Public Law 94-210
94th Congress

An Act

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

Feb. 5, 1976
[S. 2718]

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

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

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TITLE I—GENERAL PROVISIONS

DECLARATION OF POLICY

SEC. 101. (a) PURPOSE.—It is the purpose of the Congress in this Act to provide the means to rehabilitate and maintain the physical facilities, improve the operations and structure, and restore the financial stability of the railway system of the United States, and to promote the revitalization of such railway system, so that this mode of transportation will remain viable in the private sector of the economy and will be able to provide energy-efficient, ecologically compatible transportation services with greater efficiency, effectiveness, and economy, through— 45 USC 801.

(1) ratemaking and regulatory reform;

(2) the encouragement of efforts to restructure the system on a more economically justified basis, including planning authority in the Secretary of Transportation, an expedited procedure for determining whether merger and consolidation applications are in the public interest, and continuing reorganization authority;

(3) financing mechanisms that will assure adequate rehabilitation and improvement of facilities and equipment, implementation of the final system plan, and implementation of the Northeast Corridor project;

(4) transitional continuation of service on light-density rail lines that are necessary to continued employment and community well-being throughout the United States;

(5) auditing, accounting, reporting, and other requirements to protect Federal funds and to assure repayment of loans and financial responsibility; and

(6) necessary studies.

(b) POLICY.—It is declared to be the policy of the Congress in this Act to—

(1) balance the needs of carriers, shippers, and the public;

(2) foster competition among all carriers by railroad and other modes of transportation, to promote more adequate and efficient transportation services, and to increase the attractiveness of investing in railroads and rail-service-related enterprises;

(3) permit railroads greater freedom to raise or lower rates for rail services in competitive markets;

(4) promote the establishment of railroad rate structures which are more sensitive to changes in the level of seasonal, regional, and shipper demand;

(5) promote separate pricing of distinct rail and rail-related services;

(6) formulate standards and guidelines for determining adequate revenue levels for railroads; and

(7) modernize and clarify the functions of railroad rate bureaus.

DEFINITIONS

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

(1) "Association" means the United States Railway Association;

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

(3) "Corporation" means the Consolidated Rail Corporation;

(4) "final system plan" means the final system plan and any additions thereto adopted by the Association pursuant to the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.);

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

(6) "Office" means the Rail Services Planning Office of the Commission;

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

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

TITLE II—RAILROAD RATES

EXPEDITIOUS DIVISIONS OF REVENUES

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

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

Report to Congress.

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

Report to Congress.

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

RAILROAD RATEMAKING

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

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

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

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

"(c) As used in this part, the terms—

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

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

"(d) Within 240 days after the date of enactment of this subdivision, the Commission shall establish, by rule, standards and procedures for determining, in accordance with section 15(9) of this part, whether and when a carrier possesses market dominance over a service rendered or to be rendered at a particular rate or rates. Such rules shall be designed to provide for a practical determination without administrative delay. The Commission shall solicit and consider the recommendations of the Attorney General and of the Federal Trade Commission in the course of establishing such rules.". Standards and procedures. 49 USC 15.

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

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

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

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

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

Annual report to Congress.

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

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

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

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

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

Hearing and notice.

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

Schedule suspension.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TARIFF MODIFICATIONS

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

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

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

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

45 USC 793 note.

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

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

49 USC 1.

Public hearing.

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

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

Report to President and Congress.

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

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

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

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

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

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

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

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

ADEQUATE REVENUE LEVELS

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

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

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

Notice and hearing. Standards and procedures.

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

RATE INCENTIVES FOR CAPITAL INVESTMENT

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

Notice.

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

Hearing.

Notice.

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

EXEMPTIONS FROM INTERSTATE COMMERCE ACT

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

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

Notice and hearing.

RATE BUREAUS

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

49 USC 1, 301, 901.

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

"AGREEMENTS BETWEEN CARRIERS SUBJECT TO PART I

Definitions. 49 USC 5c.

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

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

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

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

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

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

"(4) The Commission shall not approve under this section any agreement which it finds is an agreement with respect to a pooling, division, or other matter or transaction to which section 5 of this part is applicable. 49 USC 5.

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

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

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

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

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

49 USC 15.

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

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

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

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

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

Investigation.

