

A BILL

To amend the Interstate Commerce Act, as amended, to modernize and reform the regulation of railroads, to allow more flexibility in establishing rates, to provide adequate prior notice of the abandonment of rail lines, and to assist in the financing of rail transportation, to develop a rolling stock scheduling and control system, and for other purposes.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled, That
this Act may be cited as the "Railroad Revitalization Act".

Railroad Ratemaking and Abandonment

Sec. 2. (a) Section 1 of the Interstate Commerce Act (49 U.S.C. 1) is amended by: (1) deleting the present paragraph (5) and substituting in its place the following:

"(5)(a) As used in this section, the term 'rate' means rate, fare, charge, and any classification, regulation, or practice relating thereto.

"(b) Each rate for a service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable rate is prohibited and declared to be unlawful. A rate that is compensatory may not be found to be unjust or unreasonable on the basis that it is too low.

"(c) In exercising its power to prescribe just and reasonable rates, the Commission shall give due consideration to the effect of rates on the movement of traffic by the carrier for which the rates are prescribed, and to the need in the public interest of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of the service. The Commission may not hold the rate of a carrier of one mode up to a particular level to protect the traffic of a carrier of another mode, if the rate proposed by the carrier is compensatory. Where, after hearing, the Commission finds any rate to be non-compensatory and unlawful, it may order that rate to be increased but by only so much as will make the unlawful rate compensatory.

"(d) A carrier's rate is deemed to be compensatory when it equals or exceeds the carrier's variable cost of providing the specific transportation to which the rate applies. In determining whether a rate on traffic moving over lines receiving an operating subsidy pursuant to paragraph (23) of this section is compensatory, the Commission shall take into account the compensation received from the subsidy.

"(e) In any proceeding instituted upon complaint to determine the lawfulness of a rate, the Commission may not approve a carrier's proposed rate decrease which is below the carrier's variable

cost of providing the specific transportation to which the rate applies, and the Commission may not disallow a carrier's proposed rate increase where the increase does not raise the rate above the carrier's variable cost of providing the specific transportation.

(2) striking paragraph (22) thereof and adding the following new paragraphs:

"(22)(a) In order to provide advance notice to users and State and local governments of those lines of railroad which a carrier may seek to abandon because of their low traffic density, the Secretary, in consultation with the Commission, shall develop and publish, within ninety days after enactment of this paragraph, standards for the classification of railroad lines according to their level of usage and probable economic viability. The Secretary, in consultation with the Commission, may revise the standards thereafter as necessary to improve the accuracy of classification. In determining 'level of usage' and 'probable economic viability' for purposes of classification, the Secretary shall take into account such economic, operational, service, and other factors, as appropriate, and may make allowance for variations in these factors among the various regions of the country and among individual railroads or groups of railroads.

"(b) Within ninety days after publication of the standards for the classification of railroad lines, each railroad shall analyze its rail system in accordance with the standards and prepare and file with the Secretary and the Commission a full and complete schedule of its low density lines. The schedule shall be prepared, filed and kept current in accordance with procedures prescribed by the Secretary, in consultation with the Commission.

"(c) A carrier may initiate an abandonment proceeding by filing a notice with the Commission at least ninety days prior to the proposed date of abandonment of a line of railroad, or the operation thereof, and certifying that the notice has been--

"(1) served by certified mail upon the Governor of each State in which all or any portion of the line of railroad or the operation thereof is proposed to be abandoned;

"(2) served by certified mail on all carriers, shippers and receivers who have used the line in the preceding eighteen months;

"(3) posted in every station on the line of railroad; and

"(4) published for three consecutive weeks in a newspaper of general circulation in each county in or through which said line of railroad operates.

For all abandonment applications filed after one year from the date of enactment of this subparagraph (c), unless at the time the notice of abandonment is filed a line of railroad sought to be abandoned has been listed for at least six months on the schedule prescribed in subparagraph (b) of this paragraph, a carrier may not abandon all or any portion of the line, or operation thereof, if the abandonment is opposed either by a person who has used the service provided thereon or which has operated over such line during the twelve months preceding the date of filing of the abandonment application, or by a State, county, or municipality served by the line.

"(d) Where an application for abandonment of a line of railroad has been considered by the Commission and the Commission determines that public convenience and necessity permits abandonment of the line, upon application by an interested party it shall determine the extent to which the revenue attributable to the line or operations in question of the applicant or applicants covers the cost of operating the line of the applicant or applicants and the amount of subsidy needed to require continued operation under subparagraph (23) of this paragraph.

