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 The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub.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 Repealed.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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This chapter is referred to in sections 802, 823, 824, 1101, 1341 of this title; title 49 sections 24506, 24901, 24904, 24907.

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 Corporation, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, any successor agencies, and any entity created by one or more such agencies for the purpose of operating, or contracting for the operation of, commuter service;

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) ''Region'' means the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan, and Illinois; the District of Columbia; and those portions of contiguous States in which are located rail properties owned or operated by railroads doing business primarily in the aforementioned jurisdictions (as determined by the Commission by order);

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

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

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

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

(21) ''supplemental transaction'' means any transaction set forth in a proposal under section 745 of this title under which the Corpora-

[1] See References in Text note below.

[2] So in original. The period probably should be a semicolon.

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

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

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741, 1112 of this title; title 19 section 2373; title 49 section 24302.

SUBCHAPTER II—UNITED STATES RAILWAY ASSOCIATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 728 of this title.

§ 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 [D.C. Code, § 29–501 et seq.]. 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 As-

[1] See Codification note below.

sociation'' as a name for any business purpose. Violations of this provision may be enjoined by any court of general jurisdiction in an action commenced by the Association. In any such action, the Association may recover any actual damages flowing from such violation, and, in addition, shall be entitled to punitive damages (regardless of the existence or nonexistence of actual damage) in an amount not to exceed $100 for each day during which such violation was committed. The district courts of the United States shall have jurisdiction over actions brought under this subsection, without regard to the amount in controversy or the citizenship of the parties.

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

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 appears in chapter 5 (§ 29–501 et seq.) of Title 29, Corporations, of the District of Columbia 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 741 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 nd 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

[1] So in original. Probably should be ''(6)''.

[2] Par. ''(1)'' designation supplied editorily.

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

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

(f) Accountability

The Chairman of the Association shall transmit annually to the Office of Management and Budget a budget for administrative expenses of the Association. Whenever the Association submits any budget estimate or request to the Office of Management and Budget, it shall concurrently transmit a copy of the estimate or request to the Congress. Within budgetary constraints of the Congress, the maximum feasible and prudent budgetary flexibility shall be provided to the Association to permit effective operations.

(g) Transfer of litigation

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

(h) Transfer of other functions

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

(i) Monitoring of contractors

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

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

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

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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 716, 719 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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 741 of this title; title 49 section 333.

§ 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

[1] See References in Text note below.

Secretary required under section 714(a) of this title.

(c) Designations

The final system plan shall designate—

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

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

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

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

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

(E) if not otherwise required to be operated by the Corporation, a government entity, or a responsible person, are suitable for use for other public purposes, including highways, other forms of transportation, conservation, energy transmission, education or health care facilities, or recreation. In carrying out this subparagraph, the Association shall solicit the views and recommendations of the Secretary, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and other agencies of the Federal Government and of the States and political subdivisions thereof within the region, and the general public; and

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

(d) Transfers

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

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

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

(3) Notwithstanding any other provision of this chapter, no acquisition under this chapter shall be made by any profitable railroad operating in the region without a determination with respect to each such transaction and all such transactions cumulatively (A) by the Association, upon adoption and release of the preliminary system plan, that such acquisition or acquisitions will not materially impair the profitability of any other profitable railroad operating in the region or of the Corporation, and (B) by the Commission, which shall be made within 90 days after adoption and release by the Association of the preliminary system plan, that such acquisition or acquisitions will be in full accord and comply with the provisions and standards of subchapter III[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

[2] See References in Text note below.

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

(5) All properties—

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

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

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

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

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

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

(e) Corporation features

The final system plan shall set forth—

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

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

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

(f) Value

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

[3] See References in Text note below.

(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 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 appro-

priate, 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 717, 718, 725, 743, 744, 745, 747, 791 of this title; title 49 sections 24907, 24909.

§ 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 716, 719, 721 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 designa-

tions 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 717, 719 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.

[1] See References in Text note below.

(b) Special court

(1) Within 30 days after January 2, 1974, the Association shall make application to the judicial panel on multi-district litigation authorized by section 1407 of title 28 for the consolidation in a single, three-judge district court of the United States of all judicial proceedings with respect to the final system plan. Within 30 days after such application is received, the panel shall make the consolidation in a district court (cited herein as the ''special court'') which the panel determines to be convenient to the parties and the one most likely to be able to conduct any proceedings under this section with the least delay and the greatest possible fairness and ability. Such proceedings shall be conducted by the special court which shall be composed of three Federal judges who shall be selected by the panel, except that none of the judges selected may be a judge assigned to a proceeding involving any railroad in reorganization in the region under section 77 of the Bankruptcy Act. The special court is authorized to exercise the powers of a district judge in any judicial district with respect to such proceedings and such powers shall include those of a reorganization court. The special court shall have the power to order the conveyance of rail properties of railroads leased, operated, or controlled by a railroad in reorganization in the region. The special court may issue rules for the conduct of any proceedings under this section and under section 745 of this title, including rules with respect to the time within which motions may be filed, and with respect to appropriate representation of interests not otherwise represented (including the Secretary with respect to a petition by the Association in the case of a proposal developed by the Secretary, under such section 745 of this title). No determination by the panel under this subsection may be reviewed in any court.

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

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

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

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

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

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

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

(c) Delivery of plan to special court

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

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

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

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

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

Notwithstanding any other provisions of this subsection and subsection (d) of this section, the time for the delivery of a certified copy of the final system plan shall be March 12, 1976, and may be extended to a date not more than 30 days thereafter, prescribed in a notice filed by the Association not later than February 17, 1976, with the special court, the Congress, and each court referred to in such subsection (d) 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—

[1] See Codification note below.

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

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

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

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

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

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

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

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

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

(f) Disposition of cash deposits

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

REFERENCES TO COURTHOUSE

Reference to United States Courthouse in District of Columbia deemed reference to ''E. Barrett Prettyman United States Courthouse'', see section 2 of Pub. L. 104–151, set out as an E. Barrett Prettyman United States Courthouse Designation note under section 129a of Title 40, Public Buildings, Property, and Works.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 718, 741, 743, 744, 745, 1104, 1323, 1324 of this title.

RULES OF THE SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973

(Effective May 20, 1982, as amended to January 6, 1997)

Rule

1. Name.
2. Seal.
3. Situs, Clerk, Executive Attorney, and Communications.
4. Panels of the Court.
5. Action by Single Judge—Quorum.
6. Sessions.
7. Attorneys.
8. Form of Briefs and Other Papers.
9. General Provision With Respect to Filing of Pleadings and Other Papers.
10. Proceedings Under § 209(e) of the Act, § 1152(a) of NRSA and of Similar Nature—Filings and Service.
11. Proceedings Under § 303(c) and Under § 306(c)(4) of the Act—Filings and Service.
12. Applicability of Federal Rules of Civil Procedure.
13. Proceedings Involving Interstate Commerce Commission.
14. Proceedings Under Section 305(d) of the Act.
15. Motions.
16. Entry of Orders by the Executive Attorney.
17. Opinions and Rulings of the Court.
18. Petitions for Reconsideration.
19. References to Regional Rail Reorganization Act and Northeast Rail Service Act.

RULE 1. NAME

The name of the Court is ''Special Court, Regional Rail Reorganization Act of 1973''.

RULE 2. SEAL

The seal of the Court shall be that of the United States District Court for the District of Columbia.

RULE 3. SITUS, CLERK, EXECUTIVE ATTORNEY, AND COMMUNICATIONS

A. SITUS. The situs of the Special Court shall be at the United States Courthouse, Washington, D.C. 20001.

B. CLERK OF COURT. The Clerk of the District Court for the District of Columbia shall be the Clerk of the Special Court. The Clerk shall supply such number of deputy clerks and other personnel as the business of the Special Court may require. All rules of said District Court with respect to the Clerk shall apply to his functions as Clerk of the Special Court.

C. EXECUTIVE ATTORNEY. The Court may appoint an executive attorney who shall be subject to removal by the Court. The executive attorney's official station shall be at the United States Courthouse, Washington, D.C. 20001.

D. COMMUNICATIONS. All communications to the Special Court, save those hereafter directed to be sent directly to the judges, shall be made to the executive attorney who shall transmit them in accordance with directions of the Court or a judge thereof.

E. PLACE OF CONDUCTING PROCEEDINGS. At the discretion of the judges of the Special Court, hearings, oral arguments and any other proceedings may be held in any federal courthouse or other federal building within the region as defined in § 102(15) of the Regional Rail Reorganization Act of 1973 or at the official station of any judge of the Court.

REFERENCES IN TEXT

Section 102(15) of the Regional Rail Reorganization Act of 1973, referred to in par. E, defining ''Region'', was redesignated section 102(17) by Pub. L. 97–35, title XI, § 1135(b), Aug. 13, 1981, 95 Stat. 646, and is classified to section 702(17) of this title.

