

Transfer Act of 1982 [45 U.S.C. 1206(e)(1)] (as amended by subsection (a) of this section)."

### § 1207. State operation

#### (a) Laws, authorities, etc., applicable to State-owned railroad with status as rail carrier engaged in interstate and foreign commerce

(1) After the date of transfer to the State pursuant to section 1203 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to part A of subtitle IV of title 49 and all other Acts applicable to rail carriers subject to that chapter,<sup>1</sup> including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), the Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). Nothing in this chapter shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

(2) The transfer to the State authorized by section 1203 of this title and the conferral of jurisdiction to the Interstate Commerce Commission pursuant to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713<sup>2</sup> of title 49, notwithstanding any participation in such agreements by connecting water carriers.

(3) All memoranda which sanction noncompliance with Federal railroad safety regulations contained in 49 CFR Parts 209-236, and which are in effect on the date of transfer, shall continue in effect according to their terms as "waivers of compliance" (as that term is used in section 20103(d) of title 49).

(4) The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

(5) Revenues generated by the State-owned railroad, including any amount appropriated or otherwise made available to the State-owned railroad, shall be retained and managed by the State-owned railroad for railroad and related purposes.

(6)(A) After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of title 26. Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1)<sup>2</sup> of title 26, but not obligations within the meaning of section 103(b)(2)<sup>2</sup> of title 26.

(B) Nothing in this chapter shall be deemed or construed to affect customary tax treatment of private investment in the equipment or other assets that are used or owned by the State-owned railroad.

#### (b) Procedures for issuance of certificate of public convenience and necessity; inventory, valuation, or classification of property; additional laws, authorities, etc., applicable

As soon as practicable after January 14, 1983, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V<sup>2</sup> of chapter 107 of title 49 shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 382(b) of the Energy Policy and Conservation Act (42 U.S.C. 6362(b)) shall not apply to actions of the Commission under this subsection.

#### (c) Eligibility for participation in Federal railroad assistance programs

The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to part A of subtitle IV of title 49.

#### (d) Laws and regulations applicable to national forest and park lands; limitations on Federal actions

After the date of transfer to the State pursuant to section 1203 of this title, the portion of the rail properties within the boundaries of the Chugach National Forest and the exclusive-use easement within the boundaries of the Denali National Park and Preserve shall be subject to laws and regulations for the protection of forest and park values. The right to fence the exclusive-use easement within Denali National Park and Preserve shall be subject to the concurrence of the Secretary of the Interior. The Secretary of the Interior, or the Secretary of Agriculture where appropriate, shall not act pursuant to this subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under this chapter.

#### (e) Preservation and protection of rail properties

The State-owned railroad may take any necessary or appropriate action, consistent with Federal railroad safety laws, to preserve and protect its rail properties in the interests of safety.

(Pub. L. 97-468, title VI, §608, Jan. 14, 1983, 96 Stat. 2573; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104-88, title III, §326, Dec. 29, 1995, 109 Stat. 951; Pub. L. 108-447, div. H, title I, §152(1), (2), Dec. 8, 2004, 118 Stat. 3222.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1), is act Aug. 29, 1935, ch. 812, as amended

<sup>1</sup> So in original. Probably should be "that part,".

<sup>2</sup> See References in Text note below.

generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of this title. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of this title, section 231t of this title, and Tables.

The Railroad Retirement Tax Act, referred to in subsec. (a)(1), is act Aug. 16, 1954, ch. 736, §§3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, as amended, which is classified generally to chapter 22 (§3201 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

The Railway Labor Act, referred to in subsec. (a)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of this title. For complete classification of this Act to the Code, see section 151 of this title and Tables.

Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), referred to in subsec. (a)(1), is act Apr. 22, 1908, ch. 149, 35 Stat. 65, as amended, and is classified generally to chapter 2 (§51 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 51 of this title and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (a)(1), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

Section 10713 of title 49, referred to in subsec. (a)(2), 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. Provisions similar to those in section 10713 are contained in section 10709 of Title 49.

Section 103, referred to in subsec. (a)(6)(A), which related to interest on certain governmental obligations was amended generally by Pub. L. 99-514, title XIII, §1301(a), Oct. 22, 1986, 100 Stat. 2602, and as so amended relates to interest on State and local bonds. Section 103(b)(2), which prior to the general amendment defined industrial development bond, relates to the applicability of the interest exclusion to arbitrage bonds.

Subchapter V of chapter 107 of title 49, referred to in subsec. (b), 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.

The National Environmental Policy Act of 1969, referred to in subsec. (b), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

#### CODIFICATION

In subsec. (a)(3), "section 20103(d) of title 49" substituted for "section 202(c) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(c))" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

#### AMENDMENTS

2004—Subsec. (a)(5). Pub. L. 108-447, §152(1), inserted "including any amount appropriated or otherwise made available to the State-owned railroad," before "shall be retained".

Subsec. (e). Pub. L. 108-447, §152(2), added subsec. (e).  
1995—Subsecs. (a)(1), (c). Pub. L. 104-88 substituted "part A" for "the jurisdiction of the Interstate Commerce Commission under chapter 105".

1986—Subsec. (a)(6)(A). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

##### 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.

##### ALASKA RAILROAD

Pub. L. 109-59, title IX, §9006, Aug. 10, 2005, 119 Stat. 1925, provided that:

"(a) GRANTS.—The Secretary [of Transportation] shall make grants to the Alaska Railroad for capital rehabilitation and improvements benefiting its passenger operations.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary."

Similar provisions were contained in Pub. L. 105-178, title VII, §7204, June 9, 1998, 112 Stat. 477.

#### § 1208. Future rights-of-way

##### (a) Access across Federal lands; application approval

After January 14, 1983, the State or State-owned railroad may request the Secretary of the Interior or the Secretary of Agriculture, as appropriate under law, to expeditiously approve an application for a right-of-way in order that the Alaska Railroad or State-owned railroad may have access across Federal lands for transportation and related purposes. The State or State-owned railroad may also apply for a lease, permit, or conveyance of any necessary or convenient terminal and station grounds and material sites in the vicinity of the right-of-way for which an application has been submitted.

##### (b) Consultative requirements prior to approval of application; conformance of rights-of-way, etc.

Before approving a right-of-way application described in subsection (a) of this section, the Secretary of the Interior or the Secretary of Agriculture, as appropriate, shall consult with the Secretary. Approval of an application for a right-of-way, permit, lease, or conveyance described in subsection (a) of this section shall be pursuant to applicable law. Rights-of-way, grounds, and sites granted pursuant to this section and other applicable law shall conform, to the extent possible, to the standards provided in the Act of March 12, 1914 (43 U.S.C. 975 et seq.) and section 1202(6) of this title. Such conformance shall not be affected by the repeal of such Act under section 615 of this title.<sup>1</sup>

(Pub. L. 97-468, title VI, §609, Jan. 14, 1983, 96 Stat. 2574; Pub. L. 108-7, div. I, title III, §345(5), Feb. 20, 2003, 117 Stat. 418.)

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