"(23) If the Commission determines that the public convenience and necessity permit the abandonment of a line of railroad, or operation thereof, the Governor of any State or the authorized representative of any local governing authority in which all or a portion of the line is located, or the shippers or receivers of traffic over the line may, prior to the effective date of the Commission's order, notify the Commission and the railroad of their intention, individually or collectively, to provide an operating subsidy to the railroad to assure a continuation of service. If the Commission determines that the State or local government has, or is likely to acquire within a six-month period, the legal capacity to provide an operating subsidy, or in the case of shippers or receivers, that they are willing and able to provide the subsidy, it may order an additional postponement of the abandonment for not more than six months to implement a subsidization plan. If the Commission determines that the revenues attributable to the line including the subsidy are equal to or exceed the cost of operating the line, it shall order continued operation of the line thereafter on the condition that the subsidy is provided.

"(24)(a) Within ninety days following the date of enactment of this title the Secretary shall, after consultation with the Commission, develop interim standards for determining the 'cost

of operating the line' and the 'revenue attributable to the line' as those terms are used in this section. The Commission shall promptly adopt and promulgate these interim standards. Within one year following the date of enactment of this title, the Secretary shall, after consultation with the Commission, develop final standards for determining these terms. The final standards shall be adopted and promulgated by the Commission within thirty days of their receipt and shall be revised from time to time as the Secretary and the Commission may agree.

"(b) The standards shall be developed in accordance with the following definitions and guidelines"

"(A) the 'cost of operating the line' means all of the applicant's costs (including capital recovery and a reasonable return on investment) which may change or be avoided as a result of a decision to abandon the line, over a period of time long enough to allow all the cost effects of the abandonment to be realized;

"(B) the 'revenue attributable to the line' means all revenues which would be lost for the applicant if the line were abandoned;

"(C) the standards shall not place an unreasonable accounting burden on the railroads; and

"(D) the standards shall permit the separation of cost and revenue between the railroad operating the line to be abandoned and other railroads participating in the traffic originating or terminating on the line.

"(25) If the Commission determines that the public convenience and necessity permit the abandonment of a line of railroad, or operations thereof and if the issuance of the certificate may affect interests of railroad employees, the Commission shall impose a fair and equitable arrangement for the protection of such employees containing benefits no less than those established pursuant to Section 5(2)(f) of this Act.

"(26) The authority of the Commission conferred by subparagraphs (18) through (22) of this section shall not apply to the construction, acquisition, or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general railroad system of transportation.

"(27)(a) Any construction, operation, or abandonment contrary to the provisions of subparagraphs (18), (19), (20), or (22) of this section may be enjoined by any United States district court of competent jurisdiction at the suit of the United States, the

State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who, knowingly authorizes, consents to, or permits any violation of the provisions of subparagraphs (18), (19), (20), or (22) of this section shall be subject to a civil penalty of not more than \$5,000 for each violation.

"(b) Applications for abandonment filed with the Commission before the date of enactment of this Act, shall be governed by the provisions of section 1 of the Interstate Commerce Act (49 U.S.C. 1) in effect on the date of the application, except that the issuance of a certificate authorizing abandonment may be stayed pursuant to the provisions of section (23) as enacted in subsection (2) of this section.

Rate Bureau Procedures

Sec. 3. (a) Section 5a of the Interstate Commerce Act (49 U.S.C. 5b) is amended by (1) amending paragraph (3) to read as follows:

"(3) Each conference, bureau, committee, or other organization of railroad carriers established or continued pursuant to an agreement approved by the Commission under the provisions

of this section shall maintain records of the votes of its members on each matter voted on. It shall maintain such other accounts, files, memoranda, or other records, and submit such reports, as the Commission may require. The records of each organization shall be subject to inspection by the Commission and shall be made available to the public through the Commission.";

(2) renumbering paragraphs (7) through (10) as (8) through (11) and adding a new paragraph to read as follows:

"(7)(A) The Commission may not approve under this section any agreement among railroad carriers that (i) permits participation in discussions, agreements or voting on rates, fares, classifications, allowances or charges relating to single-line movements, (ii) permits any carrier not holding itself out to participate in a particular joint line or interline movement to participate in discussions, agreements, or voting on rates, fares, classifications, divisions, allowances, or charges relating to that movement; or (iii) provides for or establishes procedures for joint consideration or other action protesting or otherwise seeking the suspension of any rate, fare, or charge.

"(B) After three years from the date of the enactment of this paragraph, the Commission may not approve under this

section any agreement among railroad carriers that permits participation in discussions, agreements, or voting on rates which are of general applicability to all or substantially all classes of traffic. This paragraph, however, shall not apply to rate changes of general applicability which are based solely on regional or national increases in fuel or labor costs.