RULE 4. PANELS OF THE COURT

A. TWO PANELS. The Court shall consist of two panels of three judges to be known as the General Panel and the § 1152 Panel. The General Panel consists of the judges appointed from time to time by the Judicial Panel on Multidistrict Litigation under § 209(b) of the Regional Rail Reorganization Act of 1973 (the Act). The § 1152 Panel consists of the judges appointed from time to time by the Judicial Panel on Multidistrict Litigation under § 1152(d) of the Northeast Rail Service Act of 1981 (NRSA).

B. PRESIDING JUDGES. Each panel shall appoint one of its members as its Presiding Judge. The Presiding Judge of the General Panel shall be the Presiding Judge of the Court.

C. THE GENERAL PANEL. The General Panel shall have exclusive jurisdiction over all actions described in § 209(e), over proceedings under §§ 303 and 306(c)(4), and over supplemental transactions proposed under § 305 of the Act.

D. THE § 1152 PANEL. The § 1152 Panel shall have primary responsibility for all actions arising under § 1152(a) of NRSA. If the Presiding Judge of the § 1152 Panel so requests, one or more of the judges of the General Panel may (but shall not be required to) sit in a particular action under § 1152(a) of NRSA in the place and stead of the same number of judges of the § 1152 Panel. Any such request shall be made to the Presiding Judge of the General Panel or, in the event of his unavailability, to one of the other judges of the General Panel in order of precedence.

REFERENCES IN TEXT

Section 209(b) and (e) of the Regional Rail Reorganization Act of 1973, referred to in pars. A and C, is section 209(b) and (e) of Pub. L. 93–236, title II, Jan. 2, 1974, 87 Stat. 999, which is classified to section 719(b) and (e) of this title.

Section 1152 of the Northeast Rail Service Act of 1981, referred to in pars. A and D, is section 1152 of Pub. L. 97–35, title XI, Aug. 13, 1981, 95 Stat. 676, which is classified to section 1105 of this title.

Sections 303, 306(c)(4), and 305 of the Act, referred to in par. C, are section 303 of Pub. L. 93–236, title III, Jan. 2, 1974, 87 Stat. 1005, which is classified to section 743 of this title, and sections 306(c)(4) and 305 of Pub. L. 93–236, title III, as added Pub. L. 94–210, title VI, § 610(b), Feb. 5, 1976, 90 Stat. 100, 104, which are classified to sections 746(c)(4) and 745 of this title, respectively.

RULE 5. ACTION BY SINGLE JUDGE—QUORUM

A. ACTION BY SINGLE JUDGE. Any one of the judges of the General Panel shall have the power with respect to actions described in Rule 4C, and any one of the judges of the § 1152 Panel (or any judge of the General Panel designated pursuant to Rule 4D) shall have the power with respect to actions arising under § 1152 of NRSA, specified in the case of three-judge courts by 28 U.S.C. § 2284(b)(3) and the powers exercised by a single judge in accordance with established procedures in the courts of appeals. A panel may also authorize a single judge to preside over the taking of testimony.

B. QUORUM. Subject to paragraph A of this rule, two judges of the General Panel shall constitute a quorum with respect to actions described in Rule 4C, and two judges who are members of the § 1152 Panel or who have been designated pursuant to Rule 4D shall constitute a quorum with respect to actions arising under § 1152(a) of NRSA.

C. INABILITY OF ONE JUDGE TO PARTICIPATE IN DECISION. If a matter has been heard by a panel of three judges and one of such judges shall be unable to continue with the consideration of the matter by reason of death, illness, resignation, or incapacity, or shall be relieved of such consideration at his request, the two remaining judges will determine the matter if they are in agreement and neither requests the designation of a third judge.

REFERENCES IN TEXT

Section 1152 of NRSA, referred to in pars. A and B, is section 1152 of Pub. L. 97–35, title XI, Aug. 13, 1981, 95 Stat. 676, which is classified to section 1105 of this title.

RULE 6. SESSIONS

The Court shall not hold formal terms, but shall be deemed always open.

RULE 7. ATTORNEYS

Every member in good standing of the bar of any district court or court of appeals of the United States or of the bar of the Supreme Court of the United States is entitled to practice before the Special Court. Any other attorney desiring so to practice must obtain admission to practice before the United States District Court for the District of Columbia.

RULE 8. FORM OF BRIEFS AND OTHER PAPERS

Printing of briefs or any other papers filed in this Court is not required. Briefs and other papers may be typewritten on opaque, unglazed paper 8½ by 11 inches in size, with copies repro-

duced by any method resulting in clearly readable copy. All briefs and other papers shall be double spaced. Briefs shall be bound in soft covers: blue for the United States Railway Association (USRA); green for Consolidated Rail Corporation (Conrail); grey for the Secretary of Transportation (Secretary) and the United States; yellow for Central Jersey Industries and Lehigh & New England Railroad; purple for railway labor organizations; pink for commuter authorities; and white for other parties.

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

See section 1341 of this title.

RULE 9. GENERAL PROVISION WITH RESPECT TO FILING OF PLEADINGS AND OTHER PAPERS

Two copies of each pleading or other paper filed with the Clerk shall be delivered to each of the three judges of the panel of the Court to which the matter has been assigned. Each such paper shall contain in its caption a precis stating the name of the party filing the paper, the nature of the paper filed, and, where applicable, the nature of the relief sought and the names of the persons against whom relief is sought. Four copies of each such paper that is required to be served upon any person shall be delivered to the Clerk.

RULE 10. PROCEEDINGS UNDER § 209(e) OF THE ACT, § 1152(a) OF NRSA AND OF SIMILAR NATURE—FILINGS AND SERVICE

A. SCOPE. This Rule applies to:

(1) Any civil action described in § 209(e) of the Act or § 1152(a) of NRSA;

(2) Any other civil action of which this Court has jurisdiction wherein the plaintiff seeks relief against a particular defendant or defendants, except proceedings under § 303(c) of the Act and proceedings under § 306(c)(4) for the determination of the base value of certificates of value.

B. INITIAL PROCESS AND ASSIGNMENT. The procedures for commencement of an action under this Rule are:

(1) The process for beginning an action under this rule shall be as described in Rule 4, F.R.Civ.P., except as the Court shall otherwise order;

(2) Subsequent to the filing of any such action, that action shall be assigned to a panel of the Court, in accordance with Special Court Rule 4, by an order of the executive attorney. Two copies of each pleading or other paper filed with the Clerk shall be delivered by the person filing the paper to each of the judges of the panel to which the matter has been assigned.

C. SUBSEQUENT PLEADINGS AND OTHER PAPERS. Service and filing of other papers shall be as described in Rule 5, F.R.Civ.P., except as the Court shall otherwise order.

D. ACTIONS UNDER § 209(e)(1)(D) OF THE ACT OR § 1152(a)(3) OF NRSA. The complaint in any action under § 209(e)(1)(D) or § 1152(a)(3) shall be accompanied by a statement why adequate relief cannot be had under the Federal Rules of Civil Procedure, Part V. The Court may dismiss any such action on motion or *sua sponte* for failure to file such a statement or if the statement is inadequate.

REFERENCES IN TEXT

Section 209(e) and (e)(1)(D) of the Act, referred to in pars. A(1) and D, is section 209(e) and (e)(1)(D) of Pub. L. 93–236, title II, Jan. 2, 1974, 87 Stat. 999, which is classified to section 719(e) and (e)(1)(D) of this title.

Section 1152(a) and (a)(3) of NRSA, referred to in pars. A(1) and D, is section 1152(a) and (a)(3) of Pub. L. 97–35, title XI, Aug. 13, 1981, 95 Stat. 676, which is classified to section 1105(a) and (a)(3) of this title.

Sections 303(c) and 306(c)(4) of the Act, referred to in par. A(2), are section 303(c) of Pub. L. 93–236, title III, Jan. 2, 1974, 87 Stat. 1005, which is classified to section 743(c) of this title, and section 306(c)(4) of Pub. L. 93–236, title III, as added Pub. L. 94–210, title VI, § 610(b), Feb. 5, 1976, 90 Stat. 104, which is classified to section 746(c)(4) of this title.

The Federal Rules of Civil Procedure, referred to in pars. B(1), C, and D, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

RULE 11. PROCEEDINGS UNDER § 303(c) AND UNDER § 306(c)(4) OF THE ACT—FILINGS AND SERVICE

Except as the Court may otherwise direct by order, any pleading or paper filed with the Clerk in proceedings under §§ 303(c) and 306(c)(4) of the Act shall be served on all members of the Transferor Steering Committee and of the Government Parties Steering Committee, as those Steering Committees may be constituted from time to time. Two copies of each such pleading or other paper so filed and served shall be delivered to each of the three judges of the General Panel.

