1637 was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948, and is covered by section 3287 of Title 18, Crimes and Criminal Procedure. Provisions of section 1641 not repealed by the 1949 act were repealed by Pub. L. 87–256, § 111(a)(1), Sept. 21, 1961, 75 Stat. 538, and are covered by chapter 33 (§ 2451 et seq.) of Title 22, Foreign Relations and Intercourse. The provisions of the Surplus Property Act of 1944 originally repealed by the 1949 act are covered by chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works.

Act of March 12, 1914, referred to in subsec. (b), is act Mar. 12, 1914, ch. 37, 38 Stat. 305, as amended, popularly known as the Alaska Railroad Act, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands, and which was repealed by section 615(a)(1) of Pub. L. 97–468 effective on the date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of this title.

The Alaska Statehood Act, referred to in subsec. (b), is Pub. L. 85–508, July 7, 1958, 72 Stat. 339, as amended, which is set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For complete classification of this Act to the Code, see Tables.

The Alaska Native Claims Settlement Act, referred to in subsecs. (b) and (e), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Act of January 2, 1976 (Public Law 94–204; 89 Stat. 1145), referred to in subsec. (b), amended the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). For complete classification of this Act to the Code, see Tables.

The Alaska National Interest Lands Conservation Act, referred to in subsecs. (b) and (e), is Pub. L. 96–487, Dec. 2, 1980, 94 Stat. 2371, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 16, Conservation, and Tables.

The general land and land management laws of the United States, referred to in subsec. (b), are classified generally to Title 43, Public Lands.

CODIFICATION

In subsec. (a), ''section 303 of title 49'' substituted for ''section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f))'' on authority of Pub. L. 97–449, § 6(b), Jan. 12, 1983, 96 Stat. 2443, the first section of which enacted subtitle I (§ 101 et seq.) and chapter 31 (§ 3101 et seq.) of subtitle II of Title 49, Transportation.

§ 1213. Conflict with other laws

The provisions of this chapter shall govern if there is any conflict between this chapter and any other law.

(Pub. L. 97–468, title VI, § 614, Jan. 14, 1983, 96 Stat. 2577.)

§ 1214. Separability

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

(Pub. L. 97–468, title VI, § 616, Jan. 14, 1983, 96 Stat. 2578.)

CHAPTER 22—CONRAIL PRIVATIZATION

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 702, 741, 1116, 1347 of this title.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1301. Findings

The Congress finds that—

(1) the bankruptcy of the Penn Central and other railroads in the Northeast and Midwest resulted in a transportation emergency which required the intervention of the Federal Government;

(2) the United States Government created the Consolidated Rail Corporation, which provides essential rail service to the Northeast and Midwest;

(3) the future of rail service in the Northeast and Midwest is essential and must be protected through rail service obligations, consistent with the transfer of the Corporation to the private sector;

(4) the Northeast Rail Service Act of 1981 has achieved its purpose in allowing the Corporation to become financially self-sustaining;

(5) the Federal Government has invested over $7,000,000,000 in providing rail service to the Northeast and Midwest;

(6) the Government, as a result of its ownership and investment of taxpayer dollars in the Corporation, controls substantial assets, including cash of approximately $1,000,000,000;

(7) the Corporation's viability and sound performance allow it to be sold to the American public for a substantial sum through a public offering;

(8) a public offering of the Corporation's stock will preserve competitive rail service in the region, provide a reasonable return to the Government, and protect employment;

(9) the Corporation's employees contributed significantly to the turnaround in the Corporation's financial performance and they should share in the Corporation's success through a settlement of their claims for reimbursement for wages below industry standard, and a share in the common equity of the Corporation;

(10) the requirements of section 761(e)[1] of this title are met by this chapter; and

(11) the Secretary of Transportation has discharged the responsibilities of the Department of Transportation under the Northeast Rail Service Act of 1981 with respect to the sale of the Corporation as a single entity.

(Pub. L. 99–509, title IV, § 4002, Oct. 21, 1986, 100 Stat. 1893.)

REFERENCES IN TEXT

The Northeast Rail Service Act of 1981, referred to in pars. (4) and (11), is subtitle E of title XI of Pub. L. 97–35, §§ 1131–1169, Aug. 13, 1981, 95 Stat. 643, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Section 761 of this title, referred to in par. (10), was repealed by Pub. L. 99–509, title IV, § 4033(a)(1), Oct. 21, 1986, 100 Stat. 1908.