(3) striking "(4), (5), or (6)" in paragraph (9) and inserting in lieu thereof "(4), (5), (6), or (7)"; striking "(9)" in paragraph (10) and inserting "(10)" in lieu thereof; and

(4) adding a new paragraph (12) to read as follows:

"(12)(a) A railroad conference, bureau, committee or other organization established or continued pursuant to any agreement approved under this section, shall take final action upon a rule, rate, or charge docketed with it within one hundred and twenty days from the date of docketing."

(b) Any agreement in effect on the date of enactment of this paragraph which permits an action prohibited by section 5a(7)(A) of this Act, and any agreement in effect three years after the date of the enactment of this paragraph which permits an action prohibited by section 5a(7)(B) of this Act is null and void to the extent it permits the prohibited action, and any prohibited action taken under that agreement is subject to the antitrust laws."

Intrastate Railroad Rate Proceedings

Sec. 4. Section 13 of the Interstate Commerce Act

(49 U.S.C. 13) is amended by (a) striking the proviso in paragraph 4 and the colon preceding the proviso, (b) inserting a period in place of the colon, and by (c) adding a new paragraph (5) to read as follows:

"(5) The Commission shall have exclusive authority, upon application to it, to determine and prescribe intrastate rates if (i) a carrier has filed with an appropriate administrative or regulatory body of a State a change in an intrastate rate, fare, or charge, or a change in a classification, regulation, or practice that has the effect of changing the rate, fare, or charge, for the purpose of adjusting the rate, fare, or charge to the rate charged on similar traffic moving in interstate or foreign commerce; and (ii) the State administrative or regulatory body has not acted finally within one hundred and twenty days from the date of the filing of the change in the intrastate rates hereunder. Notice of the application to the Commission shall be served on the appropriate State administrative or regulatory body. The Commission shall determine and prescribe the rate thereafter to be charged according to the standards set forth in paragraph (4) of this section. The provisions of this paragraph shall apply notwithstanding the laws or constitution of any State, or the pendency of any proceeding before

any State court or other State authority."

Suspension of Railroad Rates

Sec. 5. (a) Section 15(7) of the Interstate Commerce Act (49 U.S.C. 15(7)) is amended to read as follows:

"(7)(a) Whenever a schedule is filed with the Commission stating a new individual or joint rate, fare, or charge, or a new individual or joint classification, regulation, or practice affecting a rate, fare, or charge, the Commission may order a hearing concerning the lawfulness of the rate, fare, charge, classification, regulation, or practice. The hearing may be ordered upon complaint and, if so ordered, without answer or other formal pleading by the interested carrier or carriers, but with reasonable notice. The hearings must be completed and a final decision rendered by the Commission not later than 7 months after the rate was scheduled to become effective, unless prior to the expiration of such period, the Commission reports in writing to the Congress that it is unable to render a decision within that period, with a full explanation of the reason for the delay. If such a report is made to the Congress, the final decision shall be made not later than 10 months after the rate was scheduled to become effective. If the Commission's final decision is not made within the applicable time period, the rate, fare, charge, classification, regulation, or practice shall go into effect immediately or if it is

already in effect, remain in effect. Therefore such a rate, fare, charge, classification, regulation, or practice may be set aside thereafter by the Commission if upon complaint of an interested party the Commission finds the rate, fare, charge, classification, regulation, or practice to be unlawful. In a proceeding pursuant to the preceding sentence, the burden of proof shall be upon the complainant.

"(7)(b) Pending a hearing instituted upon complaint, the schedule may be suspended for seven months beyond the time when it would otherwise go into effect, or for ten months if the Commission reports to Congress pursuant to paragraph (7)(a), except under the following conditions: (i) in the case of a rate increase, a rate may not be suspended on the ground that it exceeds a just and reasonable level if the rate is within a limit specified in paragraph (7)(c) except that such a rate change may be suspended under sections 2, 3, and 4 of the Act pending the determination of its lawfulness; (ii) in the case of a rate decrease, a rate may not be suspended on the ground that it is below a just and reasonable level if the rate is within a limit specified in paragraph (7)(c) except that such a rate change may be suspended under sections 2, 3, and 4 of the Act pending the

determination of its lawfulness. In addition, the Commission may not suspend a rate under any section of this part unless a complaint is filed, and the complainant establishes and the Commission finds that, without suspension the proposed rate change will cause immediate and irreparable injury to the complainant, that the complainant is likely to prevail on the merits, and that suspension is in the public interest. Nothing contained in this paragraph shall be deemed to establish a presumption that any rate increase or decrease in excess of the limits set forth in paragraph (7)(c) is unlawful or should be suspended.