REFERENCES IN TEXT

Sections 303(c) and 306(c)(4) of the Act, referred to in text, are section 303(c) of Pub. L. 93–236, title III, Jan. 2, 1974, 87 Stat. 1005, which is classified to section 743(c) of this title, and section 306(c)(4) of Pub. L. 93–236, title III, as added Pub. L. 94–210, title VI, § 610(b), Feb. 5, 1976, 90 Stat. 104, which is classified to section 746(c)(4) of this title.

RULE 12. APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE

Except as herein otherwise provided, proceedings described in Rule 10 and Rule 11 shall conform to the Federal Rules of Civil Procedure insofar as these may be applicable and are not inconsistent with the Act, NRSA, or the rules of this Court, save as the Court for good cause may otherwise direct by order in a particular case or class of cases.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Act, referred to in text, 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.

NRSA, referred to in text, is subtitle E of title XI (§§ 1131–1169) of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643, 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.

RULE 13. PROCEEDINGS INVOLVING INTERSTATE COMMERCE COMMISSION

In any proceeding involving a question that arises under the Interstate Commerce Act and

related laws (codified in Subtitle 4 of Title 49 of the United States Code), or the rules, regulations, or orders of the Interstate Commerce Commission issued thereunder, or that affects a proceeding that is pending before or may properly be brought in the first instance before the Interstate Commerce Commission, a copy of each pleading or other paper filed with the Clerk shall be served upon the General Counsel, Interstate Commerce Commission, Washington, D.C. 20423.

REFERENCES IN TEXT

Subtitle 4 of Title 49 of the United States Code, referred to in text, probably means subtitle IV (§10101 et seq.) 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.

RULE 14. PROCEEDINGS UNDER SECTION 305(d) OF THE ACT

A. COMMENCEMENT OF PROCEEDINGS. Proceedings under §305(d) of the Act shall begin by the filing of a petition by USRA or the Secretary.

B. SERVICE OF PETITION ON CONRAIL AND PUBLICATION IN THE FEDERAL REGISTER. The petition shall be served upon Conrail prior to its filing with the Special Court, and notice of the petition shall be published in the Federal Register within seven days after filing.

C. ANSWER OF CONRAIL TO PETITION. Any answer by Conrail shall be served on the petitioner and filed with the Court within fourteen days after the filing of the petition.

D. APPLICATION FOR INTERVENTION. Except for good cause shown, any application for leave to intervene shall be served on the petitioner and filed within fourteen days after publication of the petition in the Federal Register.

E. FILING OF RECORD. The petitioner shall file the record made before USRA, the Secretary, and the Interstate Commerce Commission within fourteen days after the filing of the petition.

F. ADDITIONAL EVIDENCE. Any application for leave to adduce additional evidence shall be made within twenty-one days after the filing of the petition and, except for good cause shown, any such application by an intervenor shall be made within seven days after the grant of intervention or the filing of the record, whichever shall last occur. Such an application will be granted only if the applicant shows to the satisfaction of the Court that such additional evidence is material, that there were reasonable grounds for failure to adduce it in earlier proceedings, and that granting the application will not prevent the Court from deciding the petition within the time provided by the Act.

REFERENCES IN TEXT

The Act, referred to in pars. A and F, is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended, known as the Regional Rail Reorganization Act of 1973, which is classified principally to this chapter (§701 et seq.). Section 305(d) of the Act is classified to section 745(d) 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.

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.

RULE 15. MOTIONS

Except as provided in Rule 16 or as the Court may otherwise direct by order, all motions shall be made only by order to show cause submitted to the executive attorney of the Court, who will set the nature of further proceedings, including the date and place of any hearing, on instructions from one or more of the judges, or, in the event of his absence or unavailability, to one of the judges of the Court who will proceed in similar fashion.

RULE 16. ENTRY OF ORDERS BY THE EXECUTIVE ATTORNEY

A. ENTRY OF ORDERS BY EXECUTIVE ATTORNEY. The executive attorney is authorized, in his discretion and subject to review by the Court, to take appropriate action and enter orders for the Court in procedural matters including the following:

(1) Orders granting procedural motions, if such a procedural motion contains a written statement that all parties consent to the entry of an order granting the motion;

(2) Orders granting motions to which no objections have been filed in response to an order to show cause issued pursuant to Rule 15;

(3) Orders granting motions for voluntary dismissal of an action pursuant to Rule 41(a)(2), F.R.Civ.P.;

(4) Pretrial orders entered pursuant to Rule 16, F.R.Civ.P.;

(5) Orders scheduling proceedings before the Court.

B. RECONSIDERATION OF ORDERS ENTERED BY EXECUTIVE ATTORNEY. Any party adversely affected by an order entered by the executive attorney pursuant to this subdivision or rule shall be entitled to reconsideration thereof by a judge of the Court if, within fourteen days of entry of such order, such party files a motion for reconsideration giving the grounds therefor.

REFERENCES IN TEXT

Rules 41(a)(2) and 16, F.R.Civ.P., referred to in par. A(3) and (4), are Rules 41(a)(2) and 16 of the Federal Rules of Civil Procedure, which are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

RULE 17. OPINIONS AND RULINGS OF THE COURT

Opinions and rulings of the Special Court, unless delivered orally, shall be filed in the office of the Clerk who shall promptly reproduce them and distribute one copy to each party.

RULE 18. PETITIONS FOR RECONSIDERATION

A. TIME FOR FILING; CONTENT; ANSWER; ACTION BY COURT IF GRANTED. A petition for reconsideration may be filed within 20 days after entry of judgment unless the time is shortened or enlarged by order. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for reconsideration will be received unless requested by the Court, but a petition for reconsideration will ordinarily not be granted in the absence of such a request. If a petition for reconsideration is granted the Court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

B. FILING OF PETITION; LENGTH. Any petition for reconsideration shall be filed in the manner prescribed by Rule 9. Except with permission by the Court, a petition for reconsideration shall not exceed 20 pages.

RULE 19. REFERENCES TO REGIONAL RAIL REORGANIZATION ACT AND NORTHEAST RAIL SERVICE ACT

In all papers filed with the Court references of sections of the Regional Rail Reorganization Act of 1973 or Northeast Rail Service Act of 1981 shall be to such sections as numbered in the applicable Act and not to such sections as numbered in the U.S. Code.

REFERENCES IN TEXT

The Regional Rail Reorganization Act of 1973, referred to in text, is 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 Northeast Rail Service Act of 1981, referred to in text, is subtitle E of title XI (§§ 1131–1169) of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 643. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

§ 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 721, 725 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

[1] See References in Text note below.

of payment of interest or principal, security, or any other term or condition, upon agreement of the recipient of the loan and upon a finding by the Association that such modification is equitable and necessary or appropriate to achieve the policy declared in subsection (f) of this section. Notwithstanding any other provision of this section, in the case of a loan made under subsection (a) of this section to a railroad in the region, the Association is not required to make the findings with respect to subsections (e)(3) and (f) 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 deriving from membership in any employee voluntary relief plan which provides benefits to its members and their beneficiaries in the event of sickness, accident, disability, or death, and to which both a railroad in reorganization and employee members have made contributions;

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

(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,[3] 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

[2] See References in Text note below.

[3] So in original. Should be "Corporation,".

court of the United States having jurisdiction over the reorganization of a railroad in reorganization in the region for an order, which shall be entered prior to such conveyance, and which—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The direct claim of the Association under this paragraph, and any direct claim authorized

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

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

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

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

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

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

(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.

(i) Electrification

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.

(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.)

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

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 720, 726, 743, 797h, 1112 of this title; title 49 section 306.

§ 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 725, 743 of this title.

§ 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 Sec-

retary 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 723, 726, 743 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) of the Railroad Revitalization and Regulatory Reform Act of 1976 [45 U.S.C. 829(b)(1)] may be used to purchase se-

ries A preferred stock of the Corporation to provide for the implementation by the Corporation of a program to reduce the Corporation's work force, if the Finance Committee finds that the implementation of such program will result in substantial savings to the United States.

(B) An employee who ceases to be an employee as a result of the reduction of work force under a program implemented pursuant to this paragraph shall not, by reason of so ceasing to be an employee, or by reason of any work or employment entered into after so ceasing to be an employee, lose such employee's current connection with the railroad industry for the purposes of the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

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

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

(c) Finding, direction, and review by Congress

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

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

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

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

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

(4) Notwithstanding any other provision of this section, or any terms and conditions governing its purchase of securities of the Corporation, the Association shall, upon written application by the Corporation at least 30 days prior to such investment, make an initial investment in debentures of the Corporation within 60 days after the date of conveyance of rail properties pursuant to section 743(b)(1) of this title. Such initial investment shall be limited to such amounts as the Association and Finance Committee, acting jointly, determine are necessary for the continued and orderly operations of the Corporation prior to any additional investment.

