

CONRAIL PRIVATIZATION ACT

[Public Law 99-509]

[As Amended Through P.L. 104-88, Enacted December 29, 1995]

【Currency: This publication is a compilation of the text of Public Law 99-509. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

Subtitle A—Rail Related Issues ¹

PART 1—GENERAL PROVISIONS

SEC. 4001. SHORT TITLE; TABLE OF CONTENTS OF SUBTITLE.

(a) SHORT TITLE.—This subtitle may be cited as the “Conrail Privatization Act”.

【45 U.S.C. 1301 nt】

(b) TABLE OF CONTENTS OF SUBTITLE.—

PART 1—GENERAL PROVISIONS

Sec. 4001. Short title; table of contents of subtitle.
Sec. 4002. Findings.
Sec. 4003. Purposes.
Sec. 4004. Definitions.

PART 2—CONRAIL

SUBPART A—SALE OF CONRAIL

Sec. 4011. Preparation for public offering.
Sec. 4012. Public offering.
Sec. 4013. Fees.

SUBPART B—OTHER MATTERS RELATING TO THE SALE

Sec. 4021. Rail service obligations.
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SUBPART C—MISCELLANEOUS TECHNICAL AND CONFORMING AMENDMENTS AND REPEALS

Sec. 4031. Abolition of United States Railway Association.

¹The Conrail Privatization Act was enacted as subtitle A of title IV of the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509).

- Sec. 4032. Applicability of Regional Rail Reorganization Act of 1973 to Conrail after sale.
- Sec. 4033. Miscellaneous amendments and repeals.
- Sec. 4034. Exemption from liability.
- Sec. 4035. Charter amendment.
- Sec. 4036. Status of Conrail after sale.
- Sec. 4037. Effect on contracts.
- Sec. 4038. Resolution of certain issues.

PART 3—PROMOTION OF RAIL COMPETITION

- Sec. 4051. Agriculture contract disclosure.
- Sec. 4052. Boxcar provision.

SEC. 4002. FINDINGS.

The Congress finds that—

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

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

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

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

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

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

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

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

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

(10) the requirements of section 401(e)² of the Regional Rail Reorganization Act of 1973 are met by this subtitle; and

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

【45 U.S.C. 1301】

² Section 4033(a)(1) of P.L. 99-509 (100 Stat. 1908) repealed section 401.

SEC. 4003. PURPOSES.

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

[45 U.S.C. 1302]

SEC. 4004. DEFINITIONS.

For the purposes of this subtitle—

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

(2) the term “Commission” means the Interstate Commerce Commission;

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

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

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

(B) all liabilities of the Corporation and its subsidiaries (excluding intercompany items), taking into account inventory and securities on the basis of the cost or current market value, whichever is lower, and not taking into account patents, trademarks, trade names, copyrights, licenses, goodwill, treasury stock, or any write-up in the book value of any assets;

(5) the term “Corporation” means the Consolidated Rail Corporation;

(6) the term “cumulative net income” means, for any period, the net income of the Corporation and its consolidated subsidiaries as determined in accordance with generally ac-

cepted accounting principles, before provision for expenses (net of income tax effect) related to—

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

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

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

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

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

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

(11) the term “preferred stock” means any class or series of preferred stock, and any class or series of common stock having liquidation and dividend rights and preferences superior to the common stock of the Corporation offered for sale under section 4012;

(12) the term “public offering” means an underwritten offering to the public of such common stock of the Corporation as the Secretary of Transportation determines to sell under section 4012;

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

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

(15) the term “United States share” means a share of common stock of the Corporation held by the United States Government on the date of the enactment of this Act or as a result of any split required pursuant to section 4012(d).

【45 U.S.C. 1303】

PART 2—CONRAIL**Subpart A—Sale of Conrail****SEC. 4011. PREPARATION FOR PUBLIC OFFERING.**

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

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

(b) **PAYMENT TO THE UNITED STATES.**—(1) Not later than 30 days after the date of the enactment of this Act, the Corporation shall transfer to the Secretary of the Treasury \$200,000,000.