"(7)(c) The limitations upon the Commission's power to suspend rate changes set forth in paragraph (7)(b)(i) and (ii) apply only to rate changes which are not of general applicability to all or substantially all classes of traffic and only when:

"(i) the rate increase or decrease is filed within one year of the date of enactment of this subparagraph; the carrier notifies the Commission that it wishes to have the rate considered pursuant to this subparagraph; the increase or decrease is not more than 7% of the rate in effect on the date of enactment; and, the aggregate of all increases or decreases in the rate sought pursuant

to this subparagraph do not exceed 7% of the rate in effect on the date of enactment; or

"(ii) the rate increase or decrease is filed within the period commencing one year after the date of enactment of this subparagraph and ending two years after the date of enactment; the carrier notifies the Commission that it wishes to have the rate considered pursuant to this subparagraph; the increase or decrease is not more than 12% of the rate in effect on the last day of the first year following the date of enactment; and, the aggregate of all increases or decreases in the rate sought pursuant to this subparagraph do not exceed 12% of the rate in effect on the last day of the first year following the date of enactment; or

"(iii) the rate increase or decrease is filed within the period commencing two years after the date of enactment of this subparagraph and ending three years after the date of enactment; the carrier notifies the Commission that it wishes to have the rate considered pursuant to this subparagraph; the increase or decrease is not more than 15% of the rate in effect on the last day of the second year following the date of enactment; and, the aggregate of all increases or decreases in the rate under this subparagraph do not exceed 15% of the rate in effect on the last day of the second year following the date of enactment; or

"(iv) the rate increase is filed after three years have elapsed from the date of enactment of this subparagraph; the carrier notifies the Commission that it wishes to have the rate considered pursuant to this subparagraph; and the increase is not more than 15% of the rate in effect on the date of annual anniversary of the enactment of this subparagraph which immediately precedes the filing and the aggregate of all increases sought pursuant to this subparagraph since the date of that anniversary do not exceed 15%; or

"(v) the rate decrease is filed after three years have elapsed from the date of enactment of this subparagraph regardless of the percentage of change.

"(7)(d) If a hearing of a proposed increased rate, fare or charge is initiated and the schedule is not suspended pending hearing, the Commission shall require the carrier to keep an account of all amounts received because of the increase from the date the rate became effective until an order issues, until seven months elapse, or if the hearings are extended pursuant to paragraph (7)(a), until ten months elapse, whichever is sooner. The account shall specify by whom and in whose behalf the amounts are paid. In its final order, the Commission shall require the carrier to refund, with interest at a rate determined by the Commission, but in no event less than the average market yield

on the day of the filing of outstanding marketable securities of the United States with remaining periods of maturity of three months, to the persons in whose behalf the amounts were paid, that portion of the increased rate or change found to be not justified. With respect to any proposed decreased rate or charge which is suspended, if the decrease or any part of it is ultimately found to be lawful, the carrier may refund any part of the portion of the decreased rate found justified provided it makes such a refund available on an equal basis to all shippers who participated in that rate according to the relative amounts of traffic moving at that rate.

"(7)(e) Except as otherwise specifically provided, at any hearing under this subsection, the burden of proof is on the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is compensatory, just and reasonable, and the Commission shall give to the hearing and decision of the question preference over all other questions pending before it and decide the same as speedily as possible.

"(f) Notwithstanding any other provisions of law, a carrier under this part may file with the Commission a notice of

intention to file a schedule stating a new rate, fare, charge, classification, regulation or practice whenever the implementation of the proposed schedule would require a total capital investment of one million dollars (\$1,000,000) or more, individually or collectively by the carrier, or a shipper or receiver or agent thereof, or an interested third party. The filing shall be accompanied by a sworn affidavit setting forth in detail the anticipated capital investment upon which it is based. Any interested person may request the Commission to investigate the schedule proposed to be filed and the Commission shall hold a hearing, but the hearing may be informal, and without answer or other formal pleading but with sufficient notice. Unless prior to the one hundred and eightieth day following the filing of the notice the Commission has determined, after hearing, that the proposed schedule, or any part thereof, would be unlawful, the carrier may file the schedule anytime thereafter to become effective after thirty days' notice. The schedule may not, for a period of five years after its effective date, be suspended or set aside as being unlawful under sections 1, 2, 3, or 4 of this Act, except that it may be suspended or set aside after that date if the rate prescribed therein is found to be not compensatory.

(b) The Secretary of Transportation shall, in consultation with the Commission study the effect of the foregoing amendments

to section 15(7) on the development of an efficient railroad system. The study shall include an analysis of the effects of the provisions upon shippers and upon carriers of all modes and include proposals for further regulatory and legislative changes if necessary. The Commission shall gather all data relating to the study as requested by the Secretary, and make such data available to the Secretary. The Secretary shall transmit results of such study to Congress within 30 months after the enactment of these amendments.