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

"(b) The Commission shall periodically, but not less than once every 3 years, review each agreement which the Commission has by order approved under this section to determine whether such agreement, or any conference, bureau, committee, or other organization established or continued pursuant to such agreement, still conforms with the standard set forth in paragraph (2) and the public interest, and to evaluate the success and effect upon the consuming public and the national rail freight transportation system of such agreement and organization. The Commission shall report to the President and to the Congress on the results of such reviews, as part of its annual report pursuant to section 21. If the Commission makes a determination that any such agreement or organization is no longer in conformity with such standard, the Commission shall by order terminate or suspend its approval thereof. Review. Report to President and Congress. 49 USC 21.

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

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

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

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

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

FILING PROCEDURES

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

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

INTRASTATE RAILROAD RATE PROCEEDINGS

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

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

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

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

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

DEMURRAGE CHARGES

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

Rules and regulations.

CAR SERVICE COMPENSATION AND PRACTICES

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

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

Notice and hearing. Rules and regulations.

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

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

Rules and regulations, revision.
49 USC 1 note.

TITLE III—REFORM OF THE INTERSTATE COMMERCE COMMISSION

ACCESS TO INFORMATION BY CONGRESSIONAL COMMITTEES

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

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

"Document."

EFFECTIVE DATE OF ORDERS OF THE COMMISSION

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

COMMISSION HEARING AND APPELLATE PROCEDURE

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

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

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

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

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

"(A) specific findings of fact;

"(B) specific and separate conclusions of law;

"(C) a recommended order; and

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

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

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

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

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

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

Report to Congress.

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

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

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

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

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

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

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

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

"(i) reopen any proceeding;

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

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

Rules.

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

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

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

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

Written statement, availability to public.
49 USC 17.

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

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

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

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

OFFICE OF RAIL PUBLIC COUNSEL

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

"OFFICE OF RAIL PUBLIC COUNSEL

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

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

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

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

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

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

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

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

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

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

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

Budget request and estimates, submittal to Congress and President.

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

Appropriation authorization.

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

Ante, p. 46.

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

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

Publication in Federal Register.

Civil action.

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

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

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

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

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

REFORM OF RULES OF PRACTICE BEFORE THE COMMISSION

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

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

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

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

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

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

(c) Within 30 days after the receipt of comments submitted pursuant to subsection (b) of this section, the Commission shall consider such comments and shall submit to the Congress a final proposal setting forth the rules of practice before the Commission with respect to matters involving common carriers by railroad. Such rules of practice shall take effect at the end of the first period of 60 calendar days of continuous session of the Congress after the date of submission of such final proposal, unless either the Senate or the House of Representatives adopts a resolution during such period stating that it does not approve such final proposal. If no resolution is adopted as provided in the preceding sentence, the Commission shall adopt such proposed rules of practice. For purposes of this subsection, continuity of session of the Congress is broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded from the computation of the 60-day period. Final proposal, submittal to Congress.

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

Review.

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

PROHIBITING DISCRIMINATORY TAX TREATMENT OF TRANSPORTATION PROPERTY

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

49 USC 26c.

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

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

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

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

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

District courts, jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

UNIFORM COST AND REVENUE ACCOUNTING SYSTEM

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

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

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

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

"(i) operating and nonoperating revenue accounts;

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

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

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

Review.

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

Appropriation authorization.

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

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

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

SECURITIES

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

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

"Interest in a railroad equipment trust."

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

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

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

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

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

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

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

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

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

RAIL SERVICES PLANNING OFFICE

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

"RAIL SERVICES PLANNING OFFICE

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

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

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

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

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

Ante, p. 31.

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

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

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

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

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

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

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

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

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

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

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

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

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

EQUITABLE DISTRIBUTION OF CARS FOR UNIT TRAIN SERVICE

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

"Unit-train service."

APPROPRIATIONS REQUEST

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

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

Transmittal to Congress.

LAW REVISION

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

49 USC 1 note.

49 USC prec. 1 note.
Final draft, submittal to Congress.

TITLE IV—MERGERS AND CONSOLIDATIONS

RESPONSIBILITIES OF THE SECRETARY

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

"RAIL SERVICES

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

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

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

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

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

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

MERGER PROCEDURE

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

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

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

Application.

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

Publication in Federal Register.

49 USC 17.

Publication in Federal Register.

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

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

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

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

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

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

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

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

EXPEDITED RAILROAD MERGER PROCEDURE

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

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

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

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

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

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

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

"(ii) the Attorney General;

"(iii) the Secretary of Labor; and

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

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

Hearing.

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

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

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

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

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

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

Proposed transaction.

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

Publication in Federal Register.

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

Notice.