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

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

[45 U.S.C. 1311]

(d) **LIMIT ON AUTHORITY TO PURCHASE STOCK.**—Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)) is amended by adding at the end thereof the following new paragraph:

“(5) The authority of the Association to purchase debentures or series A preferred stock of the Corporation shall terminate upon the date of the enactment of the Conrail Privatization Act.”.

SEC. 4012. PUBLIC OFFERING.

(a) **STRUCTURE OF PUBLIC OFFERING.**—(1) After the registration statement referred to in section 4011(c) is declared effective by the

Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-lead managers, shall offer the United States shares for sale in a public offering, except as provided in paragraphs (2) and (3).

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

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

(4) In making a determination under paragraph (3), the Secretary shall have the goal of obtaining at least \$2,000,000,000 in aggregate gross proceeds for the United States from the public offering and any payments made under section 4011(b).

(b) **SUBSEQUENT SALES.**—If the Secretary of Transportation elects to offer for sale less than all the United States shares, the Secretary shall sell the remaining United States shares in subsequent public offerings.

(c) **CONSENT OF THE CORPORATION NOT REQUIRED.**—Any public offering under this section may be made without the consent of the Corporation.

(d) **AUTHORITY TO REQUIRE STOCK SPLITS.**—(1) The Secretary of Transportation, in consultation with the co-lead managers and the Chairman of the Board of Directors of the Corporation, may, in connection with the initial public offering described in subsection (a), before the filing of the registration statement referred to in section 4011(c), require the Corporation to declare a stock split or reverse stock split.

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

(e) **CANCELLATION OF OTHER SECURITIES HELD BY THE UNITED STATES.**—(1) In consideration for amounts transferred to the United States under section 4011(b), the Secretary of Transportation shall, concurrent with the initial public offering described in subsection (a), deliver to the Corporation all preferred stock, 7.5 percent debentures, and contingent interest notes of the Corporation. The Corporation shall immediately cancel such debentures, preferred stock, and contingent interest notes, and any interest of the United States in such debentures, preferred stock, and contingent interest notes shall be thereby extinguished.

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

provided or established by the Corporation, or any change in the financial reporting practice of the Corporation.

(f) **MINORITY INVESTMENT BANKING FIRMS.**—The Secretary of Transportation shall ensure that minority owned or controlled investment banking firms shall have an opportunity to participate to a significant degree in any public offering under this part.

(g) **INVESTMENT BANKING FIRM REQUIREMENTS.**—(1) The level of any investment banking firm's participation in the public offering shall be consistent with that firm's financial capabilities.

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

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

[45 U.S.C. 1312]

SEC. 4013. FEES.

(a) **INVESTMENT BANKING FIRM FEES.**—The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall agree to pay to investment banking firms and other persons participating with such firms in the public offering the absolute minimum amount in fees necessary to carry out the public offering.

(b) **COSTS OF THE PUBLIC OFFERING.**—All costs of the public offering payable by the Secretary of Transportation shall be paid from the proceeds of the public offering.

[45 U.S.C. 1313]

Subpart B—Other Matters Relating to the Sale

SEC. 4021. RAIL SERVICE OBLIGATIONS.

(a)³ **OBLIGATIONS OF THE CORPORATION.**—During a period of 5 years beginning on the date of the enactment of this Act, the following obligations shall apply to the Corporation:

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

³ Subsection (a)(2) was repealed by section 2(b)(3) of P.L. 101-213 (103 Stat. 1843). The remaining paragraphs of subsection (a) were not redesignated.

years beginning after the sale date, a total of \$1,400,000,000 for its first four fiscal years beginning after the sale date, and a total of \$1,750,000,000 for its first five fiscal years beginning after the sale date.