Railroad Revenue Levels

Sec. 6. Section 15a of the Interstate Commerce Act (49 U.S.C. 15a) is amended to read as follows:

"Sec. 15a. In carrying out its responsibilities under this part, the Commission shall give due consideration to the need for revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide adequate and efficient railway transportation service. In determining the adequacy of revenues, the Commission shall prescribe uniform methods and criteria for estimating the rate of return based on costs of capital and risk, the cost impact of changes in the general level of prices and wages, and the adequacy of cash flow."

Prohibiting Discriminatory Taxation

Section 7. Sections 26 and 27 of the Interstate Commerce Act (49 U.S.C. 27) are redesignated as sections 27 and 28 and a new section 26 is added to read as follows:

"Sec. 26. (1) As used in this section--

"(a) The term 'assessment jurisdiction' means a geographical area, such as a State or a county, city or township within a State, which is a unit for purposes of determining assessed value of property for ad valorem taxation.

"(b) The term 'transportation property' means transportation property, as defined in the regulations of the Interstate Commerce Commission, that is owned or used by any common or contract carrier subject to economic regulation under parts I, II, III, or IV of this Act or by The National Railroad Passenger Corporation.

"(c) The term 'commercial and industrial property' means property devoted to a commercial or industrial use, but does not include transportation property or land used primarily for agricultural purposes or primarily for the purpose of growing timber.

"(d) The term 'all other property' means all property, real or personal, other than transportation property or land used primarily for agricultural purposes or primarily for the purpose of growing timber.

"(2) Notwithstanding the provisions of section 202(b) of this Act, the following actions by any State, or subdivision or agency thereof, whether taken pursuant to a constitutional provision, statute, administrative order or practice, or otherwise, constitute an unreasonable and unjust discrimination against, and an undue burden upon interstate commerce and are prohibited:

"(a) the assessment, for purposes of a property tax levied by any taxing district, of transportation property at a value which, as a ratio of the true market value of the property, is higher than the ratio of assessed value to true market value of all other industrial and commercial property which is in the assessment jurisdiction in which is included the taxing district, and which is subject to a property tax levy;

"(b) the collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to all other commercial and industrial property in the taxing district;

"(c) the collection of any tax on the portion of an assessment which is prohibited; and

"(d) the imposition of any other tax which results in discriminatory treatment of a carrier subject to the Interstate Commerce Act.

"(3) If the ratio of assessed value to true market value of all other commercial and industrial property in the assessment jurisdiction cannot be established through the random-sampling method known as a 'sales assessment ratio study', conducted in accordance with statistical principles applicable to that study, then the following actions are also prohibited:

"(a) the assessment of transportation property at a value which, as a ratio of the true market value of the property, is higher than the ratio of assessed value to true market value of all other property which is in the assessment jurisdiction in which is included the taxing district, and which is subject to a property tax levy; or

"(b) the collection of an ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to all other property in the taxing district.

"(4) Notwithstanding the provisions of section 1341, title 28, United States Code, or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction to issue such writs of injunction or other property process, mandatory or

otherwise, as may be necessary to restrain any State, or subdivision or agency thereof, or any persons from violating the prohibitions of this section, except that relief may not be granted hereunder unless the assessed value as a percentage of true value of the transportation property exceeds by at least 5 per centum the assessed value as a percentage of true value of other commercial and industrial property or all other property, as the case may be, in the assessment jurisdiction. The jurisdiction of the district courts shall not be exclusive of that which any Federal or State court may otherwise have.

"(5) This section shall not become effective until three years after the date of its enactment.

Uniform Cost and Revenue Accounting

Sec. 8. The Commission shall, jointly with the Secretary of Transportation, study and recommend uniform cost accounting and uniform revenue accounting methods for rail carriers. Within two years from the effective date of this section, the Commission shall issue regulations prescribing the recommended uniform cost accounting and uniform revenue accounting methods. In their study and recommendations, the Commission and the Secretary shall give due consideration to all items and factors (including the cost of capital) presently used in the ascertainment of costs for ratemaking purposes which they deem relevant to the determination of variable

cost; and they shall consult with and solicit the views of other agencies and departments of the Federal Government, and the representatives of the carriers, their employees, shippers, and the public.

Railroad Loan Guarantees

Sec. 9(a) For the purposes of sections 9 and 10, "Secretary" means the Secretary of Transportation except where otherwise specifically provided. The Secretary is authorized, on such terms and conditions as he may prescribe, and with the approval of the Secretary of the Treasury, to guarantee any lender timely payment of principal and interest on securities, obligations or loans, including refinancings thereof, issued for the purpose of financing acquisitions or improvements specified in subsection (d) of this section. The maturity date of any security, obligation, or loan, including all extensions and renewals thereof, shall not be later than 30 years from its date of issuance, nor be later than the end of the useful life of any asset to be financed by the security, obligation, or loan. The Secretary may prescribe and collect a reasonable annual guarantee fee and such additional fees as may be required in his judgment to cover expenses under the program authorized by this section.

