

sion a registration statement with respect to the securities to be offered and sold in accordance with the securities laws and the rules and regulations thereunder in connection with the initial and any subsequent public offering.

**(d) Omitted**

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

REFERENCES IN TEXT

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

CODIFICATION

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

**§ 1312. Public offering**

**(a) Structure of public offering**

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

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

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

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

**(b) Subsequent sales**

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

**(c) Consent of Corporation not required**

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

**(d) Authority to require stock splits**

(1) The Secretary of Transportation, in consultation with the co-lead managers and the Chairman of the Board of Directors of the Corporation, may, in connection with the initial public offering described in subsection (a), before the filing of the registration statement re-

ferred to in section 1311(c) of this title, require the Corporation to declare a stock split or reverse stock split.

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

**(e) Cancellation of other securities held by United States**

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

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

**(f) Minority investment banking firms**

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

**(g) Investment banking firm requirements**

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

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

**(h) Government Accountability Office authority to conduct audits**

The Government Accountability 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 Government Accountability Office to make such audits. The Government Accountability Office shall report the results of all such audits to the Congress.

(Pub. L. 99-509, title IV, §4012, Oct. 21, 1986, 100 Stat. 1896; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (f), was in the original “this part” meaning part 2 (§§4011-4038) of sub-

title A of title IV of Pub. L. 99-509, Oct. 21, 1986, 100 Stat. 1895, which enacted this subchapter, amended sections 702, 726, 727, 741, 797, 821, 825, 829, 831, 1105, 1115, and 1116 of this title and section 10362 of Title 49, Transportation, repealed sections 761 to 769c, 797, 825a, 1107, 1110, and 1114 of this title, and enacted provisions set out as a note under section 797 of this title. For complete classification of part 2 to the Code, see Tables.

#### AMENDMENTS

2004—Subsec. (h). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in heading and wherever appearing in text.

#### 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.

### § 1313. Fees

#### (a) Investment banking firm fees

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

#### (b) Costs of public offering

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

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

#### PART B—OTHER MATTERS RELATING TO SALE

### § 1321. Rail service obligations

#### (a) Obligations of Corporation

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

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

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

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

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

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

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

#### (b) Compliance certificates

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

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

(A) quarterly financial statements; and

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

for the period with respect to which the dividend has been declared, and the fiscal year to date, and shall compare such capital expenditures to the budgeted capital expenditures and to the capital expenditures during the comparable periods of the previous fiscal year.