Corporation.

(f) Minority investment banking firms

The Secretary of Transportation shall ensure that minority owned or controlled investment banking firms shall have an opportunity to participate to a significant degree in any public offering under this subchapter.

(g) Investment banking firm requirements

(1) The level of any investment banking firm's participation in the public offering shall be consistent with that firm's financial capabilities.

(2) No investment banking firm which was not in existence on September 1, 1986, shall participate in the public offering.

(h) Government Accountability Office authority to conduct audits

The Government Accountability Office may make such audits as may be deemed appropriate by the Comptroller General of the United States of all accounts, books, records, memoranda, correspondence, and other documents and transactions of the Corporation and the co-lead managers associated with the public offering. The co-lead managers shall agree, in writing, to allow the Government Accountability Office to make such audits. The Government Accountability Office shall report the results of all such audits to the Congress.

(Pub. L. 99–509, title IV, § 4012, Oct. 21, 1986, 100 Stat. 1896; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (f), was in the original ''this part'' meaning part 2 (§§ 4011–4038) of subtitle A of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1895, which enacted this subchapter, amended sections 702, 726, 727, 741, 797, 821, 825, 829, 831, 1105, 1115, and 1116 of this title and section 10362 of Title 49, Transportation, repealed sections 761 to 769c, 797*l*, 825a, 1107, 1110, and 1114 of this title, and enacted provisions set out as a note under section 797 of this title. For complete classification of part 2 to the Code, see Tables.

AMENDMENTS

2004—Subsec. (h). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in heading and wherever appearing in text.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise

provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 1313. Fees

(a) Investment banking firm fees

The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall agree to pay to investment banking firms and other persons participating with such firms in the public offering the absolute minimum amount in fees necessary to carry out the public offering.

(b) Costs of public offering

All costs of the public offering payable by the Secretary of Transportation shall be paid from the proceeds of the public offering.

(Pub. L. 99–509, title IV, § 4013, Oct. 21, 1986, 100 Stat. 1897.)

PART B—OTHER MATTERS RELATING TO SALE

§ 1321. Rail service obligations

(a) Obligations of Corporation

During a period of 5 years beginning on October 21, 1986, the following obligations shall apply to the Corporation:

(1) The Corporation shall spend in each fiscal year the greater of (A) an amount equal to the Corporation's depreciation for financial reporting purposes for such year or (B) $500,000,000, in capital expenditures. With respect to any fiscal year, the Corporation's Board of Directors may reduce the required capital expenditures for such year to an amount which the Board determines is justified by prudent business and engineering practices, except that the Corporation's capital expenditures shall not be less than $350,000,000 for its first fiscal year beginning after the sale date, a total of $700,000,000 for its first two fiscal years beginning after the sale date, a total of $1,050,000,000 for its first three fiscal years beginning after the sale date, a total of $1,400,000,000 for its first four fiscal years beginning after the sale date, and a total of $1,750,000,000 for its first five fiscal years beginning after the sale date.

(2) Repealed. Pub. L. 101–213, § 2(b)(3), Dec. 11, 1989, 103 Stat. 1843.

(3) The Corporation shall continue its affirmative action program and its minority vendor program, substantially as such programs were being conducted by the Corporation as of February 8, 1985, subject to any provisions of applicable law.

(4) The Corporation shall not permit to occur any transaction or series of transactions (other than in the ordinary course of business of the Corporation and its subsidiaries) whereby all or any substantial part of the railroad assets and business of the Corporation and its subsidiaries taken as a whole are sold, leased, transferred, or otherwise disposed of to any corporation or entity other than to a wholly owned subsidiary of the Corporation.

(5) The Corporation shall offer any line for which an abandonment certificate is issued by the Commission to a purchaser who agrees to provide interconnecting rail service. Such offer shall last for the 120-day period following the date of issuance of the abandonment certificate and the price for such abandoned line shall be equal to 75 percent of net liquidation value as determined by the Commission, pursuant to regulations that had been issued under section 748 of this title.

(6) The Corporation and its subsidiaries shall maintain, preserve, protect, and keep their respective properties in good repair, working order, and condition, and shall not permit deferral of normal and prudent maintenance necessary to provide and maintain rail service.