(b) All guarantees entered into by the Secretary under this section shall constitute general obligations of the United States of America backed by the full faith and credit of the Government of the United States of America.

(c) Any guarantee made by the Secretary under this section shall not be terminated, cancelled or otherwise revoked; shall be conclusive evidence that such guarantee complies fully with the provisions of this section and of the approval and legality of the principal amount, interest rate, and all other terms of the securities, obligations, or loans and of the guarantee; and shall be valid and incontestable in the hands of a holder of a guaranteed security, obligation, or loan, except for fraud or material misrepresentation on the part of such holder.

(d) The loan guarantees authorized by subsection (a) of this section may be made for the purpose of financing the acquisition, construction, maintenance, or development of the following facilities and equipment used in the rendering of rail transportation services:

- (i) track, roadbed and related structures subject to projected traffic usage of at least 5 million gross ton-miles per mile of road per year;
- (ii) electrical, communication, and power transmission systems;

- (iii) signals;
- (iv) terminal facility modernization and consolidation;
- (v) new and rebuilt rolling stock and trailers and containers for carriage on flat cars (TOFC); and
- (vi) computer based information or data systems.

(e)(1) Before making any guarantee pursuant to this section, the Secretary must consider whether the prospective lender is responsible and whether adequate provision will be made for servicing the obligation. The Secretary may not make a guarantee pursuant to this section unless the borrower has an equity interest in the asset to be financed. The Secretary may not make a guarantee for purposes (i) through (iv) of subsection (d) unless he finds that--

- (i) the management of the railroad is actively pursuing necessary programs designed to upgrade and develop plant facilities and operations as necessary to fulfill its obligations as a common carrier;
- (ii) the prospective earning power of the borrower together with the character and value of the security pledged, furnish reasonable assurance that the borrower will be able to repay the loan within the time fixed and afford reasonable protection to the United States in the event of a default;
- (iii) the activity to be financed under the guarantee will enhance the efficiency of rail operations;

(iv) the prospective borrower has demonstrated to the satisfaction of the Secretary that credit is not otherwise available on reasonable terms;

(v) the interest rate on the obligation to be guaranteed is a reasonable rate, taking into consideration the range of interest rates prevailing in the private market for similar obligations, and the risks assumed by the Federal government; and

(vi) there has been provided for the protection of the interests of railroad employees which may be affected thereby, a fair and equitable arrangement containing benefits no less than those required by and established pursuant to Section 5(2)(f) of the Interstate Commerce Act.

(2) The Secretary may not make a guarantee for the purpose of improving track or terminal facilities unless he also finds that the proposed improvements will contribute to the establishment of a rational, efficient, and economical national rail transportation system.

(3) The Secretary may not make a guarantee (a) for the purpose of the acquisition or rebuilding of rolling stock and TOFC unless he finds that --

(i) the acquisition or rebuilding is justified by the present and future need for rolling stock; and

(ii) the probable value of the rolling stock or TOFC will provide reasonable protection to the United States in the event of a default;

(b) for the purpose of the acquisition of an information or data system unless he finds that the proposed acquisition of the information or data system is consistent with the purposes of section 11 of this Act.

(4) In making a guarantee for any of the purposes specified in subsection (d), the Secretary shall also take into account, the return on investment of the improvement for which a guarantee is sought, the potential for intermodal connections and substitutions and for improved utilization of freight cars, the relationship of the proposed improvement to other improvement plans of the borrower, the contribution of the improvement to improved rail transportation service both for passengers and for shippers, and the contribution of the improvement to the efficiency of the borrower.

(f) The Secretary may prescribe, as he deems necessary and appropriate, rules and regulations for the administration of this section.

(g) In order to reduce the cost of borrowing under this section and to assure that the borrowings are financed in a manner least disruptive of private financial markets and institutions, the Secretary may enter into agreements with the Federal Financing Bank under which the Federal Financing Bank may purchase obligations issued by the borrower and guaranteed by the Secretary.

(h) There is hereby created within the Treasury a separate fund (hereafter in this section called "the fund") which shall be available to the Secretary without fiscal year limitation as a revolving fund for the purpose of this section. The total of any guarantees made from the fund in any fiscal year shall not exceed limitations specified in appropriations Acts. A business-type budget for the fund shall be prepared, transmitted to the Congress, considered, and enacted in the manner prescribed by law (sections 102, 103, and 104 of the Government Corporation Control Act (31 U.S.C. 847-849) for wholly-owned Government corporations.