This chapter, referred to in par. (10), was in the original "this subtitle" meaning subtitle A (§§ 4001–4052) of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1892, known as the Conrail Privatization Act, which is classified principally to this chapter. For complete classification of subtitle A to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 4001(a) of subtitle A (§§ 4001–4052) of title IV of Pub. L. 99–509 provided that: "This subtitle [enacting this chapter, amending sections 702, 726, 727, 741, 797, 821, 825, 829, 831, 1105, 1115, and 1116 of this title and sections 10362 and 10713 of Title 49, Transportation, repealing sections 761 to 769c, 797*l*, 825a, 1107, 1110, and 1114 of this title, and enacting provisions set out as a note under section 797 of this title] may be cited as the 'Conrail Privatization Act'."

[1] See References in Text note below.

§ 1302. Purposes

The purposes of this chapter are to transfer the interest of the United States in the common stock of the Corporation to the private sector in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of its rail service in the Northeast and Midwest, provides for the protection of the public interest in a sound rail transportation system, and, to the extent not inconsistent with such purposes, secures the maximum proceeds to the United States.

(Pub. L. 99–509, title IV, § 4003, Oct. 21, 1986, 100 Stat. 1893.)

§ 1303. Definitions

For the purposes of this chapter—

(1) the term "capital expenditures" means amounts expended by the Corporation and its subsidiaries for replacement or rehabilitation of, or enhancements to, the railroad plant, property, trackage, and equipment of the Corporation and its subsidiaries, as determined in accordance with generally accepted accounting principles, and in interpreting generally accepted accounting principles, no amount spent on normal repair, maintenance, and upkeep of such railroad plant, property, trackage, and equipment in the ordinary course of business shall constitute capital expenditures;

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

(3) the term "consolidated funded debt" means the aggregate, after eliminating intercompany items, of all funded debt of the Corporation and its consolidated subsidiaries, consolidated in accordance with generally accepted accounting principles;

(4) the term "consolidated tangible net worth" means the market value of the common equity of the Corporation as of the sale date, plus or minus the change from the sale date to the date of measurement in the excess, after making appropriate deductions for any minority interest in the net worth of subsidiaries, of—

(A) the assets of the Corporation and its subsidiaries (excluding intercompany items) which, in accordance with generally accepted accounting principles, are tangible assets, after deducting adequate reserves in each case where, in accordance with generally accepted accounting principles, a reserve is proper, over

(B) all liabilities of the Corporation and its subsidiaries (excluding intercompany items),

taking into account inventory and securities on the basis of the cost or current market value, whichever is lower, and not taking into account patents, trademarks, trade names, copyrights, licenses, goodwill, treasury stock, or any write-up in the book value of any assets;

(5) the term "Corporation" means the Consolidated Rail Corporation;

(6) the term "cumulative net income" means, for any period, the net income of the

Corporation and its consolidated subsidiaries as determined in accordance with generally accepted accounting principles, before provision for expenses (net of income tax effect) related to—

(A) amounts paid by the Corporation under section 4024(e), and comparable payments made to present and former employees of the Corporation not covered by such section; and

(B) the aggregate value of any shares and cash distributed by the Corporation under section 4024(f);

(7) the term ''debt'' means (A) indebtedness, whether or not represented by bonds, debentures, notes, or other securities, for the repayment of money borrowed, (B) deferred indebtedness for the payment of the purchase price of property or assets purchased, (C) guarantees, endorsements, assumptions, and other contingent obligations in respect of, or to purchase or to otherwise acquire, indebtedness of others, and (D) indebtedness secured by any mortgage, pledge, or lien existing on property owned, subject to such mortgage, pledge, or lien, whether or not indebtedness secured thereby shall have been assumed;

(8) the term ''funded debt'' means all debt created, assumed, or guaranteed, directly or indirectly, by the Corporation and its subsidiaries which matures by its terms, or is renewable at the option of the Corporation or any such subsidiary to a date, more than 1 year after the date of the original creation, assumption, or guarantee of such debt by the Corporation or such subsidiary;

(9) the term ''liabilities'' means all items of indebtedness or liability which, in accordance with generally accepted accounting principles, would be included in determining total liabilities as shown on the liabilities side of a balance sheet as at the date as of which liabilities are to be determined;

(10) the term ''person'' means an individual, corporation, partnership, association, trust, or other entity or organization, including a government or political subdivision thereof or a governmental body;

(11) the term ''preferred stock'' means any class or series of preferred stock, and any class or series of common stock having liquidation and dividend rights and preferences superior to the common stock of the Corporation offered for sale under section 1312 of this title;

(12) the term ''public offering'' means an underwritten offering to the public of such common stock of the Corporation as the Secretary of Transportation determines to sell under section 1312 of this title;

(13) the term ''sale date'' means the date on which the initial public offering is closed;

(14) the term ''subsidiary'' means any corporation more than 50 percent of whose outstanding voting securities are directly or indirectly owned by the Corporation; and

(15) the term ''United States share'' means a share of common stock of the Corporation held by the United States Government on October 21, 1986, or as a result of any split required pursuant to section 1312(d) of this title.

