

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

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

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

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

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

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

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

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

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

(10) the requirements of section 761(e)<sup>1</sup> of this title are met by this chapter; and

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

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

#### REFERENCES IN TEXT

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

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 (10), was repealed by Pub.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

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

#### SHORT TITLE

Section 4001(a) of subtitle A (§§4001-4052) of title IV of Pub. L. 99-509 provided that: "This subtitle [enacting

this chapter, amending sections 702, 726, 727, 741, 797, 821, 825, 829, 831, 1105, 1115, and 1116 of this title and sections 10362 and 10713 of Title 49, Transportation, repealing sections 761 to 769c, 797l, 825a, 1107, 1110, and 1114 of this title, and enacting provisions set out as a note under section 797 of this title] may be cited as the 'Conrail Privatization Act'."

#### § 1302. Purposes

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

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

#### § 1303. Definitions

For the purposes of this chapter—

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

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

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

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

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

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

<sup>1</sup> See References in Text note below.

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

(6) the term "cumulative net income" means, for any period, the net income of the Corporation and its consolidated subsidiaries as determined in accordance with generally accepted accounting principles, before provision for expenses (net of income tax effect) related to—

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

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

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

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

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

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

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

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

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

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

(15) the term "United States share" means a share of common stock of the Corporation held by the United States Government on Oc-

tober 21, 1986, or as a result of any split required pursuant to section 1312(d) of this title.

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

#### REFERENCES IN TEXT

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

#### ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 1301 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 1301 of Title 49.

### SUBCHAPTER II—CONRAIL

#### PART A—SALE OF CONRAIL

### § 1311. Preparation for public offering

#### (a) Public offering managers

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

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

#### (b) Payment to United States

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

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

#### (c) Registration statement

The Corporation shall prepare and cause to be filed with the Securities and Exchange Commis-