(i)(1) There are authorized to be appropriated to the fund from time to time such amounts as may be necessary to provide capital for the fund. All amounts received by the Secretary as payments, fees, and any other moneys, property, or assets derived by him from his operations in connection with this section shall be deposited in the fund.

(2) All guarantees, expenses, and payments pursuant to operations of the Secretary under this section shall be paid from the fund. From time to time, and at least at the close of each fiscal year, the Secretary shall pay from the fund into Treasury as miscellaneous receipts interest on the cumulative amount of appropriations available as capital to the fund, less the average undisbursed cash balance in the fund during the year. The rate of such interest shall be determined by the Secretary of the Treasury. However, such rate shall not be less than a rate determined by taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of loans guaranteed from the fund. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest. If at any time the Secretary

determines that moneys in the fund exceed the present and any reasonably prospective future requirements of the funds, such excess may be transferred to the general fund of the Treasury.

(j) If at any time the moneys available in the fund are insufficient to enable the Secretary to discharge his responsibilities under guarantees under this section, he shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Secretary from appropriations or other moneys available under subsection (i) of this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes or obligations.

The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(k) The aggregate unpaid principal amount of securities, obligations, or loans outstanding at any one time, which are guaranteed by the Secretary under this section, may not exceed \$2,000,000,000.

(l) The Secretary may not pursuant to this section guarantee any security, obligation, or loan, if the income from such security, obligation, or loan is excluded from gross income for the purposes of chapter I of the Internal Revenue Code of 1954.

Railroad Restructuring

Sec. 10.

(a) FINDINGS. --The Congress finds and declares that--

(1) Efficient railroads are essential to the commerce and defense of the country.

(2) Preservation of a viable private sector rail industry is in the national interest.

(3) Existing rail facilities in the United States, including main line track and branch line track, are excessive in relation to long run demand for rail services.

(4) This excess capacity impairs the efficiency and economic health of the rail industry.

(5) The time, expense and delay associated with proceedings under the Interstate Commerce Act for consideration of proposals for consolidation and joint use of facilities has been an obstacle to removing excess and duplicative rail plant capacity.

(6) A vital need exists to reduce this country's rail plant to the level necessary to meet the public's long term demand for rail services.

(7) A clear need exists to expedite the consideration of proposals which have the effect of eliminating excess or duplicative facilities.

(8) Preservation of an effective level of competition in transportation is essential to shippers and is in the national interest.

(b) PURPOSES.--It is therefore declared to be the purpose of Congress in this Act to provide for--

(1) An efficient, economical, viable private sector rail system.

(2) Greater efficiency of the rail system through rationalization of facilities which are excessive in relation to long run demand for rail services.

(3) Prompt and fair consideration of voluntary agreements to achieve those objectives.

(4) The maintenance of an effective level of competition in transportation.

(5) Federal financial assistance to the railroad industry where necessary capital cannot be obtained from private sources on reasonable terms.

(c) As a condition for receiving financial assistance pursuant to this Act, the Secretary may require an applicant to enter into an agreement with another applicant or with another railroad with respect to merger, consolidation, control, joint use of tracks, terminals, or other facilities, or the acquisition or sale of assets. This section does not confer authority upon the Secretary to require non-applicants to enter into an agreement with an applicant.

- (d) Within 90 days of the date of enactment of this Act, the Secretary shall publish regulations in accordance with 5 U.S.C. 553 prescribing the procedures for applying for Federal assistance under this Act and the information and data which must be submitted by each applicant.
- (e) If the Secretary determines to condition the granting of financial assistance pursuant to section (c), the Secretary shall provide reasonable notice in the Federal Register of the application and the proposed agreement. The Secretary shall also provide written notice to the Attorney General of the United States and to each Governor of a state in which any railroad whose property is involved in the proposed agreement operates. The Secretary shall provide an opportunity to any interested person to submit written comments and shall provide an opportunity for an informal oral hearing regarding the proposed agreement. Within 15 days of the Secretary's final date for receiving the comments of interested persons, the Attorney General shall review the proposed agreement and the comments filed and shall advise the Secretary in writing of his views on its competitive effects.

(f) The Secretary shall review the written and oral comments.

He shall then give notice in the Federal Register of any changes in the proposed agreement which he has made after review of the comments and shall provide an opportunity to the public to comment on the changes.