(Pub. L. 99–509, title IV, § 4004, Oct. 21, 1986, 100 Stat. 1894.)

REFERENCES IN TEXT

Section 4024(e) and section 4024(f), referred to in par. (6), are section 4024(e) and (f) of Pub. L. 99–509, and are set out as a note under section 797 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

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

SUBCHAPTER II—CONRAIL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1105 of this title.

PART A—SALE OF CONRAIL

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1346 of this title.

§ 1311. Preparation for public offering

(a) Public offering managers

(1) Not later than 30 days after October 21, 1986, the Secretary of Transportation, in consultation with the Secretary of the Treasury and the Chairman of the Board of Directors of the Corporation, shall retain the services of investment banking firms to serve jointly and be compensated equally as co-lead managers of the public offering (hereafter in this part referred to as the ''co-lead managers'') and to establish a syndicate to underwrite the public offering. The total number of co-lead managers shall be no fewer than 4 nor greater than 6. The Secretary shall designate one co-lead manager to coordinate and administer the public offering.

(2) In selecting the investment banking firms to serve as co-lead managers of the public offering under paragraph (1), consideration shall be given to the firm's institutional and retail distribution capabilities, financial strength, knowledge of the railroad industry, experience in large scale public offerings, research capability, and reputation. In addition, recognition shall also be given to contributions made by particular investment banking firms before October 21, 1986, in demonstrating and promoting the long-term financial viability of the Corporation.

(b) Payment to United States

(1) Not later than 30 days after October 21, 1986, the Corporation shall transfer to the Secretary of the Treasury $200,000,000.

(2) On or before February 1, 1987, or 30 days before the sale date, whichever occurs first, the Secretary of Transportation shall determine whether to require the Corporation to transfer to the Secretary of the Treasury, in addition to amounts transferred under paragraph (1), not to exceed $100,000,000, taking into account the viability of the Corporation. The Corporation shall transfer such funds as are required to be transferred under this paragraph.

(c) Registration statement

The Corporation shall prepare and cause to be filed with the Securities and Exchange Commission a registration statement with respect to the securities to be offered and sold in accordance with the securities laws and the rules and regulations thereunder in connection with the initial and any subsequent public offering.

(d) Omitted

(Pub. L. 99–509, title IV, § 4011, Oct. 21, 1986, 100 Stat. 1895.)

REFERENCES IN TEXT

This part, referred to in subsec. (a), was in the original ''this subpart'' meaning subpart A (§§ 4011–4013) of part 2 of subtitle A of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1895, which enacted this part and amended section 726 of this title. For complete classification of subpart A to the Code, see Tables.

CODIFICATION

Subsec. (d) of this section amended section 726 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1312 of this title.

§ 1312. Public offering

(a) Structure of public offering

(1) After the registration statement referred to in section 1311(c) of this title is declared effective by the Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-lead managers, shall offer the United States shares for sale in a public offering, except as provided in paragraphs (2) and (3).

(2) The Secretary of Transportation, after such consultation, may elect to offer less than all of the United States shares for sale at the time of the initial sale.

(3) Under no circumstances shall the Secretary of Transportation offer any of the United States shares for sale unless, before the sale date, the Secretary determines, after such consultation, that the estimated sum of the gross proceeds from the sale of all the United States shares will be an adequate amount. A determination by the Secretary under this paragraph shall not be reviewable.

(4) In making a determination under paragraph (3), the Secretary shall have the goal of obtaining at least $2,000,000,000 in aggregate gross proceeds for the United States from the public offering and any payments made under section 1311(b) of this title.

(b) Subsequent sales

If the Secretary of Transportation elects to offer for sale less than all the United States shares, the Secretary shall sell the remaining United States shares in subsequent public offerings.

(c) Consent of Corporation not required

Any public offering under this section may be made without the consent of the Corporation.

(d) Authority to require stock splits

(1) The Secretary of Transportation, in consultation with the co-lead managers and the Chairman of the Board of Directors of the Corporation, may, in connection with the initial public offering described in subsection (a) of this section, before the filing of the registration statement referred to in section 1311(c) of this title, require the Corporation to declare a stock split or reverse stock split.

(2) The Corporation shall take such action as may be necessary to comply with the Secretary's requirements under this subsection.