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

(d) Terms and conditions

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

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

(2) The dividends payable on series A preferred stock of the Corporation shall not be

cumulative and shall be paid in cash when and to the extent that there is ''cash available for restricted cash payments'', as that term is defined in the final system plan.

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

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

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

(e) Modifications, waivers, and conversions

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

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

(3) Notwithstanding any provision of State law, there shall be no conversion of the debentures of the Corporation into series A preferred stock of the Corporation, as provided in the terms and conditions of the debentures and pursuant to the final system plan, unless the Board of Directors of the Association and the Finance Committee jointly determine to effect such conversion.

(f) Employee stock ownership plan

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

(2) The employee stock ownership plan shall:

(A) provide:

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

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

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

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

(D) have been approved by the Board of Directors of the Corporation to the extent and in

the manner which may be required by the Corporation's articles of incorporation and bylaws then in effect; and

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

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

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

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

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

(4) The Corporation shall adopt such terms and conditions governing the securities of interests therein to be transferred to the plan (including limitations on voting rights) as the Association, with the concurrence of the Finance Committee, determines are necessary to protect reasonably the interests of the United States in the litigation pursuant to section 743(c) of this title and in the event of any action to further reorganize or restructure the Corporation's assets or capital structure.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) each director, officer, employee and agent of the Corporation of 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)[1] 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

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.

[1] See References in Text note below.

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, 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 712, 721, 727, 741, 1342 of this title; title 49 section 306.

§ 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 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;

[1] See References in Text note below.

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

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

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

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

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

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

REFERENCES IN TEXT

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 712, 741, 1005 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.

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,

[1] See References in Text note below.

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

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

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

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 728, 1104 of this title.

§ 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 sys-

tem 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) 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;

(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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 719, 726 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 741 of this title.

§ 743. Valuation and conveyance of rail properties

(a) Deposit with court

Within 10 days after delivery of a certified copy of a final system plan pursuant to section 719(c) of this title—

(1) the Corporation, in exchange for the rail properties of the railroads in reorganization in the region and of railroads leased, operated, or controlled by railroads in reorganization in the region to be transferred to the Corporation or any subsidiary thereof, shall deposit with the special court all of the stock and other securities of the Corporation and certificates of value issued by the Association designated in the final system plan to be exchanged for such rail properties;

(2) each profitable railroad operating in the region and each state or responsible person (including a government entity) purchasing rail properties from a railroad in reorganization in the region, or from a railroad leased, operated, or controlled by a railroad in reorganization in the region, as provided in the final system plan shall deposit with the special court the compensation to be paid for such rail properties.

(b) Conveyance of rail properties

(1) The special court shall, within 10 days after deposit under subsection (a) of this section of the securities of the Corporation, certificates of value issued by the Association, and compensation from the profitable railroads operating in the region, States, and responsible persons, order the trustee or trustees of each railroad in reorganization in the region to convey forthwith to the Corporation or any subsidiary thereof, the respective profitable railroads operating in the region, States, and responsible persons all right, title, and interest in the rail properties of such railroad in reorganization and shall itself order the conveyance of all right, title, and interest in the rail properties of any person leased, operated, or controlled by such railroad in reorganization that are to be conveyed to them under the final system plan as certified to such court under section 719(d) of this title. In any case where the special court orders the trustee or trustees of a railroad in reorganization in the region to execute and deliver deeds or other instruments conveying rail properties to the Corporation or a subsidiary thereof or to a profitable railroad operating in the region or a State or responsible person, those deeds or other instruments may be executed, acknowledged, and delivered on behalf of the trustee or trustees by any person or persons who have been duly authorized to perform such acts on behalf of the trustee or trustees by the district court of the United States or any other court having jurisdiction over the respective railroad in reorganization in the region. Notwithstanding any provision of State or local law, in any case where deeds or other instruments have been executed, acknowledged, or delivered by a representative of the trustee or trustees of a railroad in reorganization in the region in accordance with the previous sentence, such execution, acknowledgment, and delivery, and the deeds or other instruments to which they pertain, shall have the same legal effect as they would have had if the trustee or trustees had themselves executed, acknowledged and delivered such deeds or other instruments.

(2) All rail properties conveyed to the Corporation or any subsidiary thereof the respective profitable railroads operating in the region, States, and responsible persons under this section shall be conveyed free and clear of any liens or encumbrances, but subject to such leases and agreements as shall have previously burdened such properties or bound the owner or operator thereof in pursuance of an arrangement with any State, or local or regional transportation

authority under which financial support from such State, or local or regional transportation authority was being provided on January 2, 1974, for the continuance of rail passenger service or any lien or encumbrance of no greater than 5 years' duration which is necessary for the contractual performance by any person of duties related to public health or sanitation. Such conveyances shall not be restrained or enjoined by any court.

(3)(A)(i) Notwithstanding any other provision of this chapter, if an interest in railroad rolling stock is included in the rail properties conveyed pursuant to subsection (b)(1) of this section, and if such conveyance is in accordance with the requirements of clause (ii) of this subparagraph, the conveyance of such properties shall be deemed an assignment. Any such assignment shall relieve the assignor of liability for any breach which occurs after the date of such conveyance, except that such assignor shall remain liable for any breach, event of default, or violation of covenant which occurred (and any charges or obligations which accrued) prior to the date of such conveyance, regardless of whether the assignee thereof assumes such liabilities, charges or obligations. If any such liabilities, charges, or obligations (accrued prior to the date of such conveyance) are paid by or on behalf of any person or entity other than such assignor, such person or entity shall have a claim to direct reimbursement, as a current expense of administration, from such assignor, together with interest on the amount so paid.

(ii) A conveyance referred to in clause (i) of this subparagraph may be effected only if—

(I) the Corporation or a subsidiary thereof, the profitable railroad operating in the region, or the State or responsible person to whom such conveyance is made assumes all of the obligations under any applicable conditional sale agreement, equipment trust agreement, or lease with respect to such rolling stock (including any obligations which accrued prior to the date on which such properties are conveyed), and

(II) such conveyance is made subject to such obligations.

As used in this subparagraph, the term ''railroad rolling stock'' means assets which could be carried in Interstate Commerce Commission account numbers 52, 53, 54, and 57.

(B) Subject to the provisions of this paragraph, the provisions of this chapter shall not affect the title and interests of any lessor, equipment trust trustee, or conditional sale vendor under any conditional sale agreement, equipment trust agreement, or lease under section 77(j) of the Bankruptcy Act. A profitable railroad operating in the region, the Corporation or a subsidiary thereof, or a State or responsible person, to whom such a conveyance is made as assignee or as lessee, shall assume all liability under such conditional sale agreement, equipment trust agreement, or lease. Such an assignment or conveyance to, and such an assumption of liability by, such a profitable railroad, Corporation, subsidiary, State, or responsible person shall not be deemed a breach, an event of default, or a violation of any covenant of any such conditional sale agreement, equipment trust agreement, or lease so assigned or conveyed, notwithstanding any provisions of any such agreement or lease.

(4) Notwithstanding anything to the contrary contained in this chapter, if a railroad in reorganization has leased rail properties from a lessor that is neither a railroad nor controlled by or affiliated with a railroad, and such lease has been approved by the lessee railroad's reorganization court prior to January 2, 1974, conveyance of such lease may only be effected if the Corporation, profitable railroad, State, or responsible person to whom the conveyance is made assumes all future liability under such lease and all of the terms and conditions specified in the lease, including the obligation to pay the specified rent to the non-railroad lessor.

(5) Notwithstanding any covenant, undertaking, condition, or provision of any sort in any lease, agreement, or contract, the conveyance, transfer, assignment, or other disposition of such lease, agreement, or contract or of any interest therein to, or the assumption by, the Corporation or any subsidiary thereof, or a profitable railroad of obligations thereunder, shall not be deemed a breach, an event of default, or a violation of any covenant of such lease, agreement, or contract.

(6)(A) Notwithstanding anything to the contrary contained in this chapter or any other other[1] provision of law, the special court shall include in its order such further directions as may be necessary to assure (i) that the operation and administration of the employee pension benefit plans described in section 775(a)[2] of this title shall be continued, without termination or interruption, by the Corporation until such time as the Corporation elects to amend or terminate any such plan, in whole or in part; and (ii) that appropriate transfers and assignments with respect to all rights and obligations relating to such plans shall be made to the Corporation for such purposes, without prejudice to payment of consideration for whatever rights any railroad in reorganization may have in any residual assets under any such employee pension benefit plan. No court shall enter any judgment against the Corporation with respect to any such rights, except that the special court may enter such a judgment in an order issued by it pursuant to subsection (c) of this section, after taking into consideration the rights and obligations transferred pursuant to this paragraph. All liabilities as an employer shall be imposed solely upon the railroad in reorganization in the event such plan is terminated, in whole or in part, by the Corporation within 1 year after the date of such transfer or assignment (except liabilities as an employer under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] for benefits accruing during such period), except that in any case in which the Corporation, on or after the date of transfer or assignment as provided by this paragraph, terminates in whole or in part any such plan, the benefits under which are not guaranteed under title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], the Corpora-

[1] So in original.