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

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

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

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

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

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

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

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

"(F) the rationalization of the rail system;

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

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

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

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

"(g) The Commission may—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE V—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

DEFINITIONS

45 USC 821.

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

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

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

(3) "facilities" means—

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

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

(C) signals, including signals and interlockers;

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

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

nating, improving, and expediting the movement of equipment;

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

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

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

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

THE RAIL FUND

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

Railroad Rehabilitation and Improvement Fund.
45 USC 822.

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

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

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

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

Rules and regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) any other receipts of the Fund.

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

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

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

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

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

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

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

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

CLASSIFICATION AND DESIGNATION OF RAIL LINES

SEC. 503. (a) TRAFFIC DENSITY ANALYSIS.—Within 90 days after the date of enactment of this Act, each railroad designated by the Commission as a class I railroad shall prepare and submit to the Secretary a full and complete analysis of the rail system operated by it. Such analysis shall indicate the traffic density for the preceding 5 calendar years on each of the main and branch rail lines of the railroad submitting such analysis. The requirements of the two preceding sentences shall not apply to any railroad subject to reorganization pursuant to the Regional Rail Reorganization Act of 1973. Submittal to Secretary of Transportation. 45 USC 823. 45 USC 701 note.

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

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

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

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

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

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

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

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

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

CAPITAL NEEDS STUDY

45 USC 824.

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

45 USC 701 note.

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

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

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

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

Transmittal to Secretary and Congress.

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

Transmittal to Congress.

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

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

REHABILITATION AND IMPROVEMENT FINANCING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 USC 205.

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

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

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

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

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

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

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

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

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

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

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

REDEEMABLE PREFERENCE SHARES

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

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

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

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

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

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

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

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

FUND ANTICIPATION NOTES

45 USC 827.

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

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

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

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

FUND BONDS

45 USC 828.

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

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

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

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

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

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

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

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

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

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

(3) the time when they shall mature;

(4) the price thereof at sale;

(5) the rate of interest thereon;

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

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

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

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

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

(3) be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of any officer or agency of the United States;

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

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

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

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

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

AUTHORIZATIONS

45 USC 829.

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

EXEMPTION

45 USC 830.

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

GUARANTEE OF OBLIGATIONS

45 USC 831.

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

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

Obligation guarantee fund. Establishment.

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

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

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

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

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

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

Publication in Federal Register.

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

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

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

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

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

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

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

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

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

Periodic inspection.

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

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

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

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

Hearing.

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

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

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

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

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

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

ISSUANCE OF NOTES OR OBLIGATIONS

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

45 USC 832.

Interest rate.

31 USC 774.

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

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

DEFAULT ON GUARANTEED OBLIGATIONS

45 USC 833.

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

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

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

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

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

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

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

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

AUDIT OF TRANSACTIONS

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

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

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

ANNUAL REPORT

45 USC 835. SEC. 515. The Secretary shall report to the Congress within 90 days following the end of each fiscal year on the financial condition and operations of the Fund and of the obligation guarantee fund during such fiscal year, and on the anticipated condition and operations of the Fund and of the obligation guarantee fund during the current fiscal year.

EMPLOYEE PROTECTION

45 USC 836. SEC. 516. (a) GENERAL.—Fair and equitable arrangements shall be provided, in accordance with this section, to protect the interests of any employees not otherwise protected under title V of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 771 et seq.), who may be affected by actions taken pursuant to authorizations or approval obtained under this title. Such arrangements shall be determined by the execution of an agreement between the representatives of the railroads and the representatives of their employees, within 120 days after the date of enactment of this title. In the absence of such an executed agreement, the Secretary of Labor shall prescribe the applicable protective arrangements, within 150 days after the date of enactment of this title.

(b) TERMS.—The arrangements required by subsection (a) of this section shall apply to each employee who has an employment relationship with a railroad on the date on which such railroad first applies for applicable financial assistance under this title. Such arrangements shall include such provisions as may be necessary for the negotiation and execution of agreements as to the manner in which the protective arrangements shall be applied, including notice requirements. Such agreements shall be executed prior to implementation of work funded from financial assistance under this title. If such an agreement is not reached within 30 days after the date on which an application for such assistance is approved, either party to the dispute may submit the issue for final and binding arbitration. The decision on any such arbitration shall be rendered within 30 days after such submission. Such arbitration decision shall in no way modify the protection afforded in the protective arrangements established pursuant to this section, shall be final and binding on the parties thereto, and shall become a part of the agreement. Such arrangements shall also include such provisions as may be necessary—