(e) Cancellation of other securities held by United States

(1) In consideration for amounts transferred to the United States under section 1311(b) of this title, the Secretary of Transportation shall, concurrent with the initial public offering described in subsection (a) of this section, deliver to the Corporation all preferred stock, 7.5 percent debentures, and contingent interest notes of the Corporation. The Corporation shall immediately cancel such debentures, preferred stock, and contingent interest notes, and any interest of the United States in such debentures, preferred stock, and contingent interest notes shall be thereby extinguished.

(2) For purposes of regulation by the Commission and State public utility regulation, the actions authorized by this subsection, the public offering, and the value of the consideration received therefor shall not change the value of the Corporation's assets net of depreciation and shall not be used to alter the calculation of the Corporation's stock or asset values, rate base, expenses, costs, returns, profits, or revenues, or otherwise affect or be the basis for a change in the regulation of any railroad service, rate, or practice provided or established by the Corporation, or any change in the financial reporting practice of the Corporation.

(f) Minority investment banking firms

The Secretary of Transportation shall ensure that minority owned or controlled investment banking firms shall have an opportunity to participate to a significant degree in any public offering under this subchapter.

(g) Investment banking firm requirements

(1) The level of any investment banking firm's participation in the public offering shall be consistent with that firm's financial capabilities.

(2) No investment banking firm which was not in existence on September 1, 1986, shall participate in the public offering.

(h) General Accounting Office authority to conduct audits

The General Accounting Office may make such audits as may be deemed appropriate by the Comptroller General of the United States of all accounts, books, records, memoranda, correspondence, and other documents and transactions of the Corporation and the co-lead managers associated with the public offering. The co-lead managers shall agree, in writing, to allow the General Accounting Office to make such audits. The General Accounting Office shall report the results of all such audits to the Congress.

(Pub. L. 99–509, title IV, § 4012, Oct. 21, 1986, 100 Stat. 1896.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (f), was in the original ''this part'' meaning part 2 (§§ 4011–4038) of subtitle A of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1895, which enacted this subchapter, amended sections 702, 726, 727, 741, 797, 821, 825, 829, 831, 1105, 1115, and 1116 of this title and section 10362 of Title 49, Transportation, repealed sections 761 to 769c, 797*l*, 825a, 1107, 1110, and 1114 of this title, and enacted provisions set out as a note under section 797 of this title. For complete classification of part 2 to the Code, see Tables.

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 1303, 1342 of this title.

§ 1313. Fees

(a) Investment banking firm fees

The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall agree to pay to investment banking firms and other persons participating with such firms in the public offering the absolute minimum amount in fees necessary to carry out the public offering.

(b) Costs of public offering

All costs of the public offering payable by the Secretary of Transportation shall be paid from the proceeds of the public offering.

(Pub. L. 99–509, title IV, § 4013, Oct. 21, 1986, 100 Stat. 1897.)

PART B—OTHER MATTERS RELATING TO SALE

§ 1321. Rail service obligations

(a) Obligations of Corporation

During a period of 5 years beginning on October 21, 1986, the following obligations shall apply to the Corporation:

(1) The Corporation shall spend in each fiscal year the greater of (A) an amount equal to the Corporation's depreciation for financial reporting purposes for such year or (B) $500,000,000, in capital expenditures. With respect to any fiscal year, the Corporation's Board of Directors may reduce the required capital expenditures for such year to an amount which the Board determines is justified by prudent business and engineering practices, except that the Corporation's capital expenditures shall not be less than $350,000,000 for its first fiscal year beginning after the sale date, a total of $700,000,000 for its first two fiscal years beginning after the sale date, a total of $1,050,000,000 for its first three fiscal years beginning after the sale date, a total of $1,400,000,000 for its first four fiscal years beginning after the sale date, and a total of $1,750,000,000 for its first five fiscal years beginning after the sale date.

(2) Repealed. Pub. L. 101–213, § 2(b)(3), Dec. 11, 1989, 103 Stat. 1843.

(3) The Corporation shall continue its affirmative action program and its minority vendor program, substantially as such programs were being conducted by the Corporation as of February 8, 1985, subject to any provisions of applicable law.

(4) The Corporation shall not permit to occur any transaction or series of transactions (other than in the ordinary course of business of the Corporation and its subsidiaries) whereby all or any substantial part of the railroad assets and business of the Corporation and its subsidiaries taken as a whole are sold, leased, transferred, or otherwise disposed of to any corporation or entity other than to a wholly owned subsidiary of the Corporation.