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

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

(5) The Corporation shall offer any line for which an abandonment certificate is issued by the Commission to a purchaser who agrees to provide interconnecting rail service. Such offer shall last for the 120-day period following the date of issuance of the abandonment certificate and the price for such abandoned line shall be equal to 75 percent of net liquidation value as determined by the Commission, pursuant to regulations that had been issued under section 308 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 748).

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

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

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

(A) quarterly financial statements; and

(B) a report of the Corporation's total capital expenditures, for the period with respect to which the dividend has been declared, and the fiscal year to date, and shall compare such capital expenditures to the budgeted capital expenditures and to the cap-

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

[45 U.S.C. 1321]

SEC. 4022. OWNERSHIP LIMITATIONS.

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

(2) This subsection shall not apply—

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

(B) to the Secretary of Transportation,

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

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

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

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

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

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

[45 U.S.C. 1322]

SEC. 4023. BOARD OF DIRECTORS.

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

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

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

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

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

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

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

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

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

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

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

(C)(i) If more than 50 percent of the interest of the United States in the Corporation has not been sold before June 1, 1987, the special court established under section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719) shall, on that date, name 3 trustees from among persons knowledgeable in business affairs to make the appointments required by subparagraph (A)(iii). The Corporation shall compensate the special court trustees in an amount to be specified by the special court, not to exceed the amount paid by the Corporation to its directors for comparable services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[45 U.S.C. 1323]

SEC. 4024. PROVISIONS FOR EMPLOYEES.

【Subsections (a) and (b) made certain amendments to section 701 of the Regional Rail Reorganization Act of 1973.】

(c) REPEAL OF SECTION 701.—Section 701 of the Regional Rail Reorganization Act of 1973 is repealed effective on the sale date. Notwithstanding this repeal—

(1) any dispute or controversy regarding benefits under section 701 shall be determined under the terms of the law in effect prior to such repeal; and

(2) the Railroad Retirement Board shall take such actions as may be necessary to complete administration and closeout of the section 701 program and the Board is authorized to receive and apply Corporation funds for this purpose.

(d) CONTINUING RESPONSIBILITIES.—(1) On and after the sale date, the Corporation shall provide the protection for its employees described in “Part III, Article III, Employee Protection”, of the “Definitive Agreement of September 17, 1985, By and Between Conrail and the Undersigned Representatives of Conrail’s Agreement Employees” and Appendix 3 thereto, together with any amendments thereto, or under any other terms and conditions as shall be agreed between the Corporation and the representatives of its employees.

(2) The Corporation shall pay, as designated by the Railroad Retirement Board, any remaining benefits under section 701 of the Regional Rail Reorganization Act of 1973 that accrued, but were not disbursed, prior to the sale date.

(3) The Railroad Retirement Board shall transfer to the Corporation such information regarding administration of the labor protection program under such section 701 as may be reasonably necessary for the Corporation to discharge its responsibilities under this subsection, including copies of the individual claim records of employees of the Corporation.

(4) The United States shall have no liability for benefits under this subsection.

(e) COMPENSATION FOR WAGES BELOW INDUSTRY STANDARD.—The Corporation shall pay \$200,000,000 to present and former employees subject to collective bargaining agreements, in accordance with the terms and conditions in the Definitive Agreement referred to in subsection (d)(1), or as otherwise agreed between the parties.

(f) ESOP TRANSACTIONS.—(1) As soon as practicable after the date of the enactment of this Act, the employee stock ownership plan of the Corporation (hereafter in this subsection referred to as the “ESOP”) shall be amended to provide that—

(A) the shares of the ConRail Equity Corporation preferred stock held by the ESOP shall be surrendered by the ESOP in exchange for an equal number of shares of the common stock of the Corporation, and such common stock of the Corporation shall be allocated by the ESOP to the same persons in the same amounts as the shares of ConRail Equity Corporation preferred stock had been allocated; and

