

zations, environmental groups, the public, and to Congress, and to publish the report in the Federal Register.

DELAWARE-MARYLAND-VIRGINIA PENINSULA RAIL
STUDY; REPORT TO CONGRESS

Pub. L. 94-555, title III, §302, Oct. 19, 1976, 90 Stat. 2631, directed Interstate Commerce Commission to submit a report to Congress, within six months of Oct. 19, 1976, regarding problems of and need for rail transportation services on Delaware-Maryland-Virginia peninsula.

§ 715. Repealed. Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1466

Section, Pub. L. 93-236, title II, §205, Jan. 2, 1974, 87 Stat. 993, Pub. L. 94-5, §3, Feb. 28, 1975, 89 Stat. 7; Pub. L. 94-210, title III, §309, Feb. 5, 1976, 90 Stat. 57, established Rail Services Planning Office.

§ 716. Final system plan

(a) Goals

The final system plan shall be formulated in such a way as to effectuate the following goals:

(1) the creation, through a process of reorganization, of a financially self-sustaining rail and express service system in the region;

(2) the establishment and maintenance of a rail service system adequate to meet the rail transportation needs and service requirements of the region;

(3) the establishment of improved high-speed rail passenger service, consonant with the recommendations of the Secretary in his report of September 1971, entitled "Recommendations for Northeast Corridor Transportation";

(4) the preservation, to the extent consistent with other goals, of existing patterns of service by railroads (including short-line and terminal railroads), and of existing railroad trackage in areas in which fossil fuel natural resources are located, and the utilization of those modes of transportation in the region which require the smallest amount of scarce energy resources and which can most efficiently transport energy resources;

(5) the retention and promotion of competition in the provision of rail and other transportation services in the region;

(6) the attainment and maintenance of any environmental standards, particularly the applicable national ambient air quality standards and plans established under the Clean Air Act Amendments of 1970, taking into consideration the environmental impact of alternative choices of action;

(7) the movement of passengers and freight in rail transportation in the region in the most efficient manner consistent with safe operation, including the requirements of commuter and intercity rail passenger service; the extent to which there should be coordination with the National Railroad Passenger Corporation and similar entities; and the identification of all short-to-medium distance corridors in densely populated areas in which the major upgrading of rail lines for high-speed passenger operation would return substantial public benefits; and

(8) the minimization of job losses and associated increases in unemployment and community benefit costs in areas in the region presently served by rail service.

(b) Factors

The final system plan shall be based upon due consideration of all factors relevant to the realization of the goals set forth in subsection (a) of this section. Such factors include the need for and the cost of rehabilitation and modernization of track, equipment, and other facilities; methods of achieving economies in the cost of rail operations in the region; means of achieving rationalization of rail services and the rail service system in the region; marketing studies; the impact on railroad employees; consumer needs; traffic analyses; financial studies; and any other factors identified by the Association under section 712(b)¹ of this title or in the report of the Secretary required under section 714(a) of this title.

(c) Designations

The final system plan shall designate—

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

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

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

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

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

(E) if not otherwise required to be operated by the Corporation, a government entity, or a responsible person, are suitable for use for other public purposes, including highways, other forms of transportation, conservation, energy transmission, education or health care facilities, or recreation. In carrying out this subparagraph, the Association shall solicit the views and rec-

¹ See References in Text note below.

ommendations of the Secretary, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and other agencies of the Federal Government and of the States and political subdivisions thereof within the region, and the general public; and

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

(d) Transfers

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

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

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

(3) Notwithstanding any other provision of this chapter, no acquisition under this chapter shall be made by any profitable railroad operating in the region without a determination with respect to each such transaction and all such transactions cumulatively (A) by the Association, upon adoption and release of the preliminary system plan, that such acquisition or acquisitions will not materially impair the profitability of any other profitable railroad operating in the region or of the Corporation, and (B) by the Commission, which shall be made within 90 days after adoption and release by the Association of the preliminary system plan, that such acquisition or acquisitions will be in full accord and comply with the provisions and standards of subchapter III¹ of chapter 113 of title 49. All determinations made by the Association in the correction to the preliminary system plan published on April 11, 1975 (40 Fed. Reg. 16377), shall be treated for all purposes as if they had been made upon adoption and release by the Association of the preliminary system plan. All determinations made by the Commission with respect to such correction shall be treated for all purposes as if they had been made within 90 days after adoption and release by the Association of the preliminary system plan. All determinations made by the Commission with respect to acquisitions by profitable railroads referred to in any supplement to the prelimi-

nary system plan published under section 717(b)(2) of this title shall be deemed to be timely if made prior to the adoption of the final system plan under section 717(c) of this title. The determination by the Association shall not be reviewable in any court. The determination by the Commission shall not be reviewable in any court.