(5) The Corporation shall offer any line for which an abandonment certificate is issued by the Commission to a purchaser who agrees to provide interconnecting rail service. Such offer shall last for the 120-day period following the date of issuance of the abandonment certificate and the price for such abandoned line shall be equal to 75 percent of net liquidation value as determined by the Commission, pursuant to regulations that had been issued under section 748 of this title.

(6) The Corporation and its subsidiaries shall maintain, preserve, protect, and keep their respective properties in good repair, working order, and condition, and shall not permit deferral of normal and prudent maintenance necessary to provide and maintain rail service.

(b) Compliance certificates

(1) Within 90 days after the close of each of its fiscal years, or at the time its financial statements have been audited, whichever occurs later, the Corporation shall deliver to the Secretary of Transportation a certificate executed by an executive officer of the Corporation. Such certificate shall certify that, as of such date, the Corporation is in compliance with all requirements (other than the requirement regarding a common stock dividend or a preferred stock dividend) set forth in this section. Such certificate shall include audited consolidated financial statements.

(2) Within 5 days after the declaration of any common stock dividend or preferred stock dividend, the Corporation shall deliver to the Secretary of Transportation a certificate executed by an executive officer of the Corporation. Such certificate shall certify that, after giving effect to any such dividend, the Corporation shall be in compliance with any requirement regarding a common stock dividend or a preferred stock dividend set forth in this section. Such certificate shall include—

(A) quarterly financial statements; and

(B) a report of the Corporation's total capital expenditures,

for the period with respect to which the dividend has been declared, and the fiscal year to date, and shall compare such capital expenditures to the budgeted capital expenditures and to the

capital expenditures during the comparable periods of the previous fiscal year.

(Pub. L. 99–509, title IV, § 4021, Oct. 21, 1986, 100 Stat. 1898; Pub. L. 101–213, § 2(b)(3), Dec. 11, 1989, 103 Stat. 1843.)

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101–213 struck out par. (2) which set forth circumstances under which Corporation could declare or pay a common or preferred stock dividend and defined terms ''common stock dividend'' and ''preferred stock dividend''.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1324 of this title.

§ 1322. Ownership limitations

(a) General

(1) During a period of 3 years beginning on the sale date, no person, directly or indirectly, may acquire or hold securities representing more than 10 percent of the total votes of all outstanding voting securities of the Corporation.

(2) This subsection shall not apply—

(A) to the employee stock ownership plan (or successor plans) of the Corporation,

(B) to the Secretary of Transportation,

(C) to a railroad as described under subsection (b) of this section,

(D) to underwriting syndicates holding shares for resale, or

(E) in the case of shares beneficially held for others, to commercial banks, broker-dealers, clearing corporations, or other nominees.

(b) Railroads

(1) During a period of 1 year beginning on the sale date, no railroad may purchase or hold, directly or indirectly, more than 10 percent of any class of stock of the Corporation. During such period, no railroad may file an application with the Commission for a merger or consolidation with the Corporation or the acquisition of control of the Corporation under section 11344[1] of title 49.

(2) During a period of 3 years beginning on the sale date, any railroad which purchases or holds any stock of the Corporation shall vote such stock in the same proportion as all other common stock of the Corporation is voted. After the expiration of 1 year after the sale date, the preceding sentence shall not apply to any railroad with respect to which the Commission has approved an application for a merger or consolidation with the Corporation or the acquisition of control of the Corporation under section 11344[1] of title 49.

(3) As used in this subsection, the term ''railroad'' means a class I railroad as determined by the Commission under the definition in effect on October 21, 1986, and includes any entity controlling, controlled by, or under common control with any railroad (other than the Corporation or its subsidiaries).

(Pub. L. 99–509, title IV, § 4022, Oct. 21, 1986, 100 Stat. 1900.)

REFERENCES IN TEXT

Section 11344 of title 49, referred to in subsec. (b)(1), (2), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104–88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804. Provisions similar to those in section 11344 are contained in sections 11324 and 14303 of Title 49.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1324 of this title.

§ 1323. Board of Directors

The Board of Directors of the Corporation shall be comprised as follows:

(1) Except as provided in paragraph (3), with respect to the period ending June 30, 1987, the board shall remain as it exists on October 21, 1986, with any vacancies being filled by directors nominated and elected by the remainder of the members of the board.