[2] See References in Text note below.

tion shall guarantee the payment when due of the accrued pension benefits provided for thereunder at the time of termination. The Corporation shall be entitled to a loan pursuant to section 721(h) of this title in an amount required for the adequate funding of accrued pension benefits under all plans transferred or assigned to the Corporation in accordance with this paragraph (whether or not terminated by the Corporation). For purposes of such section 721(h) and notwithstanding any other provision of Federal or State law, amounts required for such adequate funding shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization, due and payable as of the date of transfer or assignment of the plans to the Corporation.

(B) The Corporation shall, through the purchase of insurance or otherwise, maintain in effect any medical insurance coverage or so much of any life insurance coverage that does not exceed in death benefits an amount equal to twice the employee's annual salary at the time of retirement or $60,000, whichever is lower, which coverage was maintained by a railroad in reorganization in the region immediately prior to April 1, 1976, and which provides insurance benefits to employees who retired, prior to April 1, 1976, from service with such a railroad. With respect to any such employee whose medical or life insurance coverage lapsed after April 1, 1976, due to nonpayment of premiums, the Corporation shall—

(i) through the purchase of insurance or otherwise, provide medical insurance benefits or life insurance benefits at the same level as were provided by the employer railroad in reorganization and in effect with respect to such employees immediately prior to April 1, 1976, except that the life insurance benefits so provided shall not exceed in death benefits an amount equal to twice the employee's annual salary at the time of retirement or $60,000, whichever is lower; and

(ii) assume and pay any claim for such employee (or his personal representative) for any such insurance benefits, if—

(I) such claim arose during the period beginning April 1, 1976, and ending on the date insurance coverage is provided pursuant to clause (i) of this subparagraph;

(II) such benefits were not paid by an insurer solely because of the lapse of the insurance coverage during such period,

except that such death benefits shall not be paid for any such employee in excess of an amount equal to twice the employee's annual salary at the time of retirement or $60,000, whichever is lower.

The Corporation shall be entitled to a loan pursuant to section 721(h) of this title in an amount required for the payment of insurance premiums and benefits described in this sub- paragraph. For purposes of section 721(h)(4)(A)(iii) of this title, amounts required for the payment of such premiums and benefits shall be deemed to be valid administrative claims against the respective estates of the railroads in reorganization, due and payable as of April 1, 1976, or, in the case of a railroad in reorganization which is not subject to a bankruptcy proceeding, such amounts shall be deemed to be obligations of such railroad, due and payable as of such date, and shall be reimbursable in accordance with the procedures set forth in paragraphs (4) and (5) of such section 721(h) of this title. As used in this subparagraph, the term ''railroad in reorganization'' includes any railroad which is controlled by a railroad in reorganization but is not itself subject to a bankruptcy proceeding, if such railroad conveyed substantially all of its rail properties to the Corporation pursuant to paragraph (1) of this subsection and conducted operations over such rail properties prior to the date of such conveyance.

(c) Findings and distribution

(1) After the rail properties have been conveyed to the Corporation or any subsidiary thereof, profitable railroads operating in the region, States, and responsible persons under subsection (b) of this section, the special court, giving due consideration to the findings contained in the final system plan, shall decide—

(A) whether the transfers or conveyances—

(i) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to the Corporation or any subsidiary thereof in exchange for the certificates of value and the other benefits accruing to such railroad as a result of such exchange (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad) as provided in the final system plan and this chapter, and

(ii) of rail properties of each railroad in reorganization, or of each railroad leased, operated, or controlled by a railroad in reorganization, to a profitable railroad operating in the region in exchange for compensation and other benefits accruing to such transferor as a result of such exchange (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad) State, or responsible person in accordance with the final system plan,

are in the public interest and are fair and equitable to the estate of each railroad in reorganization in accordance with the standard of fairness and equity applicable to the approval of a plan of reorganization or a step in such a plan under section 77 of the Bankruptcy Act, or fair and equitable to a railroad that is not itself in reorganization but which is leased, operated, or controlled by a railroad in reorganization;

(B) whether the transfers or conveyances are more fair and equitable than is required as a constitutional minimum; and

(C) what portion of the proceeds received by a railroad in reorganization from an entity other than the Corporation or any subsidiary thereof for the sale, lease, or transfer of property subject to an agreement under section 723

or section 725(a)(1) or (2) of this title reflects value attributable to the maintenance or improvement provided pursuant to the agreement.

(2) If the special court finds that the terms of one or more exchanges for certificates of value and other benefits are not fair and equitable to an estate of a railroad in reorganization, or to a railroad leased, operated, or controlled by a railroad in reorganization (taking into consideration compensable unconstitutional erosion, if any, which the special court finds to have occurred in the estate of each such railroad, during the bankruptcy proceeding with respect to such railroad), which has transferred rail properties pursuant to the final system plan, it may—

(A) enter a judgment reallocating the certificates of value in a fair and equitable manner if they have not been fairly allocated among the railroads transferring rail properties to the Corporation or any subsidiary thereof, except that one certificate of value shall be allocated to each such railroad; and

(B) if the lack of fairness and equity cannot be completely cured by a reallocation of the certificates of value, order the Corporation to provide for the transfer to the railroad of certificates of value issued by the Association as designated in the final system plan in such nature and amount as would make the exchange or exchanges fair and equitable; and

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

(3) If the special court finds that the terms of one or more conveyances of rail properties to a profitable railroad operating in the region, State, or responsible person in accordance with the final system plan are not fair and equitable, it shall enter a judgment against such profitable railroad, State, or responsible person. If the special court finds that the terms of one or more conveyances or exchanges for certificates of value or other benefits are fairer and more equitable than is required as a constitutional minimum, then it shall order the return of any excess certificates of value, or compensation to the Corporation or a profitable railroad, State, or responsible person so as not to exceed the constitutional minimum standard of fairness and equity. The special court shall also find the amount of the payments, if any, which each profitable railroad has made on behalf of a transferor railroad in reorganization in accordance with section 721(h) of this title, for which payment the profitable railroad has not been reimbursed, as provided in section 721(h) of this title. Notwithstanding any other provision of this paragraph or of paragraph (4), the special court shall order the return to any such profitable railroad from compensation deposited by such profitable railroad pursuant to subsection (a)(2) of this section, of any such amount so found together with interest at the rate provided in section 721(h) of this title. In making any finding under this paragraph, the special court shall take into consideration compensable unconstitutional erosion, if any, which it finds to have occurred in the estate of a railroad in reorganization in the region, or of a railroad leased, operated, or controlled by such a railroad, during the bankruptcy proceeding with respect to such railroad.

(4) Upon making the findings referred to in this subsection, the special court shall order distribution of the certificates of value and compensation deposited with it under subsection (a) of this section to the trustee or trustees of each railroad in reorganization in the region and to persons leased, operated, or controlled by such railroads who so transferred or conveyed rail properties who conveyed right, title, and interest in rail properties to the Corporation and the respective profitable railroads, States, and responsible persons under such subsection.

(5) Whenever the special court, pursuant to subsection (b)(1) of this section, orders the transfer or conveyance of rail properties—

(A) designated under section 716(c)(1)(C) or (D) of this title, to the Corporation or any subsidiary thereof, the United States shall indemnify the Corporation against any costs or liabilities imposed on the Corporation as the result of any judgment entered against the Corporation, with respect to such properties, under paragraph (2) of this subsection; and

(B) to the National Railroad Passenger Corporation, a profitable railroad operating in the region, a State, or any other responsible person (including a governmental entity), the United States shall indemnify such Corporation, railroad, State, or person against any costs or liabilities imposed thereon as the result of any judgment entered against such Corporation, railroad, State, or person under paragraph (3) of this subsection;

plus interest on the amount of such judgment at such rate as is constitutionally required. The United States may, in its discretion, represent the Corporation or the National Railroad Passenger Corporation, such profitable railroad, State or responsible person, in any proceedings before the special court that could result in such a judgment against the Corporation under paragraph (2) of this subsection or against the National Railroad Passenger Corporation, such profitable railroad, State or responsible person, under paragraph (3) of this subsection. The Corporation, the National Railroad Passenger Corporation, any profitable railroad, State, or responsible person, which is represented by the United States of America shall cooperate diligently in whatever manner the United States shall reasonably request of it in connection with such proceedings. Neither the Corporation, or its subsidiaries, nor the National Railroad Passenger Corporation, any profitable railroad, State or responsible person, shall be obligated to reimburse the United States for any moneys paid by the United States pursuant to this section.