(b) Compliance certificates

(1) Within 90 days after the close of each of its fiscal years, or at the time its financial statements have been audited, whichever occurs later, the Corporation shall deliver to the Secretary of Transportation a certificate executed by an executive officer of the Corporation. Such certificate shall certify that, as of such date, the Corporation is in compliance with all requirements (other than the requirement regarding a common stock dividend or a preferred stock dividend) set forth in this section. Such certificate shall include audited consolidated financial statements.

(2) Within 5 days after the declaration of any common stock dividend or preferred stock dividend, the Corporation shall deliver to the Secretary of Transportation a certificate executed by an executive officer of the Corporation. Such certificate shall certify that, after giving effect to any such dividend, the Corporation shall be in compliance with any requirement regarding a common stock dividend or a preferred stock dividend set forth in this section. Such certificate shall include—

(A) quarterly financial statements; and

(B) a report of the Corporation's total capital expenditures,

for the period with respect to which the dividend has been declared, and the fiscal year to date, and shall compare such capital expenditures to the budgeted capital expenditures and to the capital expenditures during the comparable periods of the previous fiscal year.

(Pub. L. 99–509, title IV, § 4021, Oct. 21, 1986, 100 Stat. 1898; Pub. L. 101–213, § 2(b)(3), Dec. 11, 1989, 103 Stat. 1843.)

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101–213 struck out par. (2) which set forth circumstances under which Corporation could declare or pay a common or preferred stock dividend and defined terms ''common stock dividend'' and ''preferred stock dividend''.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set

out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 1322. Ownership limitations

(a) General

(1) During a period of 3 years beginning on the sale date, no person, directly or indirectly, may acquire or hold securities representing more than 10 percent of the total votes of all outstanding voting securities of the Corporation.

(2) This subsection shall not apply—

(A) to the employee stock ownership plan (or successor plans) of the Corporation,

(B) to the Secretary of Transportation,

(C) to a railroad as described under subsection (b) of this section,

(D) to underwriting syndicates holding shares for resale, or

(E) in the case of shares beneficially held for others, to commercial banks, broker-dealers, clearing corporations, or other nominees.

(b) Railroads

(1) During a period of 1 year beginning on the sale date, no railroad may purchase or hold, directly or indirectly, more than 10 percent of any class of stock of the Corporation. During such period, no railroad may file an application with the Commission for a merger or consolidation with the Corporation or the acquisition of control of the Corporation under section 11344[1] of title 49.

(2) During a period of 3 years beginning on the sale date, any railroad which purchases or holds any stock of the Corporation shall vote such stock in the same proportion as all other common stock of the Corporation is voted. After the expiration of 1 year after the sale date, the preceding sentence shall not apply to any railroad with respect to which the Commission has approved an application for a merger or consolidation with the Corporation or the acquisition of control of the Corporation under section 11344[1] of title 49.

(3) As used in this subsection, the term ''railroad'' means a class I railroad as determined by the Commission under the definition in effect on October 21, 1986, and includes any entity controlling, controlled by, or under common control with any railroad (other than the Corporation or its subsidiaries).

(Pub. L. 99–509, title IV, § 4022, Oct. 21, 1986, 100 Stat. 1900.)

REFERENCES IN TEXT

Section 11344 of title 49, referred to in subsec. (b)(1), (2), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804. Provisions similar to those in section 11344 are contained in sections 11324 and 14303 of Title 49.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

[1] See References in Text note below.

§ 1323. Board of Directors

The Board of Directors of the Corporation shall be comprised as follows:

(1) Except as provided in paragraph (3), with respect to the period ending June 30, 1987, the board shall remain as it exists on October 21, 1986, with any vacancies being filled by directors nominated and elected by the remainder of the members of the board.

(2)(A) Except as provided in paragraph (3), with respect to the period beginning July 1, 1987, the board shall consist of—

(i) 3 directors appointed by the Secretary of Transportation;

(ii) the Chief Executive Officer and the Chief Operating Officer of the Corporation; and

(iii) 8 directors appointed from among persons knowledgeable in business affairs by the special court trustees named under subparagraph (C), in consultation with the Secretary of Transportation and the Chairman of the Board of Directors of the Corporation, and recognizing the need for and importance of—

(I) continuity in the direction of the Corporation's business and affairs;

(II) preserving the value of the investment of the United States in the Corporation;

(III) preserving essential rail service provided by the Corporation; and

(IV) providing for the sale of the United States shares.

(B) The Secretary of Transportation and the special court trustees may appoint directors under subparagraph (A) from among existing directors of the Corporation.