(B) the remaining shares of the ConRail Equity Corporation preferred stock held by the Corporation shall be cancelled, and an equal number of shares of the common stock of the Corporation shall be contributed by the Corporation to the ESOP, which shares shall be allocated by the ESOP to persons who are or were ESOP participants in accordance with the formula set forth in section 2 of Article II of Part III of the Definitive Agreement referred to in subsection (d)(1), and in accordance with a comparable formula for present and former employees of the Corporation not covered by such section of the Definitive Agreement, except that no contribution by the Corporation to the ESOP shall be made which would affect the tax-qualified status of the ESOP, or of any of the employee benefit plans maintained by the Corporation or any affiliate of the Corporation, under the Internal Revenue Code of 1954.

(2)(A)(i) As soon as practicable after the expiration of 180 days after 100 percent of the United States shares are sold, the ESOP

shall distribute all of the stock in the accounts of its participants and beneficiaries, except as provided in clause (ii).

(ii) Fractional shares shall not be distributed under clause (i). Shares equal to the aggregate amount of fractional shares shall be surrendered by the ESOP and redeemed by the Corporation for cash at the average closing price for the common stock of the Corporation on a national securities exchange for the 10 business days immediately preceding the date of distribution under clause (i), or, if the common stock of the Corporation is not listed on a national securities exchange, at the average closing price for such stock for such 10 business days as appearing in any regularly published reporting or quotation service, and the proceeds of such redemption shall be distributed by the ESOP to the same participants and beneficiaries and in the same amounts as the fractional shares had been allocated.

(B) After completing the distribution under subparagraph (A), the ESOP shall terminate.

(3) The Corporation shall distribute any full shares of its common stock which, because of the exception under paragraph (1)(B), could not be contributed to the ESOP to those persons to whom the ESOP would have allocated such shares pursuant to paragraph (1)(B) had such shares been contributed to the ESOP. The Corporation shall pay cash pursuant to the formula set forth in paragraph (2)(A)(ii) in lieu of fractional shares.

(4) For purposes of Rule 144 promulgated under the Securities Act of 1933, each share of the common stock of the Corporation distributed under this subsection shall be deemed to have been beneficially owned by the recipient, as of the date of such distribution, for a period of 3 years.

[45 U.S.C. 797 nt]

SEC. 4025. CERTAIN ENFORCEMENT RELIEF.

(a) ENFORCEMENT ACTIONS.—The Secretary of Transportation, with respect to any provision of section 4021 or 4022, and any person who suffers direct and substantial economic injury as a result of an alleged violation by the Corporation, with respect to the provisions of section 4021(a) (1) and (2), and section 4022, may bring an action to require compliance with such provision.

(b) SPECIAL COURT.—Any action brought under this part shall be brought before the special court established under section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 719). Such special court may limit the enforcement of a restriction under section 4021, if the effect of such restriction would be to substantially impair the continued viability of the Corporation.

[45 U.S.C. 1324]

Subpart C—Miscellaneous Technical and Conforming Amendments and Repeals

SEC. 4031. ABOLITION OF UNITED STATES RAILWAY ASSOCIATION.

(a) ABOLITION AND TERMINATION.—(1) Effective April 1, 1987, the United States Railway Association is abolished.

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

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

(b) TRANSFER OF SECURITIES AND RESPONSIBILITIES.—(1) Any securities of the Corporation held by the United States Railway Association shall, upon the date of the enactment of this Act, be transferred to the Secretary of Transportation.

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

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

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

[45 U.S.C. 1341]

SEC. 4032. APPLICABILITY OF REGIONAL RAIL REORGANIZATION ACT OF 1973 TO CONRAIL AFTER SALE.

[Section 4032 added a new subsection (k) to the end of section 301 of the Regional Rail Reorganization Act of 1973.]

SEC. 4033. MISCELLANEOUS AMENDMENTS AND REPEALS.