(6) Whenever the Corporation exercises an option to acquire, or acquires, interests in rail marine freight floating equipment pursuant to the recommendations of the final system plan, and the Corporation thereafter makes such floating equipment available to a profitable railroad operating in the region, a State, or a responsible

person including[3] a government entity), the United States shall indemnify—

(A) the Corporation against any costs or liabilities imposed on the Corporation as the result of any judgment entered against it, with respect to such equipment, under paragraph (2) of this subsection; and

(B) such profitable railroad, State, or responsible person against any costs or liabilities imposed thereon as the result of any judgment entered against such profitable railroads, State, or responsible person under paragraph (3) of this subsection,

plus interest on the amount of such judgment at such rate as is constitutionally required.

(d) Appeal

An order or judgment entered by the United States District Court for the District of Columbia pursuant to subsection (c) of this section or section 746 of this title shall be reviewable in accordance with sections 1291, 1292, and 1294 of title 28.

(e) Transfer and other taxes and recording fees

All transfers or conveyances of rail properties (whether real, personal, or mixed) which are made under this chapter (including transfers and conveyances which are made in accordance with a supplemental transaction pursuant to section 745 of this title or which are made at any time to carry out the purposes of section 791(d) of this title) shall be exempt from any taxes, imposts, or levies now or hereafter imposed, by the United States or by any State or any political subdivision of a State, on or in connection with such transfers or conveyances or on the recording of deeds, bills of sale, liens, encumbrances, or other instruments evidencing, effectuating, or incident to any such transfers or conveyances, whether imposed on the transferor or on the transferee. Such transferors and transferees shall be entitled to record any such deeds, bills of sale, liens, encumbrances, or other instruments and, consistent with the designations and applicable principles in the final system plan, to record the release or removal of any pre-existing liens or encumbrances of record with respect to properties so transferred or conveyed, upon payment of any appropriate and generally applicable charges to compensate for the cost of the service performed.

(Pub. L. 93–236, title III, § 303, Jan. 2, 1974, 87 Stat. 1005; Pub. L. 94–5, § 8, Feb. 28, 1975, 89 Stat. 9; Pub. L. 94–210, title VI §§ 601(d), 612(a), (c)–(i), (k), (*l*), (n)–(q), Feb. 5, 1976, 90 Stat. 84, 107–111; Pub. L. 94–436, §§ 3, 5, Sept. 30, 1976, 90 Stat. 1398, 1399; Pub. L. 94–555, title II, §§ 202(b), 204, 220(b), Oct. 19, 1976, 90 Stat. 2616, 2620, 2629; Pub. L. 95–199, § 4, Nov. 23, 1977, 91 Stat. 1424; Pub. L. 95–597, § 1, Nov. 4, 1978, 92 Stat. 2547; Pub. L. 96–73, title II, § 204(a), Sept. 29, 1979, 93 Stat. 556; Pub. L. 97–35, title XI, § 1167(a), Aug. 13, 1981, 95 Stat. 686; Pub. L. 100–352, § 6(e), June 27, 1988, 102 Stat. 664; Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379; Pub. L. 104–317, title VI, § 605(b)(2), Oct. 19, 1996, 110 Stat. 3858.)

[3] So in original. Probably should be ''(including''.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 712, 716, 719, 721, 724, 725, 726, 741, 744, 745, 746, 791, 797h of this title; title 49 sections 24505, 24907.

§ 744. Termination and continuation of rail services

(a) Discontinuance

(1) Except as provided in subsections (c) and (f) of this section, rail service on rail properties of a railroad in reorganization in the region, or of a person leased, operated, or controlled by such a railroad, which transfers to the Corporation or to profitable railroads operating in the region all or substantially all of its rail properties designated for such conveyance in the final system plan, and rail service on rail properties of a profitable railroad operating in the region which transfers substantially all of its rail properties to the Corporation or to other railroads pursuant to the final system plan, may be discontinued, to the extent such discontinuance is not precluded by the terms of the leases and agreements referred to in section 743(b)(2) of this title, if—

(A) the final system plan does not designate rail service to be operated over such rail properties;

(B) not sooner than 30 days following the effective date of the final system plan, the trustee or trustees of the applicable railroad in reorganization or a profitable railroad give notice in writing of intent to discontinue such service on a date certain which is not less than 60 days after the date of such notice or on the date of any conveyance ordered by the special court pursuant to section 743(b)(1) of this title, whichever is later; and

(C) the notice required by subparagraph (B) of this paragraph is sent by certified mail to the Commission; to the chief executive officer, the transportation agencies, and the government of each political subdivision of each State in which such rail properties are located; and to each shipper who has used such rail service during the previous 12 months.

(2)(A) If rail properties are not, in accordance with the designations in the final system plan, required to be operated, as a consequence of a recommended arrangement for joint use or operation of rail properties (under section 716(g) of this title) or as part of a coordination project (under sections 716(c) and (g) of this title), rail service on such properties may be discontinued, subsequent to the date of conveyance of rail properties pursuant to such section 743(b)(1) of this title, if the Commission determines that such rail service on such rail properties is not compensatory and if—

(i) the petitioner and any other railroad involved in such arrangement or coordination project have, prior to filing an application for such discontinuance, entered into a binding

agreement (effective on or before the effective date of such discontinuance) to carry out such arrangement or project;

(ii) such application is filed with the Commission not later than 1 year after the effective date of the final system plan; and

(iii) such discontinuance is not precluded by the terms of the leases and agreements referred to in such section 743(b)(2).

(B) For purposes of this paragraph, rail service on rail properties is compensatory if the revenue attributable to such properties from such service equals or exceeds the sum of the avoidable costs of providing such service on such properties plus a reasonable return on the value of such rail properties, as determined in accordance with the standards developed pursuant to section 10362(b)(6)[1] of title 49.

(C) The Commission shall make its final determination, with respect to any discontinuance requested under this paragraph, not later than 120 days after the date of filing of an application therefor. The applicant shall have the burden of proving that the service involved is not compensatory. If the Commission fails to make a final determination within such time, the application shall be deemed to be granted.

(D) The Commission may issue such rules, regulations, and procedures as it deems necessary for the conduct of its functions under this paragraph.

(b) Abandonment

(1) Except as provided in subsections (c) and (f) of this section, rail properties over which rail service has been discontinued under subsection (a) of this section may not be abandoned sooner than 120 days after the effective date of the discontinuance. Thereafter, except as provided in subsection (c) of this section, such rail properties may be abandoned upon 30 days' notice in writing to any person (including a government entity) required to receive notice under subsection (a)(1)(C) of this section.

(2) In any case in which rail properties proposed to be abandoned under this section are designated by the final system plan as rail properties which are suitable for use for other public purposes (including roads or highways, other forms of mass transportation, conservation, and recreation), such rail properties shall not be sold, leased, exchanged, or otherwise disposed of during the 240-day period beginning on the date of notice of proposed abandonment under this section unless such rail properties have first been offered, upon reasonable terms, for acquisition for public purposes.

(3) Rail service may be discontinued, under subsection (a) of this section, and rail properties may be abandoned, under this section, notwithstanding any provision of part A of subtitle IV of title 49, the constitution or law of any State, or the decision of any court or administrative agency of the United States or of any State.

(c) Continuation of rail services

No rail service may be discontinued and no rail properties may be abandoned, pursuant to this section—

(1) in the case of service and properties referred to in subsections (a)(1) and (b)(1) of this section, after 2 years from the effective date of the final system plan or more than 2 years after the date on which the final rail service continuation payment is received, whichever is later; or

(2) if a financially responsible person (including a government entity) offers—

(A) to provide a rail service continuation payment which is designed to cover the difference between the revenue attributable to such rail properties and the avoidable costs of providing rail service on such properties, together with a reasonable return on the value of such properties;

(B) to provide a rail service continuation payment which is payable pursuant to a lease or agreement with a State or with a local or regional transportation authority under which financial support was being provided on January 2, 1974 for the continuation of rail passenger service; or

(C) to purchase, pursuant to subsection (f) of this section, such rail properties in order to operate rail services thereon.

If a rail service continuation payment is offered, pursuant to paragraph (2)(A) of this subsection, for both freight and passenger service on the same rail properties, the owner of such properties may not be entitled to more than one payment of a reasonable return on the value of such properties.

(d) Rail freight service

(1) If a rail service continuation payment is offered, pursuant to subsection (c)(2)(A) of this section, for rail freight service, the person offering such payment shall designate the operator of such service and enter into an operating agreement with such operator. The person offering such payment shall designate as the operator of such service—

(A) the Corporation, if rail properties of the Corporation connect with the line of railroad involved, unless the Commission determines that such rail service continuation could be performed more efficiently and economically by another railroad;

(B) any other railroad whose rail properties connect with such line, if the Corporation's rail properties do not so connect or if the Commission makes a determination in accordance with subparagraph (A) of this paragraph; or

(C) any responsible person (including a government entity) which is willing to operate rail service over such rail properties.