(C)(i) If more than 50 percent of the interest of the United States in the Corporation has not been sold before June 1, 1987, the special court established under section 719 of this title shall, on that date, name 3 trustees from among persons knowledgeable in business affairs to make the appointments required by subparagraph (A)(iii). The Corporation shall compensate the special court trustees in an amount to be specified by the special court, not to exceed the amount paid by the Corporation to its directors for comparable services.

(ii) No person shall be eligible to be appointed as a special court trustee under this subparagraph who, at any time during the 30 months immediately preceding such appointment, was an officer, employee, or director of the United States Railway Association, the Corporation, or the Department of Transportation.

(3)(A) After the sale date, one director shall be elected by the public shareholders of the Corporation for each increment of 12.5 percent

of the interest of the United States in the Corporation that has been sold through public offering.

(B) With respect to the period ending June 30, 1987—

(i) the first director elected under this paragraph shall replace the member of the board who became a director most recently from among—

(I) directors appointed by the United States Railway Association, or elected under paragraph (1) to replace such a director, and

(II) directors appointed by the Secretary of Transportation, or elected under paragraph (1) to replace such a director;

(ii) the second director elected under this paragraph shall replace the member of the Board who became a director most recently from among directors described in clause (i)(I) or (II), whichever group the first director replaced under this subparagraph was not a member of; and

(iii) subsequent directors elected under this paragraph shall replace members alternately from the groups described in clause (i)(I) and (II).

(C) With respect to the period beginning July 1, 1987, directors elected under this paragraph shall replace directors appointed by the special court trustees under paragraph (2)(A)(iii), in the order designated by the special court trustees in a list to be issued at the time of such original appointments.

(D) With respect to the period beginning on the first date more than 50 percent of the interest of the United States in the Corporation has been sold through public offering and ending when 100 percent of such interest has been sold—

(i) all remaining members of the board referred to in paragraph (2)(A)(iii), and

(ii) with respect to the period ending June 30, 1987, all remaining members of the board, except 3 members appointed by the Secretary of Transportation and the Chief Executive Officer and the Chief Operating Officer of the Corporation,

shall be replaced by directors elected by the public shareholders of the Corporation.

(E) After 100 percent of the interest of the United States in the Corporation has been sold, any remaining directors appointed by the Secretary of Transportation, the United States Railway Association, or the special court trustees referred to under paragraph (2)(A)(iii), shall be replaced by directors elected by the public shareholders of the Corporation.

(F) Nothing in this paragraph shall be construed to prohibit any director referred to in this section from being elected as a director by the public shareholders of the Corporation.

(4)(A) No director appointed or elected under this section shall be a special court trustee or an employee of the United States, except as elected by the public shareholders of the Corporation.

(B) No director appointed or elected under this section shall be an employee of the Corporation, except as provided in paragraph (2)(A)(ii) or as elected by the public shareholders of the Corporation.

(Pub. L. 99–509, title IV, § 4023, Oct. 21, 1986, 100 Stat. 1901.)

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

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

§ 1324. Certain enforcement relief

(a) Enforcement actions

The Secretary of Transportation, with respect to any provision of section 1321 or 1322 of this title, and any person who suffers direct and substantial economic injury as a result of an alleged violation by the Corporation, with respect to the provisions of section 1321(a)(1) and (2)[1] of this title, and section 1322 of this title, may bring an action to require compliance with such provision.

(b) Special court

Any action brought under this subchapter shall be brought before the special court established under section 719 of this title. Such special court may limit the enforcement of a restriction under section 1321 of this title, if the effect of such restriction would be to substantially impair the continued viability of the Corporation.

(Pub. L. 99–509, title IV, § 4025, Oct. 21, 1986, 100 Stat. 1905.)

REFERENCES IN TEXT

Section 1321(a)(2) of this title, referred to in subsec. (a), was repealed by Pub. L. 101–213, § 2(b)(3), Dec. 11, 1989, 103 Stat. 1843.

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

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

PART C—MISCELLANEOUS PROVISIONS

§ 1341. Abolition of United States Railway Association

(a) Abolition and termination

(1) Effective April 1, 1987, the United States Railway Association is abolished.

(2) On January 1, 1987, all powers, duties, rights, and obligations of such association relating to the Corporation under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) shall be transferred to the Secretary of Transportation.