(2)(A) Except as provided in paragraph (3), with respect to the period beginning July 1, 1987, the board shall consist of—

(i) 3 directors appointed by the Secretary of Transportation;

(ii) the Chief Executive Officer and the Chief Operating Officer of the Corporation; and

(iii) 8 directors appointed from among persons knowledgeable in business affairs by the special court trustees named under subparagraph (C), in consultation with the Secretary of Transportation and the Chairman of the Board of Directors of the Corporation, and recognizing the need for and importance of—

(I) continuity in the direction of the Corporation's business and affairs;

(II) preserving the value of the investment of the United States in the Corporation;

(III) preserving essential rail service provided by the Corporation; and

(IV) providing for the sale of the United States shares.

(B) The Secretary of Transportation and the special court trustees may appoint directors under subparagraph (A) from among existing directors of the Corporation.

[1] See References in Text note below.

(C)(i) If more than 50 percent of the interest of the United States in the Corporation has not been sold before June 1, 1987, the special court established under section 719 of this title shall, on that date, name 3 trustees from among persons knowledgeable in business affairs to make the appointments required by subparagraph (A)(iii). The Corporation shall compensate the special court trustees in an amount to be specified by the special court, not to exceed the amount paid by the Corporation to its directors for comparable services.

(ii) No person shall be eligible to be appointed as a special court trustee under this subparagraph who, at any time during the 30 months immediately preceding such appointment, was an officer, employee, or director of the United States Railway Association, the Corporation, or the Department of Transportation.

(3)(A) After the sale date, one director shall be elected by the public shareholders of the Corporation for each increment of 12.5 percent of the interest of the United States in the Corporation that has been sold through public offering.

(B) With respect to the period ending June 30, 1987—

(i) the first director elected under this paragraph shall replace the member of the board who became a director most recently from among—

(I) directors appointed by the United States Railway Association, or elected under paragraph (1) to replace such a director, and

(II) directors appointed by the Secretary of Transportation, or elected under paragraph (1) to replace such a director;

(ii) the second director elected under this paragraph shall replace the member of the Board who became a director most recently from among directors described in clause (i)(I) or (II), whichever group the first director replaced under this subparagraph was not a member of; and

(iii) subsequent directors elected under this paragraph shall replace members alternately from the groups described in clause (i)(I) and (II).

(C) With respect to the period beginning July 1, 1987, directors elected under this paragraph shall replace directors appointed by the special court trustees under paragraph (2)(A)(iii), in the order designated by the special court trustees in a list to be issued at the time of such original appointments.

(D) With respect to the period beginning on the first date more than 50 percent of the interest of the United States in the Corporation has been sold through public offering and ending when 100 percent of such interest has been sold—

(i) all remaining members of the board referred to in paragraph (2)(A)(iii), and

(ii) with respect to the period ending June 30, 1987, all remaining members of the board, except 3 members appointed by the Secretary of Transportation and the Chief Executive Officer and the Chief Operating Officer of the Corporation,

shall be replaced by directors elected by the public shareholders of the Corporation.

(E) After 100 percent of the interest of the United States in the Corporation has been sold, any remaining directors appointed by the Secretary of Transportation, the United States Railway Association, or the special court trustees referred to under paragraph (2)(A)(iii), shall be replaced by directors elected by the public shareholders of the Corporation.

(F) Nothing in this paragraph shall be construed to prohibit any director referred to in this section from being elected as a director by the public shareholders of the Corporation.

(4)(A) No director appointed or elected under this section shall be a special court trustee or an employee of the United States, except as elected by the public shareholders of the Corporation.

(B) No director appointed or elected under this section shall be an employee of the Corporation, except as provided in paragraph (2)(A)(ii) or as elected by the public shareholders of the Corporation.

(Pub. L. 99–509, title IV, § 4023, Oct. 21, 1986, 100 Stat. 1901.)

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 719 of this title.

§ 1324. Certain enforcement relief

(a) Enforcement actions

The Secretary of Transportation, with respect to any provision of section 1321 or 1322 of this title, and any person who suffers direct and substantial economic injury as a result of an alleged violation by the Corporation, with respect to the provisions of section 1321(a)(1) and (2)[1] of this title, and section 1322 of this title, may bring an action to require compliance with such provision.

(b) Special court

Any action brought under this subchapter shall be brought before the special court established under section 719 of this title. Such special court may limit the enforcement of a restriction under section 1321 of this title, if the effect of such restriction would be to substantially impair the continued viability of the Corporation.

(Pub. L. 99–509, title IV, § 4025, Oct. 21, 1986, 100 Stat. 1905.)

REFERENCES IN TEXT

Section 1321(a)(2) of this title, referred to in subsec. (a), was repealed by Pub. L. 101–213, § 2(b)(3), Dec. 11, 1989, 103 Stat. 1843.

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

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

[1] See References in Text note below.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 719 of this title.