A designated railroad may refuse to enter into such an operating agreement only if the Commission determines, on petition by any affected party, that the agreement would substantially impair such railroad's ability to serve adequately its own patrons or to meet its outstanding common carrier obligations. The designated operator shall, pursuant to each such operating agreement (i) be obligated to operate rail freight service on such rail properties, and (ii) be entitled to receive, from the person offering such payment, the difference between the revenue at-

[1] See References in Text note below.

tributable 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)[2] of title 49.

(3) If necessary to prevent any disruption or loss of rail service, at any time after the date of conveyance, pursuant to section 743(b)(1) of this title, the Commission shall take such action as may be appropriate under its existing authority (including the enforcement of common carrier requirements applicable to railroads in reorganization in the region) to ensure compliance with obligations imposed under this subsection. The district courts of the United States shall have jurisdiction, upon petition by the Commission or any interested person (including a government entity), to enforce any order of the Commission issued pursuant to the exercise of its authority under this subsection, or to enjoin any designated entity or the trustees of a railroad in reorganization in the region from refusing to comply with the provisions of this subsection.

(4) No determination of reasonable payment for the use of rail properties of a railroad in reorganization in the region, and no determination of value of rail properties of such a railroad (including supporting or related documents or reports of any kind) which is made in connection with any lease agreement, contract of sale, or other agreement or understanding which is entered into after October 19, 1976—

(A) pursuant to this section; or

(B) pursuant to section 762[2] of this title or section 17[2] 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[3] 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

[2] See References in Text note below.

[3] So in original. Probably should be ''this''.

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)[4] of the Federal Transit Act (49 U.S.C. 1613(a)(2)),

the Corporation (or a profitable railroad) shall continue to provide such service after the end of such period, except as otherwise provided in this subsection.

(5)(A) The Secretary shall reimburse the Corporation (or a profitable railroad) for any loss which is incurred by it during the 180-day mandatory operation period specified in paragraph (1) of this subsection which is not compensated for by a State (or a local or regional transportation authority). The amount of such reimbursement shall be determined pursuant to section 17(a)(1)[4] 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)[4] 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)[4] 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 Sec-

[4] See References in Text note below.

retary 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 719, 741, 742, 1111 of this title; title 49 section 24505.

§ 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 in-

terest 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.

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

[1] See References in Text note below.

issue such orders as may be necessary to carry out such proposal. The provisions of paragraphs (2)–(6) of subsection (d) of this section shall apply to the determination of the special court under this subsection, except that the standards for such determination shall be those set forth in this paragraph.

(4)(A) Any employee who was protected by the compensatory provisions of subchapter V[2] of this chapter immediately prior to August 13, 1981, and who is deprived of employment as a result of the transfer of rail properties under this subsection shall be eligible for benefits under section 797[2] of this title.

(B) As used in this paragraph, ''employee deprived of employment'' means any employee who is unable to secure employment through the normal exercise of seniority rights, but does not include any employee who refuses an offer of employment with a railroad acquiring properties under this subsection.

(g) Transfer of properties and freight service obligations of specific lines

(1) Within 20 days after August 13, 1981, the Secretary shall initiate discussions and negotiations for the expedited transfer of all properties and freight service obligations of the Corporation with respect to the following lines: Canaan, Connecticut, to Pittsfield, Massachusetts; North Adams Junction, Massachusetts, to North Adams, Massachusetts; Hazardville, Connecticut, to Springfield, Massachusetts; Westfield, Massachusetts, to Easthampton, Massachusetts; Westfield, Massachusetts, to Holyoke, Massachusetts.

(2) Within 120 days after August 13, 1981, the Secretary shall transfer, provided a qualified purchaser offers to purchase, the Corporation's properties and freight service obligations described in paragraph (1) of this subsection to another railroad or railroads in the Region which are determined by the Secretary to be qualified. A qualified purchaser is defined as a railroad financially self-sustaining which guarantees continuous service for at least four years.

(3) The Secretary shall determine a fair and equitable price for the rail properties to be transferred under this subsection, and shall, unless the parties otherwise agree, establish divisions of joint rates for through routes over such properties which are fair and equitable to the parties.

(4) The Secretary shall determine fair and equitable terms for the provision of such trackage rights, on segments of the Corporation's lines not to exceed 5 miles per line transferred, to acquiring carriers as may be necessary to operate such transferred lines in an efficient manner.

(Pub. L. 93–236, title III, § 305, as added Pub. L. 94–210, title VI, § 610(b), Feb. 5, 1976, 90 Stat. 100; amended Pub. L. 96–448, title VI, § 601(a), Oct. 14, 1980, 94 Stat. 1958; Pub. L. 97–35, title XI, § 1155, Aug. 13, 1981, 95 Stat. 677; Pub. L. 98–620, title IV, § 402(48), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 104–317, title VI, § 605(c)(2), Oct. 19, 1996, 110 Stat. 3859.)

[2] See References in Text note below.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 719, 741, 743 of this title.

§ 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 securities are traded over a period of 120 consecutive trading days ending not less than 20 nor more than 40 trading days preceding the redemption date, or, in the case of a security for which there is not an established trading market, on the basis of the fair market value thereof as determined by the majority vote of three experts in the valuation of securities, one to be selected by the Association, one to be selected by the directors of the Corporation elected by the holders of the security to be valued, and one to be selected by the two first selected.

(d) Authorization of appropriations

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

(Pub. L. 93–236, title III, § 306, as added Pub. L. 94–210, title VI, § 610(b), Feb. 5, 1976, 90 Stat. 104; amended Pub. L. 94–248, §§ 2, 3, Mar. 25, 1976, 90 Stat. 286.)

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 712, 719, 720, 743, 1115 of this title.

§ 747. Protection of Federal funds

(a) Audit

(1) The Comptroller General of the United States is authorized to audit the programs, activities, and financial operations of the Corporation for any period during which (A) Federal funds provided pursuant to this chapter are being used to finance any portion of its operations, or (B) Federal funds have been invested therein pursuant to this chapter. Any such audit may be conducted under such rules and regulations as the Comptroller General may prescribe. The Comptroller General shall report to the Congress at such times and to such extent as he considers necessary to keep the Congress informed on the security of such Federal funds and guarantees and, to the extent appropriate, make recommendations for achieving greater economy, efficiency, and effectiveness in such programs, activities, and operations.

(2) For the purpose of any audit conducted pursuant to subsection (a) of this section, the Comptroller General, or a designated representative of the Comptroller General, shall have access to and the right to examine all books, accounts, records, reports, files, and other papers, items, or property belonging to or in use by the Corporation.

(b) Report

The Association shall prepare and submit an annual report to Congress on the performance of the Corporation in order to keep the Congress informed as to matters which may affect the quality of rail services in the region and which may affect the security of Federal funds referred to in subsection (a) of this section. Each such report shall be submitted within 150 days after the end of the fiscal year of the Corporation. Each such report shall include an evaluation of—

(1) the degree to which the goals of section 716(a) of this title are being met;

(2) the amounts and causes of deviations, if any, from the financial projections of the final system plan;

(3) the amount of Federal funds made available to the Corporation and a clear description of the uses of such funds;

(4) the projected financial needs of the Corporation;

(5) the projected sources from which such financial needs are likely to be met; and

(6) the ability of the Corporation to become financially self-sustaining without requiring Federal funds in excess of those authorized by section 716(f) of this title.

(c) Monitoring of Corporation

(1) The Association shall also report to the Congress, in accordance with this subsection, on the policies of the Corporation and the results of such policies with respect to operations, cost containment, and marketing.

(2) Within 90 days after November 1, 1978, the Association shall (A) subdivide each such policy

area into constituent parts or groups of parts which are specific and significant, (B) identify the most appropriate indicia to reflect accurately such parts or groups of parts, and (C)(i) determine any and all deficiencies in data used to compute the values of such indicia including consistency and clarity of definitions, timeliness of data entry, editing and validation of input data, and processing, and (ii) outline the efforts of the Association and Corporation to correct the deficiencies and the results of such efforts. On or before the end of such 90-day period, the Association shall submit to the Congress such methodological information and additional information which the Association deems necessary or appropriate to further the purpose of this subchapter.

(3) Using such indicia, the Association shall report on (A) the relationship of each constituent part or groups of parts to the Corporation's revenue and capital and operating expenses, (B) the extent to which such parts or group of parts contributes to profits or losses, (C) the efforts of management to contain or reduce the contribution of such part or group of parts to losses, (D) the results of such efforts, and (E) such other information as the Association deems necessary or appropriate.

(4) The Association shall (A) transmit to the Congress the first such monitoring report pursuant to paragraph (3) at the end of the first calendar quarter which begins after the end of the 90-day period for preparation and submission of the methodological information pursuant to paragraph (2), (B) report such monitoring information to the Congress at the end of the first quarter of each calendar year thereafter, (C) update methodological and monitoring information periodically as the Association deems necessary or appropriate, but in no case less frequently than once a year, and (D) where the results of such updating are statistically significant or relevant to Congressional policymaking, report them and the reasons for their significance at the end of the calendar quarter in which the updating occurred.