(a) REGIONAL RAIL REORGANIZATION ACT OF 1973 REPEALS.—The following provisions of the Regional Rail Reorganization Act of 1973 (together with any items relating to such provisions contained in the table of contents of such Act) are repealed:

(1) Title IV (45 U.S.C. 761 through 769c).

(2) Section 713 (45 U.S.C. 797l).

(b) REGIONAL RAIL REORGANIZATION ACT OF 1973 AMENDMENTS.—(1) Section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702) is amended by inserting after paragraph (17) a new paragraph as follows:

“(17A) ‘sale date’ means the date on which the initial public offering of the securities of the Corporation is closed under the Conrail Privatization Act;”.

(2) Section 217(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 727(c)) is amended by striking “, until the property” and all that follows, and inserting in lieu thereof “applicable to any taxable period commencing before January 1, 1987.”.

(3) Section 217(e) of such Act (45 U.S.C. 727(e)) is amended by striking “and shall collect”.

(c) AMENDMENTS AND REPEALS OF OTHER RAIL LAWS.—(1)(A) Section 1152 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1105) is amended—

(i) by inserting “or part 2 of the Conrail Privatization Act” after “subtitle” each place it appears; and

(ii) in the second sentence of subsection (c), by inserting “, as the case may be,” after the insertion made by clause (i) of this subparagraph.

(B) Section 1168(a) of the Northeast Rail Service Act of 1981 (45 U.S.C. 1116(a)) is amended by inserting before the period at the end the following: “and to the implementation of the sale of the interest of the United States in Conrail under the Conrail Privatization Act”.

(C)(i) The following provisions of the Northeast Rail Service Act of 1981 are repealed:

(I) Section 1154 (45 U.S.C. 1107).

(II) Section 1161 (45 U.S.C. 1110).

(III) Section 1166 (45 U.S.C. 1114).

(IV) Subsection (c) of section 1167 (45 U.S.C. 1115).

(ii) The items relating to such sections 1154, 1161, and 1166 in the table of contents of such Act are repealed.

(2) Section 501(8) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821(8)) is amended by striking out “(A)” and by striking out all that follows “improved asset utilization;”.

(3) Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825) is amended—

(A) in subsection (a)(1), by striking out all after “railroad” through “1981”; and

(B) in subsection (b)(2)(C), by striking out all after “costs” the second time it appears through “subsidy”.

(4) Subsection (b)(1) of section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 829) is repealed.

(5) Section 511(e) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(e)) is amended—

(A) by striking out “(1)” in the first paragraph;

(B) by striking all that follows “time” in the first paragraph and inserting in lieu thereof a period; and

(C) by striking out paragraph (2).

(6) Section 402 of the Rail Safety and Service Improvement Act of 1982 (45 U.S.C. 825a) is repealed.

(7) Section 10362(b)(7)(A) of title 49, United States Code, is amended by striking out “by the Consolidated Rail Corporation or”.

SEC. 4034. EXEMPTION FROM LIABILITY.

(a) IN GENERAL.—No person referred to in section 216(f)(8)(C) (i), (ii), or (iii) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(f)(8)(C) (i), (ii), or (iii)) shall be liable, for money damages or otherwise, to any party if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty, in connection with any action taken under this part, which

such person in good faith reasonably believed to be required by law or vested in such person.

(b) EXCEPTION.—This section shall not apply to claims arising out of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities, which claims are in connection with a public offering under section 4012 of this Act.

[45 U.S.C. 1342]

SEC. 4035. CHARTER AMENDMENT.

Within 60 days after the date of the enactment of this Act, the Corporation shall amend its Articles of Incorporation to contain the following provision, which provision shall not be subject to amendment or repeal:

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

[45 U.S.C. 1343]

SEC. 4036. STATUS OF CONRAIL AFTER SALE.

The Corporation shall be a rail carrier as defined in section 10102 of title 49, United States Code, notwithstanding this part.

[45 U.S.C. 1344]

SEC. 4037. EFFECT ON CONTRACTS.