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

(5) All properties—

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

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

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

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

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

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

(e) Corporation features

The final system plan shall set forth—

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

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

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

(f) Value

The final system plan shall designate the value of all rail properties to be transferred under the final system plan and the value of the securities and other benefits to be received for transferring those rail properties to the Corporation in accordance with the final system plan.

(g) Other provisions

The final system plan may recommend arrangements among various railroads for joint use or operation of rail properties on a shared ownership, cooperative, pooled, or condominium-type basis, subject to such terms and condi-

tions as may be specified in the final system plan. The final system plan shall also make such designations as are determined to be necessary in accordance with the provisions of section 762 or 763¹ of this title.

(h) Obligational authority

The final system plan shall recommend the amount of obligations of the Association which are necessary to enable it to implement the final system plan.

(i) Terms and conditions for securities

The final system plan may include terms and conditions for any securities to be issued by the Corporation in exchange for the conveyance of rail properties under the final system plan which in the judgement of the Association will minimize any actual or potential debt burden on the Corporation. Any such terms and conditions for securities of the Corporation which purport to directly obligate the Association shall not become effective without affirmative approval, with or without modification by a joint resolution of the Congress.

(j) Additional properties deemed designated

Any rail properties over which rail service was being provided as of February 5, 1976, and which were recommended in the preliminary system plan for transfer to the Corporation, shall be deemed to be designated in the final system plan for transfer to the Corporation under subsection (c)(1)(A) of this section. Any designation in the final system plan, pursuant to subsection (c)(1)(B) of this section, of overhead trackage rights to be acquired by a profitable railroad operating in the region over specified rail properties to be acquired by the Corporation, where such designation does not (1) authorize such profitable railroad to interchange traffic with at least one railroad, or (2) provide for the connection of portions of such profitable railroad's rail properties, and where the transfer of ownership of such rail properties (including trackage rights) to such profitable railroad was recommended in the preliminary system plan, and the Commission has made a determination with respect thereto, in accordance with subsection (d)(3) of this section, shall be deemed to authorize such profitable railroad to interchange traffic with the Corporation and any other profitable railroad connecting with such specified rail properties.

(Pub. L. 93-236, title II, § 206, Jan. 2, 1974, 87 Stat. 994; Pub. L. 94-5, § 2(b), Feb. 28, 1975, 89 Stat. 7; Pub. L. 94-210, title VI, § 607(e)-(j), (o)-(q), title VIII, § 807, Feb. 5, 1976, 90 Stat. 96-98, 143; Pub. L. 94-436, §§ 2, 4, Sept. 30, 1976, 90 Stat. 1398; Pub. L. 94-555, title II, § 202(a), (c), Oct. 19, 1976, 90 Stat. 2616, 2617; Pub. L. 95-611, § 4(a), Nov. 8, 1978, 92 Stat. 3090.)

REFERENCES IN TEXT

Clean Air Act Amendments of 1970, referred to in subsec. (a)(6), mean Pub. L. 91-604, Dec. 31, 1970, 84 Stat. 1676. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 7401 of Title 42, The Public Health and Welfare, and Tables.

Section 712(b) of this title, referred to in subsec. (b), which related to additional duties of the Association,

was repealed and section 712(c) of this title was redesignated section 712(b) by Pub. L. 97-35, title XI, §1148(a), Aug. 13, 1981, 95 Stat. 674.

Section 714 of this title, referred to in subsec. (b), was omitted from the Code.