(3) The sole function of the United States Railway Association after January 1, 1987, shall be the termination of its affairs and the liquidation of its assets.

(b) Transfer of securities and responsibilities

(1) Any securities of the Corporation held by the United States Railway Association shall, upon[1] October 21, 1986, be transferred to the Secretary of Transportation.

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[1] See References in Text note below.

[1] So in original. Probably should be "on".

(2) If, on the date the United States Railway Association is abolished under subsection (a) of this section, such association shall not have completed the termination of its affairs and the liquidation of its assets, the duty of completing such winding up of its affairs and liquidation shall be transferred to the Secretary of Transportation, who for such purposes shall succeed to all remaining powers, duties, rights, and obligations of such association.

(c) Financing agreement

(1) On January 1, 1987, the Amended and Restated Financing Agreement, dated May 10, 1979, between the United States Railway Association and the Corporation, together with any and all rights and obligations of or on behalf of any person with respect to such agreement, shall terminate and be of no further force or effect, except for those provisions specifying terms and conditions for payments made to the United States with respect to debentures, preferred stock, and contingent interest notes.

(2) Effective as of the sale date, those provisions of the Financing Agreement referred to in paragraph (1) shall terminate.

(Pub. L. 99–509, title IV, § 4031, Oct. 21, 1986, 100 Stat. 1906.)

REFERENCES IN TEXT

The Regional Rail Reorganization Act of 1973, referred to in subsec. (a)(2), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

§ 1342. Exemption from liability

(a) In general

No person referred to in section 726(f)(8)(C)(i), (ii), or (iii) of this title shall be liable, for money damages or otherwise, to any party if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty, in connection with any action taken under this subchapter, which such person in good faith reasonably believed to be required by law or vested in such person.

(b) Exception

This section shall not apply to claims arising out of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities, which claims are in connection with a public offering under section 1312 of this title.

(Pub. L. 99–509, title IV, § 4034, Oct. 21, 1986, 100 Stat. 1909.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

§ 1343. Charter amendment

Within 60 days after October 21, 1986, the Corporation shall amend its Articles of Incorporation to contain the following provision, which provision shall not be subject to amendment or repeal:

"It shall be a fundamental purpose of the Corporation to maintain continued rail service in its service area.".

(Pub. L. 99–509, title IV, § 4035, Oct. 21, 1986, 100 Stat. 1909.)

§ 1344. Status of Conrail after sale

The Corporation shall be a rail carrier as defined in section 10102 of title 49, notwithstanding this subchapter.

(Pub. L. 99–509, title IV, § 4036, Oct. 21, 1986, 100 Stat. 1909; Pub. L. 104–88, title III, § 332, Dec. 29, 1995, 109 Stat. 953.)

AMENDMENTS

1995—Pub. L. 104–88 substituted "section 10102" for "section 10102(19)".

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

§ 1345. Effect on contracts

Nothing in this subchapter shall affect any obligation of the Corporation to carry out its transportation contracts and equipment leases, equipment trusts, and conditional sales agreements, in accordance with their terms.

(Pub. L. 99–509, title IV, § 4037, Oct. 21, 1986, 100 Stat. 1909.)

§ 1346. Resolution of certain issues

(a) Employee issues

Section 4024 completely and finally—

(1) extinguishes all employee rights, and any obligation of the United States, under section 761(e)[1] of this title as in effect immediately before October 21, 1986;

(2) resolves any and all claims against the Corporation or any other person arising under the Definitive Agreement referred to in section 4024(d)(1) or any other agreement containing similar terms and conditions;

(3) resolves all claims to pay entitlements arising out of the pay increase deferrals by present and former employees of the Corporation under the Agreement of May 5, 1981, between Conrail and Certain Labor Organizations for Labor Contributions to Self-Sufficiency for Conrail;

(4) resolves all issues raised by notices served by representatives of such employees under section 156 of this title proposing repayment of or compensation for such deferrals; and

(5) resolves all claims against the Railway Labor Executives' Association or the Corpora-

[1] See References in Text note below.

tion by any adviser, consultant, or other person who has provided services to such association in connection with any matter referred to in this subchapter.

(b) Corporation actions

The Corporation shall not be considered to be in breach, default, or violation of any agreement to which it is a party, notwithstanding any provision of such agreement, because of any provision of this subchapter or any action the Corporation is required to take under this subchapter.