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

[45 U.S.C. 1345]

SEC. 4038. RESOLUTION OF CERTAIN ISSUES.

(a) EMPLOYEE ISSUES.—Section 4024 completely and finally—

(1) extinguishes all employee rights, and any obligation of the United States, under section 401(e)⁴ of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 761(e)) as in effect immediately before the date of the enactment of this Act;

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

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

(4) resolves all issues raised by notices served by representatives of such employees under section 6 of the Railway Labor Act proposing repayment of or compensation for such deferrals; and

(5) resolves all claims against the Railway Labor Executives' Association or the Corporation by any adviser, consult-

⁴So in law. Section 401 was repealed by section 4033(a)(1) of P.L. 99-509 (100 Stat. 1908).

ant, or other person who has provided services to such association in connection with any matter referred to in this part.

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

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

[45 U.S.C. 1346]

PART 3—PROMOTION OF RAIL COMPETITION

SEC. 4051. AGRICULTURE CONTRACT DISCLOSURE.

[Section 4051 added a new paragraph (2) at the end of section 10713(b) of title 49, United States Code.]

SEC. 4052. BOXCAR PROVISION.

The authority of the Commission to promulgate that portion of the rule adopted by the Commission in Ex Parte No. 346 (Sub. No. 19) served September 12, 1986, consisting of small railroad protections, is hereby confirmed.

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TITLE VIII—REVENUES, TRADE, AND RELATED PROGRAMS⁵

Subtitle A—Revenue Provisions

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PART III—TAX TREATMENT OF CONRAIL PUBLIC SALE

SEC. 8021. TAX TREATMENT OF CONRAIL PUBLIC SALE.

(a) TREATMENT AS NEW CORPORATION.—

(1) IN GENERAL.—For periods after the public sale, for purposes of the Internal Revenue Code of 1954, Conrail shall be treated as a new corporation which purchased all of its assets as of the beginning of the day after the date of the public sale for an amount equal to the deemed purchase price.

(2) ALLOCATION AMONG ASSETS.—The deemed purchase price shall be allocated among the assets of Conrail in accordance with the temporary regulations prescribed under section

⁵This was enacted as Title VIII of the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509).

338 of the Internal Revenue Code of 1954 (as such regulations were in effect on the date of the enactment of this Act). The Secretary shall establish specific guidelines for carrying out the preceding sentence so that the basis of each asset will be clearly ascertainable. For purposes of applying the regulations referred to in the first sentence, accounts receivable and materials and supplies shall be treated as cash equivalents.

(3) DEEMED PURCHASE PRICE.—For purposes of this subsection, the deemed purchase price is an amount equal to the gross amount received pursuant to the public sale, multiplied by a fraction—

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

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

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

(b) NO INCOME FROM CANCELLATION OF DEBT OR PREFERRED STOCK.—No amount shall be included in the gross income of any person by reason of any cancellation of any obligation (or preferred stock) of Conrail in connection with the public sale.

(c) DISALLOWANCE OF CERTAIN DEDUCTIONS.—No deduction shall be allowed to Conrail for any amount which is paid after the date of the public sale to employees of Conrail for services performed on or before the date of the public sale.

(d) WAIVER OF CERTAIN EMPLOYEE STOCK OWNERSHIP PLAN PROVISIONS.—For purposes of determining whether the employee stock ownership plans of Conrail meet the qualifications of sections 401 and 501 of the Internal Revenue Code of 1954—

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

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

(e) DEFINITIONS.—For purposes of this section—

(1) CONRAIL.—The term “Conrail” means the Consolidated Rail Corporation. Such term includes any corporation which was a subsidiary of Conrail immediately before the public sale.

(2) PUBLIC SALE.—The term “public sale” means the sale of stock in Conrail pursuant to a public offering under the Conrail Privatization Act. If there is more than 1 public offering under such Act, such term means the sale pursuant to the initial public offering under such Act.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Treasury or his delegate.

[45 U.S.C. 1347]