(1) for the preservation of compensation (including subsequent general wage increases, vacation allowances, and monthly compensation guarantees), rights, privileges, and benefits (including fringe benefits such as pensions, hospitalization, and vacations, under the same conditions and so long as such benefits continue to be accorded to other employees of the employing railroad in active service or on furlough, as the case may be) to such employees under existing collective-bargaining agreements or otherwise;

(2) to provide for final and binding arbitration of any dispute which cannot be settled by the parties, with respect to the interpretation, application, or enforcement of the provisions of the protective arrangements;

(3) to provide that an employee who is unable to secure employment by the exercise of his or her seniority rights, as a result of actions taken with financial assistance obtained under

this title, shall be offered reassignment and, where necessary, retraining to fill a position comparable to the position held at the time of such adverse effect and for which he is, or by training and retraining can become, physically and mentally qualified, so long as such offer is not in contravention of collective bargaining agreements relating thereto; and

(4) to provide that the protection afforded pursuant to this section shall not be applicable to employees benefited solely as a result of the work which is financed by funds provided pursuant to this title.

(c) SUBCONTRACTING.—The arrangements which are required to be negotiated by the parties or prescribed by the Secretary of Labor, pursuant to subsections (a) and (b) of this section, shall include provisions regulating subcontracting by the railroads of work which is financed by funds provided pursuant to this title.

INTERCITY RAIL PASSENGER SERVICE

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

TITLE VI—IMPLEMENTATION OF THE FINAL SYSTEM PLAN

GENERAL

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

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

"TABLE OF CONTENTS

"TITLE I—GENERAL PROVISIONS

"TITLE II—UNITED STATES RAILWAY ASSOCIATION

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

45 USC 720.
45 USC 721.

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

Post, p. 89.

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

"(e) TRANSFER AND OTHER TAXES AND RECORDING FEES.—All transfers or conveyances of rail properties (whether real, personal, or mixed) which are made under this Act (including transfers and conveyances which are made in accordance with a supplemental transaction pursuant to section 305 of this title) shall be exempt from any taxes, imposts, or levies now or hereafter imposed, by the United States or by any State or any political subdivision of a State, on or in connection with such transfers or conveyances or on the recording of deeds, bills of sale, liens, encumbrances, or other instruments evidencing, effectuating, or incident to any such transfers or conveyances, whether imposed on the transferor or on the transferee. Such transferors and transferees shall be entitled to record any such deeds, bills of sale, liens, encumbrances, or other instruments and, consistent with the designations and applicable principles in the final system plan, to record the release or removal of any pre-existing liens or encumbrances of record with respect to properties so transferred or conveyed, upon payment of any appropriate and generally applicable charges to compensate for the cost of the service performed.".

Post, p. 100.

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

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

"(2) The Association may, upon petition of any State, modify the final system plan to make further designations with respect to rail properties of railroads in reorganization in the region designated for transfer to the Corporation under such plan, if such designations (A) are likely to result in improved rail service on such rail properties and connecting rail properties, and (B) would not materially impair the profitability of the Corporation. Such designations, including designations of such rail properties to a State, a profitable railroad, or a responsible person, may be made at any time prior to delivery of the final system plan to the special court under section 209(c) of this title. Such further designations shall be treated for all purposes as if they had been included in the final system plan adopted by the Association and reviewed by the Congress, and the final system plan shall for all purposes be deemed to be approved as modified by such designations. Any action of the Association with respect to any such petition shall not be subject to review by any court.

"(3)(A) Within 20 days after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, the Association may, by notice to the Congress and by publication in the Federal Register, modify, supplement, or add to the designations of rail properties in the final system plan if the Association finds such actions are necessary to— Notice to Congress; publication in Federal Register. *Ante*, p. 31.

"(i) achieve the efficient implementation of the final system plan, or

"(ii) provide for the offer to profitable railroads of rail properties designated in the final system plan to the Corporation, if such properties are not essential in the operation of other rail properties of the Corporation but are or would be integrally related to the operation of rail properties of (or which are offered pursuant to the final system plan to) such profitable railroad, or

"(iii) provide for the designation of additional rail properties to the Corporation or to a subsidiary thereof to enable the Corporation to serve efficiently a line of railroad designated to the Corporation in the final system plan if such line does not connect with any other line of railroad so designated to the Corporation or if such line would be served more efficiently as a consequence of such designation.