Subchapter III of chapter 113 of title 49, referred to in subsec. (d)(3), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804. Previously, in subsec. (d)(3), "subchapter III of chapter 113 of title 49" was substituted for "section 5 of part I of the Interstate Commerce Act (49 U.S.C. 5)" on authority of Pub. L. 95-473, §3(b), Oct. 17, 1978, 92 Stat. 1446, the first section of which enacted subtitle IV (§10101 et seq.) of Title 49.

Sections 762 and 763 of this title, referred to in subsec. (g), were repealed by Pub. L. 94-210, title VIII, §806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

AMENDMENTS

1978—Subsec. (d)(5)(C). Pub. L. 95-611 substituted "3 years" for "900 days".

1976—Subsec. (c)(1)(A). Pub. L. 94-210, §607(g), inserted proviso relating to notice by the Corporation to the Association.

Subsec. (c)(1)(B). Pub. L. 94-210, §607(f), inserted provision relating to alternative designations to be made under this paragraph.

Subsec. (c)(1)(D). Pub. L. 94-210, §607(j), designated existing provision as cl. (i) and added cl. (ii).

Subsec. (c)(2). Pub. L. 94-210, §607(h), inserted provision relating to sale of designated properties to a subsidiary of the Corporation.

Subsec. (d)(1). Pub. L. 94-210, §607(i), inserted "or any subsidiary thereof" after "Corporation" wherever appearing.

Subsec. (d)(3). Pub. L. 94-210, §607(e), inserted provisions relating to correction to the preliminary system plan published in 40 Fed. Reg. 16377, determinations made with respect to such correction by the Commission, and determinations made with respect to acquisitions referred to in any supplement to the preliminary system plan.

Subsec. (d)(4). Pub. L. 94-210, §607(o), inserted provision relating to modification of offer until the date of acceptance, and substituted "95" for "60" and "7 days after February 5, 1976," for "30 days after the effective date of the final system plan".

Subsec. (d)(5). Pub. L. 94-555, §202(a), inserted "or for purposes of providing rail marine freight floating service" after "intercity rail passenger service".

Pub. L. 94-436, §2, inserted provision relieving the Corporation, its Board of Directors, and its individual directors from liability to any party by reason of the fact that the Corporation transferred property pursuant to section 743 of this title.

Pub. L. 94-210, §807, restructured provisions and substituted provisions relating to valuation of transferred properties transferred by the Corporation and adjustment of such valuation, for provisions relating to valuation of transferred properties sold by the Corporation.

Subsec. (d)(6). Pub. L. 94-210, §607(p), added par. (6).

Subsec. (d)(7). Pub. L. 94-555, §202(c), inserted "by the Corporation pursuant to the final system plan" after "with respect to the acquisition".

Pub. L. 94-436, §4, added par. (7).

Subsec. (j). Pub. L. 94-210, §607(q), added subsec. (j).

1975—Subsec. (a)(1). Pub. L. 94-5 inserted "and express" after "rail".

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-611, §4(b), Nov. 8, 1978, 92 Stat. 3090, provided that: "The amendment made by this Act [probably meaning this section 4, which amended section 716 of this title] shall be effective on January 2, 1974."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective Oct. 1, 1976, see section 303 of Pub. L. 94-555, set out as a note under section 702 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

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

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

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

§ 717. Adoption of final system plan

(a) Preliminary system plan

(1) Within 420 days after January 2, 1974, the Association shall adopt and release a preliminary system plan prepared by it on the basis of reports and other information submitted to it by the Secretary, the Office, and interested persons in accordance with this chapter and on the basis of its own investigations, consultations, research, evaluation, and analysis pursuant to this chapter. Copies of the preliminary system plan shall be transmitted by the Association to the Secretary, the Office, the Governor and public utility commission of each State in the region, the Congress, each court having jurisdiction over a railroad in reorganization in the region, the special court, and interested persons, and a copy shall be published in the Federal Register. The Association shall invite and afford interested persons an opportunity to submit comments on the preliminary system plan to the Association within 60 days after the date of its release.

(2) The Office is authorized and directed to hold public hearings on the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the preliminary system plan, not later than 60 days after the date of release of such plan. The Office is authorized to hold public hearings on any supplement to the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of such supplement, not later than 30 days after the release of such supplement.

(b) Approval

(1) Within 120 days after January 2, 1974, each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act and