PART C—MISCELLANEOUS PROVISIONS

§ 1341. Abolition of United States Railway Association

(a) Abolition and termination

(1) Effective April 1, 1987, the United States Railway Association is abolished.

(2) On January 1, 1987, all powers, duties, rights, and obligations of such association relating to the Corporation under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) shall be transferred to the Secretary of Transportation.

(3) The sole function of the United States Railway Association after January 1, 1987, shall be the termination of its affairs and the liquidation of its assets.

(b) Transfer of securities and responsibilities

(1) Any securities of the Corporation held by the United States Railway Association shall, upon[1] October 21, 1986, be transferred to the Secretary of Transportation.

(2) If, on the date the United States Railway Association is abolished under subsection (a) of this section, such association shall not have completed the termination of its affairs and the liquidation of its assets, the duty of completing such winding up of its affairs and liquidation shall be transferred to the Secretary of Transportation, who for such purposes shall succeed to all remaining powers, duties, rights, and obligations of such association.

(c) Financing agreement

(1) On January 1, 1987, the Amended and Restated Financing Agreement, dated May 10, 1979, between the United States Railway Association and the Corporation, together with any and all rights and obligations of or on behalf of any person with respect to such agreement, shall terminate and be of no further force or effect, except for those provisions specifying terms and conditions for payments made to the United States with respect to debentures, preferred stock, and contingent interest notes.

(2) Effective as of the sale date, those provisions of the Financing Agreement referred to in paragraph (1) shall terminate.

(Pub. L. 99–509, title IV, § 4031, Oct. 21, 1986, 100 Stat. 1906.)

REFERENCES IN TEXT

The Regional Rail Reorganization Act of 1973, referred to in subsec. (a)(2), is Pub. L. 93–236, Jan. 2, 1974, 87 Stat. 985, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

§ 1342. Exemption from liability

(a) In general

No person referred to in section 726(f)(8)(C)(i), (ii), or (iii) of this title shall be liable, for money damages or otherwise, to any party if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty, in connection with any action taken under this subchapter, which such person in good faith reasonably believed to be required by law or vested in such person.

(b) Exception

This section shall not apply to claims arising out of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities, which claims are in connection with a public offering under section 1312 of this title.

(Pub. L. 99–509, title IV, § 4034, Oct. 21, 1986, 100 Stat. 1909.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

§ 1343. Charter amendment

Within 60 days after October 21, 1986, the Corporation shall amend its Articles of Incorporation to contain the following provision, which provision shall not be subject to amendment or repeal:

"It shall be a fundamental purpose of the Corporation to maintain continued rail service in its service area.".

(Pub. L. 99–509, title IV, § 4035, Oct. 21, 1986, 100 Stat. 1909.)

§ 1344. Status of Conrail after sale

The Corporation shall be a rail carrier as defined in section 10102 of title 49, notwithstanding this subchapter.

(Pub. L. 99–509, title IV, § 4036, Oct. 21, 1986, 100 Stat. 1909; Pub. L. 104–88, title III, § 332, Dec. 29, 1995, 109 Stat. 953.)

AMENDMENTS

1995—Pub. L. 104–88 substituted "section 10102" for "section 10102(19)".

EFFECTIVE DATE OF 1995 AMENDMENT

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

§ 1345. Effect on contracts

Nothing in this subchapter shall affect any obligation of the Corporation to carry out its transportation contracts and equipment leases, equipment trusts, and conditional sales agreements, in accordance with their terms.

(Pub. L. 99–509, title IV, § 4037, Oct. 21, 1986, 100 Stat. 1909.)

[1] So in original. Probably should be "on".

§ 1346. Resolution of certain issues

(a) Employee issues

Section 4024 completely and finally—

(1) extinguishes all employee rights, and any obligation of the United States, under section 761(e)[1] of this title as in effect immediately before October 21, 1986;

(2) resolves any and all claims against the Corporation or any other person arising under the Definitive Agreement referred to in section 4024(d)(1) or any other agreement containing similar terms and conditions;

(3) resolves all claims to pay entitlements arising out of the pay increase deferrals by present and former employees of the Corporation under the Agreement of May 5, 1981, between Conrail and Certain Labor Organizations for Labor Contributions to Self-Sufficiency for Conrail;

(4) resolves all issues raised by notices served by representatives of such employees under section 156 of this title proposing repayment of or compensation for such deferrals; and

(5) resolves all claims against the Railway Labor Executives' Association or the Corporation by any adviser, consultant, or other person who has provided services to such association in connection with any matter referred to in this subchapter.