(c) Right to sue withdrawn

The United States hereby withdraws any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person for any legal, equitable, or other relief with respect to any claim arising out of, or resulting from, acts or omissions under this subchapter, except actions brought to require the Secretary of Transportation to perform duties or acts required under part A of this subchapter.

(Pub. L. 99–509, title IV, § 4038, Oct. 21, 1986, 100 Stat. 1909.)

REFERENCES IN TEXT

Section 4024, referred to in subsec. (a), is section 4024 of Pub. L. 99–509, which amended section 797 of this title, provided for repeal of section 797 of this title effective on the sale date of the Consolidated Rail Corporation, and enacted provisions set out as a note under section 797 of this title. Section 4024(d)(1) is set out as a note under section 797 of this title.

Section 761 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 99–509, title IV, § 4033(a)(1), Oct. 21, 1986, 100 Stat. 1908.

Part A of this subchapter, referred to in subsec. (c), was in the original ''subpart A'' meaning subpart A (§§ 4011–4013) of part 2 of subtitle A of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1895, which enacted part A of this subchapter and amended section 726 of this title. For complete classification of this Act to the Code, see Tables.

§ 1347. Tax treatment of Conrail public sale

(a) Treatment as new corporation

(1) In general

For periods after the public sale, for purposes of title 26, Conrail shall be treated as a new corporation which purchased all of its assets as of the beginning of the day after the date of the public sale for an amount equal to the deemed purchase price.

(2) Allocation among assets

The deemed purchase price shall be allocated among the assets of Conrail in accordance with the temporary regulations prescribed under section 338 of title 26 (as such regulations were in effect on October 21, 1986). The Secretary shall establish specific guidelines for carrying out the preceding sentence so that the basis of each asset will be clearly ascertainable. For purposes of applying the regulations referred to in the first sentence, accounts receivable and materials and supplies shall be treated as cash equivalents.

(3) Deemed purchase price

For purposes of this subsection, the deemed purchase price is an amount equal to the gross amount received pursuant to the public sale, multiplied by a fraction—

(A) the numerator of which is 100 percent, and

(B) the denominator of which is the percentage (by value) of the stock of Conrail sold in the public sale.

The amount determined under the preceding sentence shall be adjusted under regulations prescribed by the Secretary for liabilities of Conrail and other relevant items.

(b) No income from cancellation of debt or preferred stock

No amount shall be included in the gross income of any person by reason of any cancellation of any obligation (or preferred stock) of Conrail in connection with the public sale.

(c) Disallowance of certain deductions

No deduction shall be allowed to Conrail for any amount which is paid after the date of the public sale to employees of Conrail for services performed on or before the date of the public sale.

(d) Waiver of certain employee stock ownership plan provisions

For purposes of determining whether the employee stock ownership plans of Conrail meet the qualifications of sections 401 and 501 of title 26—

(1) the limits of section 415 of such title (relating to limitations on benefits and contributions under qualified plans) shall not apply with respect to interests in stock transferred pursuant to this Act or a law heretofore enacted, and

(2) the 2-year waiting period for withdrawals shall not apply to withdrawals of amounts (or shares) in participants accounts in connection with the public sale.

(e) Definitions

For purposes of this section—

(1) Conrail

The term ''Conrail'' means the Consolidated Rail Corporation. Such term includes any corporation which was a subsidiary of Conrail immediately before the public sale.

(2) Public sale

The term ''public sale'' means the sale of stock in Conrail pursuant to a public offering under the Conrail Privatization Act [45 U.S.C. 1301 et seq.]. If there is more than 1 public offering under such Act, such term means the sale pursuant to the initial public offering under such Act.

(3) Secretary

The term ''Secretary'' means the Secretary of the Treasury or his delegate.

(Pub. L. 99–509, title VIII, § 8021, Oct. 21, 1986, 100 Stat. 1954; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(1), is Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1874, as amended, known as the Omnibus Budget Reconciliation Act of 1986. For complete classification of this Act to the Code, see Tables.

The Conrail Privatization Act, referred to in subsec. (e)(2), is subtitle A (§§ 4001–4052) of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1892, which is classified principally to this chapter (§ 1301 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

CODIFICATION

This section was enacted as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of subtitle A of title IV of that Act, known as the Conrail Privatization Act, which comprises this chapter.

AMENDMENTS

1986—Subsecs. (a)(1), (2), (d). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.