Any designation to a profitable railroad pursuant to this paragraph shall comply with the second sentence of section 206(d)(4) of this title, and shall only be made upon a finding by the Association that such designation is integrally related to an offer of rail properties to a profitable railroad in the final system plan, that the goals of the final system plan require that the rail properties be operated as a part of the rail properties included in such offer, and that the implementation of such designation will not materially and adversely affect the impact of such offer on the profitability of the Corporation or any profitable railroad operating in the region. Any designation to a profitable railroad pursuant to this subsection, which amends any prior offer, shall terminate 30 days after the date of enactment of this paragraph *Post*, p. 97.

unless, prior to such date, such profitable railroad has notified the Association in writing of its acceptance of such amendment to the prior offer.

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

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

"(D) Any labor agreements entered into under section 508 of this Act shall be subject to further negotiations for any modifications which may be necessary to implement designations made pursuant to this paragraph.".

Post, p. 117.

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

"Secretary."

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

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

"Local or regional transportation authority."

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

SPECIAL COURT

SEC. 602. (a) Section 209(b) of such Act (45 U.S.C. 719) is amended by striking out the sixth sentence thereof and inserting in lieu thereof the following new sentence: "The special court may issue rules for the conduct of any proceedings under this section and under section 305 of this Act, including rules with respect to the time within which motions may be filed, and with respect to appropriate representation of interests not otherwise represented (including the Secretary with respect to a petition by the Association in the case of a proposal developed by the Secretary, under such section 305).".

Post, p. 100.

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

"(e) ORIGINAL AND EXCLUSIVE JURISDICTION.—(1) Notwithstanding any other provision of law, any civil action—

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

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

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

"(D) to obtain, inspect, copy, or review any document in the possession or control of the Association that would be discoverable in litigation pursuant to section 303(c) of this Act;

45 USC 743.

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

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

shall be within the original and exclusive jurisdiction of the special court. The special court shall not hear or determine any such action prior to the date of conveyance, pursuant to section 303(b)(1) of this Act, except as the Constitution may require. Relief shall not be granted in any action referred to in subparagraph (A), (C), or (E) unless the person seeking such relief establishes that the Association acted in reckless or deliberate disregard of applicable law. USC prec. title 1.

"(2) The original and exclusive jurisdiction of the special court shall include any action, whether filed by any interested person or initiated by the special court itself, to interpret, alter, amend, modify, or implement any of the orders entered by such court pursuant to section 303(b) of this Act in order to effect the purposes of this Act or the goals of the final system plan. During the pendency of any proceeding described in this paragraph, the special court may enter such orders as it determines to be appropriate, including orders enjoining, restraining, conditioning, or limiting any conveyance, transfer, or use of any asset or right which is subject to such an order or which is at issue in such a proceeding, or which involves the enforcement of any liens or encumbrances upon such assets or rights. Any orders pursuant to this paragraph which interpret, alter, amend, modify, or implement orders entered by the special court shall be final and shall not be restrained or enjoined by any court.

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

"(f) DISPOSITION OF CASH DEPOSITS.—Whenever the compensation which is deposited with the special court under section 303(a) of this Act is in the form of cash, such cash shall be invested and reinvested upon such terms and conditions as the special court shall determine, pending the making of the findings referred to in paragraphs (1), (2), and (3) of section 303(c) of this Act. Notwithstanding section 303(c)(4) of this Act, the special court may order (1) the income from such investments, (2) the dividends or interest, if any, received on any securities or obligations deposited with the special court under such section 303(a), and (3) the income, if any, received with respect to any other form of compensation so deposited, to be distributed to the trustee of each railroad in reorganization and to any person leased, operated or controlled by such a railroad which conveyed the right, title, and interest in the rail properties with respect to which such cash, securities, obligations, or other compensation have been so deposited with the special court. Notwithstanding section 303(c)(4) of this Act, the special court may, within 90 days after the date of conveyance of rail properties pursuant to section 303(b) of this Act, order up to 25 percent of any cash (including investments made with cash) and other compensation deposited with the special court to be distributed

to such trustee or person. On petition of the applicable trustee or person, the special court may order such additional distributions as it finds reasonable and appropriate, prior to the making of the findings referred to in paragraphs (1), (2), and (3) of such section 303(c).