(Pub. L. 93–236, title III, § 307, as added Pub. L. 94–210, title VI, § 609, Feb. 5, 1976, 90 Stat. 99; amended Pub. L. 95–565, § 7, Nov. 1, 1978, 92 Stat. 2400.)

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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741, 1321 of this title.

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,

[1] So in original. Section 10903(b) of Title 49, Transportation, does not contain a par. (3).

[2] See References in Text note below.

88 Stat. 1464; Pub. L. 94–210, title VIII, § 805(a), Feb. 5, 1976, 90 Stat. 139, directed Secretary to provide financial assistance to States and local or regional transportation authorities in facilitating and maintaining main line or local rail service, prior to repeal by Pub. L. 94–210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 763, Pub. L. 93–236, title IV, § 403, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 655, related to determinations about profitability of Consolidated Rail Corporation.

A prior section 763, Pub. L. 93–236, title IV, § 403, Jan. 2, 1974, 87 Stat. 1012; Pub. L. 93–488, § 1(e), Oct 26, 1974, 88 Stat. 1465; Pub. L. 94–210, title VIII, § 805(b), (c), Feb. 5, 1976, 90 Stat. 142, authorized Association to provide loans for acquisition of rail properties by States or local or regional transportation authorities and for modernization of those acquired properties, prior to repeal by Pub. L. 94–210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

Section 764, Pub. L. 93–236, title IV, § 404, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 656, related to failure to sell interest of United States in common stock of Consolidated Rail Corporation as an entity.

Section 765, Pub. L. 93–236, title IV, § 405, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 657, related to plans to transfer Consolidated Rail Corporation's freight rail properties and service responsibilities.

Section 766, Pub. L. 93–236, title IV, § 406, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 658, related to consolidation and review of freight transfer agreements.

Section 767, Pub. L. 93–236, title IV, § 407, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 658, related to public comment and Congressional notification regarding freight transfer agreements.

Section 768, Pub. L. 93–236, title IV, § 408, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 659, related to performance under freight transfer agreements.

Section 769, Pub. L. 93–236, title IV, § 409, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 659, provided that conveyance of interest in rail properties under freight transfer agreement is deemed to be an assignment.

Section 769a, Pub. L. 93–236, title IV, § 410, as added Pub. L. 97–35, title XI, § 1142, Aug. 13, 1981, 95 Stat. 660, related to identification and sale of unprofitable subsidiaries of Consolidated Rail Corporation.

Section 769b, Pub. L. 93–236, title IV, § 411, as added Pub. L. 97–35, title XI, § 1146(a), Aug. 13, 1981, 95 Stat. 672, related to labor transfer agreements.

Section 769c, Pub. L. 93–236, title IV, § 412, as added Pub. L. 97–35, title XI, § 1146(a), Aug. 13, 1981, 95 Stat. 673, related to labor protection benefits.

SUBCHAPTER V—EMPLOYEE PROTECTION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 745, 836 of this title.

§§ 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 implement the final system plan where such action was in compliance with the requirements of such plan and with respect to any action taken to formulate or implement any supplemental transaction.

(3) As used in this subsection, ''antitrust laws'' includes the Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended; the Federal Trade Commission Act (38 Stat. 717), as amended [15 U.S.C. 41 et seq.], sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), as amended [15 U.S.C. 8, 9]; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended; and the antitrust laws of any State or subdivision thereof.

(b) Commerce, securities, and bankruptcy

(1) The provisions of subtitle IV of title 49 and the Bankruptcy Act, are inapplicable (A) to actions taken under this chapter to formulate and implement the final system plan where such action was in compliance with the requirements of such plan, and (B) to actions taken under this chapter to formulate or implement any supplemental transaction.

(2) All securities of the Corporation which are issued to the Association as the initial holder, or which are issued in connection with the transfer to the Corporation or a subsidiary thereof of rail properties under this chapter, shall be deemed for all purposes to have been issued subject to and authorized pursuant to section 11301[1] of title 49.

(3) The provisions of section 77e of title 15, shall not apply to transactions involving the issuance of any security of the Corporation to the Association, transactions involving the issuance of any security of the Corporation that is deposited with the special court pursuant to section 743(a) of this title, or transactions involving the issuance or distribution of any security of the Corporation, where the terms and conditions of such issuance or distribution are approved by the special court pursuant to section 743(c) of this title.

(4) The powers and duties of the Commission under section 77 of the Bankruptcy Act, with respect to a railroad in reorganization in the region which conveys all or substantially all of its designated rail properties to the Corporation or a subsidiary thereof, or to profitable railroads in the region, pursuant to the final system plan, and the requirement that plans of reorganization be filed with the Commission, shall cease upon the date of such conveyance. The powers and duties of the Commission under section 77 of the Bankruptcy Act shall also so terminate, as of February 5, 1976, with respect to any railroad in reorganization under such section 77 but not subject to this chapter which (1) does not operate any line of railroad, and (2) has transferred all or substantially all of its rail properties to a railroad in reorganization in the region which was subject to this chapter prior to February 5, 1976. Thereafter, such powers and duties of the Commission shall be vested in the district court of the United States which has jurisdiction of the estate of any such railroad in reorganization at the time of such conveyance. Such court shall proceed to reorganize or liquidate such railroad in reorganization pursuant to such section 77 on such terms as the court deems just and reasonable, or pursuant to any other provisions of the Bankruptcy Act, if the court finds that such action would be in the best interests of such estate. This paragraph does not affect any obligation of any carrier by railroad subject to regulation under subtitle IV of title 49. The powers and duties of the Commission under section 77 of the Bankruptcy Act shall continue in effect only to the extent that the railroad in reorganization continues to operate any line of railroad.

(c) Environment

The provisions of section 4332(2)(C) of title 42 shall not apply with respect to any action taken under authority of this chapter before, and including, the conveyance of rail properties ordered by the special court under section 743 (b)(1) of this title, and shall not apply thereafter to any action taken in compliance with the requirements of the final system plan.

(d) Northeast Corridor

(1) Rail properties designated in accordance with section 716(c)(1)(C) of this title shall be purchased or leased by the National Railroad Passenger Corporation. The Corporation shall negotiate an appropriate sale or lease agreement with the National Railroad Passenger Corporation for the properties designated for transfer pursuant to section 716(c)(1)(C) of this title, which shall take effect on the date of conveyance of such properties to the Corporation.

(2) Properties acquired by purchase, lease, or otherwise pursuant to this subsection shall be improved in order to meet the goal set forth in section 716(a)(3) of this title, relating to improved highspeed passenger service, by the earliest practicable date after January 2, 1974.

(3) The Secretary shall begin the necessary engineering studies and improvements on January 2, 1974.

(4) The final system plan shall provide for any necessary coordination with freight or commuter services of use of the facilities designated in section 716(c)(1)(C) of this title. Such coordination may be effectuated through a single operating entity, designated in the final system

[1] See References in Text note below.

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, 20, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act (38 Stat. 717), as amended, referred to in subsec. (a)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Sections 73 and 74 of the Act of August 27, 1894, referred to in subsec. (a)(3), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570. Sections 73 to 77 of this Act are known as the Wilson Tariff Act. Sections 73 to 76 enacted sections 8 to 11 of Title 15. Section 77 was not classified to the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8 of Title 15 and Tables.

Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended, referred to in subsec. (a)(3), is popularly known as the Robinson-Patman Antidiscrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, 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.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 716, 719, 741, 742, 743 of this title; title 11 section 1166; title 49 section 24907.

§ 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

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 231, 351 of this title.

§ 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.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 231, 351, 741, 797d, 797i, 1103 of this title.

§ 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.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741, 797c, 797d, 797m of this title.

§ 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.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741, 797d, 797m of this title.

§ 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).

[1] See References in Text note below.

[1] See References in Text note below.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 741 of this title.

§ 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.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 741 of this title.

§ 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741, 797m of this title.

§ 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

[1] See References in Text note below.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 741 of this title.

§ 797i. Limitations on liability

(a) Federal Government

The liability of the United States under an agreement entered into or benefit schedule prescribed under section 797[1] of this title or for payment of a termination allowance under section 797a of this title shall be limited to amounts appropriated under section 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.

[1] See References in Text note below.

(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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 741 of this title.

§ 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.)

AMENDMENTS

1994—Pub. L. 103–272 struck out ‘‘, the National Railroad Passenger Corporation, or the Amtrak Commuter Services Corporation’’ before ‘‘to employ any’’.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 741 of this title.

§ 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. 19, 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 741 of this title.

CHAPTER 17—RAILROAD REVITALIZATION AND REGULATORY REFORM

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