(b) Corporation actions

The Corporation shall not be considered to be in breach, default, or violation of any agreement to which it is a party, notwithstanding any provision of such agreement, because of any provision of this subchapter or any action the Corporation is required to take under this subchapter.

(c) Right to sue withdrawn

The United States hereby withdraws any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person for any legal, equitable, or other relief with respect to any claim arising out of, or resulting from, acts or omissions under this subchapter, except actions brought to require the Secretary of Transportation to perform duties or acts required under part A of this subchapter.

(Pub. L. 99–509, title IV, § 4038, Oct. 21, 1986, 100 Stat. 1909.)

REFERENCES IN TEXT

Section 4024, referred to in subsec. (a), is section 4024 of Pub. L. 99–509, which amended section 797 of this title, provided for repeal of section 797 of this title effective on the sale date of the Consolidated Rail Corporation, and enacted provisions set out as a note under section 797 of this title. Section 4024(d)(1) is set out as a note under section 797 of this title.

Section 761 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 99–509, title IV, § 4033(a)(1), Oct. 21, 1986, 100 Stat. 1908.

Part A of this subchapter, referred to in subsec. (c), was in the original "subpart A" meaning subpart A (§§ 4011–4013) of part 2 of subtitle A of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1895, which enacted part A of this subchapter and amended section 726 of this title.

[1] See References in Text note below.

For complete classification of this Act to the Code, see Tables.

§ 1347. Tax treatment of Conrail public sale

(a) Treatment as new corporation

(1) In general

For periods after the public sale, for purposes of title 26, Conrail shall be treated as a new corporation which purchased all of its assets as of the beginning of the day after the date of the public sale for an amount equal to the deemed purchase price.

(2) Allocation among assets

The deemed purchase price shall be allocated among the assets of Conrail in accordance with the temporary regulations prescribed under section 338 of title 26 (as such regulations were in effect on October 21, 1986). The Secretary shall establish specific guidelines for carrying out the preceding sentence so that the basis of each asset will be clearly ascertainable. For purposes of applying the regulations referred to in the first sentence, accounts receivable and materials and supplies shall be treated as cash equivalents.

(3) Deemed purchase price

For purposes of this subsection, the deemed purchase price is an amount equal to the gross amount received pursuant to the public sale, multiplied by a fraction—

(A) the numerator of which is 100 percent, and

(B) the denominator of which is the percentage (by value) of the stock of Conrail sold in the public sale.

The amount determined under the preceding sentence shall be adjusted under regulations prescribed by the Secretary for liabilities of Conrail and other relevant items.

(b) No income from cancellation of debt or preferred stock

No amount shall be included in the gross income of any person by reason of any cancellation of any obligation (or preferred stock) of Conrail in connection with the public sale.

(c) Disallowance of certain deductions

No deduction shall be allowed to Conrail for any amount which is paid after the date of the public sale to employees of Conrail for services performed on or before the date of the public sale.

(d) Waiver of certain employee stock ownership plan provisions

For purposes of determining whether the employee stock ownership plans of Conrail meet the qualifications of sections 401 and 501 of title 26—

(1) the limits of section 415 of such title (relating to limitations on benefits and contributions under qualified plans) shall not apply with respect to interests in stock transferred pursuant to this Act or a law heretofore enacted, and

(2) the 2-year waiting period for withdrawals shall not apply to withdrawals of amounts (or shares) in participants accounts in connection with the public sale.

(e) Definitions

For purposes of this section—

(1) Conrail

The term ''Conrail'' means the Consolidated Rail Corporation. Such term includes any corporation which was a subsidiary of Conrail immediately before the public sale.

(2) Public sale

The term ''public sale'' means the sale of stock in Conrail pursuant to a public offering under the Conrail Privatization Act [45 U.S.C. 1301 et seq.]. If there is more than 1 public offering under such Act, such term means the sale pursuant to the initial public offering under such Act.

(3) Secretary

The term ''Secretary'' means the Secretary of the Treasury or his delegate.

(Pub. L. 99–509, title VIII, § 8021, Oct. 21, 1986, 100 Stat. 1954; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(1), is Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1874, as amended, known as the Omnibus Budget Reconciliation Act of 1986. For complete classification of this Act to the Code, see Tables.

The Conrail Privatization Act, referred to in subsec. (e)(2), is subtitle A (§§ 4001–4052) of title IV of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1892, which is classified principally to this chapter (§ 1301 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

CODIFICATION

This section was enacted as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of subtitle A of title IV of that Act, known as the Conrail Privatization Act, which comprises this chapter.

AMENDMENTS

1986—Subsecs. (a)(1), (2), (d). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.