45 USC 743.

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

FINANCE COMMITTEE

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

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

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

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

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

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

OBLIGATIONS OF THE ASSOCIATION

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

"(b) MAXIMUM OBLIGATIONAL AUTHORITY.—The aggregate amount of obligations of the Association issued under this section which may be outstanding at any one time shall not exceed $275,000,000. No obligations or proceeds thereof shall be issued or made available after the date of enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 except— *Ante*, p. 31.

"(1) to meet existing or potential commitments for loans under section 211 of this title made or applied for prior to January 1, 1976; and *Post*, p. 92.

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

DEBENTURES AND SERIES A PREFERRED STOCK

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

"DEBENTURES AND SERIES A PREFERRED STOCK

"SEC. 216. (a) GENERAL.—The Association is authorized, in accordance with the provisions of this section, and such rules and regulations as it may prescribe, to invest from time to time in the securities of the Corporation by purchasing (1) up to $1,000,000,000 of debentures issued by the Corporation, and (2) after the acquisition of such debentures, up to $1,100,000,000 of the series A preferred stock of the Corporation. Rules and regulations. 45 USC 726.

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

"(A) for the modernization, rehabilitation and maintenance of rail properties of the Corporation;

"(B) for the acquisition of equipment and other capital needs;

"(C) for the refinancing of indebtedness which was incurred by the Corporation under section 211 of this title or which was incurred under section 215 of this title and assumed by the Corporation; or 45 USC 725.

"(D) working capital as contemplated by the final system plan.

"(2) Purchases of up to $1,000,000,000 of debentures and, thereafter, of up to $1,100,000,000 of series A preferred stock shall be made by the Association as required and requested by the Corporation, unless the Finance Committee makes an affirmative finding that—

"(A) the Corporation has failed in any material respect to comply with any covenants or undertakings made to the Association and such failure remains uncorrected;

"(B) the Corporation has failed substantially (as determined by performance within the margins prescribed by the Board of Directors) to attain the overall operating (including rehabilitation) and financial results projected for the Corporation in the final system plan (including any modifications of such projected results and of the performance margins applicable to such projected results which are jointly approved by the Finance Committee and the Board of Directors and which would improve the possibility that the Corporation will attain such projected results and perform within such margins, as modified); or

"(C) it is not reasonably likely, taking into consideration all relevant factors including the overall operating (including rehabilitation) and financial results achieved by the Corporation, that the Corporation will be able to become financially self-sustaining without requiring Federal financial assistance substantially in excess of the amounts authorized in this section.

"(c) FINDING, DIRECTION, AND REVIEW BY CONGRESS.—(1) If the Finance Committee makes an affirmative finding pursuant to subsection (b)(2) of this section, it may direct the Association—

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

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

"(2) A copy of each affirmative finding, the reasons therefor, and each direction made by the Finance Committee under paragraph (1) of this subsection, together with the comments and recommendations thereon of the Board of Directors of the Association, shall be transmitted to the Congress by the Association within 10 days after the date on which the Finance Committee makes such finding and direction, or if not so transmitted, shall be transmitted by the Finance Committee. Each such direction so transmitted shall become finally effective and is required to be implemented by the Association, unless within the first period of 30 calendar days of continuous session of Congress after the date of its transmittal to Congress either House of Congress disapproves such direction (except that such direction shall become finally effective immediately upon approval of such direction by both Houses of Congress) in accordance with the procedures specified in section 1017 of the Congressional Budget and Impoundment Control Act of 1974 (31 U.S.C. 1407). For purposes of this paragraph, continuity of session of Congress is broken only in the circumstances described in section 1011(5) of that Act (31 U.S.C. 1401(5)). During review by the Association and Congress, the Association shall take no action inconsistent with the direction of the Finance Committee pursuant to paragraph (c)(1) of this section, except to the extent the Association finds necessary, in its discretion, to assure continuous orderly operation of the Corporation.

"(3) If the Congress, pursuant to paragraph (2) of this subsection, disapproves a direction submitted to the Association pursuant to paragraph (1) of this subsection, the Association shall continue to purchase the debentures or series A preferred stock of the Corporation as otherwise provided in this title until such time as a direction is submitted under this section which is not so disapproved (or affirmatively approved). The powers of the Association and of the Board of Directors of the Association shall remain in effect except to the extent modified by any such direction. If any such direction is disapproved by either House of Congress, the Finance Committee may, not earlier than 30 days after the date of such disapproval, make (and the Board of Directors of the Association shall transmit) any additional affirmative finding and direction with respect to the same matter, which direction shall become effective in accordance with paragraph (2) of this subsection. An affirmative finding and direction under this subsection, or action by the Association during a