(g) The Secretary and the Commission shall administer the provisions of this Act in light of its declaration and purposes and the Secretary may modify any proposed transaction to make it conform to said declaration of purpose. The Secretary and the Commission shall consider whether a proposed transaction is in the public interest. An agreement is in the public interest if (i) the efficiency gains substantially outweigh any adverse effects on competition; and (ii) there is no clear and substantially less anti-competitive alternative available to the proposed transaction for achieving the efficiency gains and other public benefits. In determining whether a proposed agreement is in the public interest, the Secretary and the Commission shall, among other things, consider the long-run or short-run nature of any adverse effects or efficiency gains and shall weigh such effects or gains accordingly. Where the Secretary approves a transaction hereunder which would eliminate substantial competition for shippers, then the

Secretary shall take necessary steps to minimize the loss of competition to affected shippers; to accomplish this, the Secretary may, among other things, require that access be granted on reasonable terms to one or more other carriers over the tracks and terminals subject to the transaction, either by the grant of trackage and terminal rights, or by the establishment of joint rates and through routes, or both. The purpose of this subsection is to improve the efficiency of the national transportation system while assuring adequate levels of competition. This section is intended to protect the vitality of competition, not individual competitors as such. The Secretary may, from time to time, for good cause shown, impose such supplemental conditions as are necessary to protect competitive conditions for shippers but shall not impose any conditions to protect competitors as such.

(h) After completing the procedures called for in the preceding paragraphs, and within 90 days of the filing of the completed application, the Secretary shall make a determination whether the proposed agreement is in the public interest and consistent with this Act. If the Secretary makes an affirmative determination, he shall so certify his findings, the basis therefor, and the proposed agreement in writing to the Interstate Commerce Commission. The Secretary shall provide labor protection at least equal to the protection afforded by section 5(2)(f) of the Interstate Commerce Act.

(i) If the Secretary so certifies in accordance with subsection (h), the Interstate Commerce Commission shall consider the Secretary's findings and the agreement pursuant to section 5(2) of the Interstate Commerce Act, except as hereafter provided. The Commission must complete any hearings it deems necessary within 120 days of the receipt of the certification and must render a final decision within 180 days of the receipt of the certification, unless the Secretary provides in the certification for longer time periods. Any hearings deemed necessary shall be held directly before a panel of the Commissioners of the Interstate Commerce Commission. Notwithstanding the provisions of section 5(2), and the panel shall, without rendering an initial decision, certify the record to the full Commission for decision. The Commission shall not disapprove or modify an agreement in any way unless the Commission finds there is clear and convincing evidence the agreement is not in the public interest as defined in subsection (g). The protestants to such an agreement shall have the burden to prove that such a certified agreement is not in the public interest. The Commission's decision shall be subject to review as provided in 28 U.S.C. 2321, as amended, except, that petitions for

review may be filed only in the United States Court of Appeals for the District of Columbia. Such proceedings shall be given priority over other pending matters and expedited to the maximum extent permitted by the Court's docket.

- (j) If the Commission shall fail to render a decision under this Act within the required time period, the Commission shall certify to the Secretary the proceedings before the Commission within 3 days of the end of its period for decision. The Secretary shall review the record and all other material and information he deems relevant; and, with the concurrence of the Attorney General on issues relating to competition, he may disapprove, modify, or approve the proposed agreement in accordance with the public interest as defined herein. Agreements approved by the Secretary pursuant to this Subsection (j) shall be deemed final, and of the same force and effect as if approved by the Commission pursuant to section 5 of the Interstate Commerce Act. The Secretary may from time to time, for good cause, make supplemental orders as he may deem necessary or appropriate. Final decisions of the Secretary pursuant to this subsection

shall be subject to review under the procedures of 28 U.S.C. 2321 as amended, provided, that petitions for review may be filed only in the United States Court of Appeals for the District of Columbia. Such proceedings shall be given priority over other pending matters and expedited to the maximum extent permitted by the Court's docket.

(k) Agreements approved pursuant to this section shall not be subject to the operation of the antitrust laws.

National Rolling Stock Management Information System

Sec. 11. (a) The Secretary is authorized to conduct research and development in order to promote a national rolling stock management information system which, utilizing advanced computer and communication techniques, would be capable of expediting the movement of rolling stock on a national basis. In conjunction with this task, the Secretary shall study, in cooperation with the Interstate Commerce Commission and the railroads the information, functions, and procedures necessary to provide efficient and expeditious rail freight service on a national basis. Within 2 years from the date of enactment of this section, the Secretary shall report to the Congress his recommendations respecting the organization, development, funding, and implementation of any such system. In arriving at his recommendations, the Secretary shall consider:

- (1) the need for timely and accurate information which leads to improvements in the movement and utilization of rolling stock on a nationwide basis, and the efficient interchange of traffic between carriers at the gateway terminals;
- (2) the requirements and technological standards necessary to assure that the advantages to be obtained from a system accrue to the nation's railroads;
- (3) the requirements and technological standards necessary to assure the improved movement and utilization of cars;
- (4) the uniform data and other technological requirements that must be contained in the rolling stock management information systems of an individual railroad to permit efficient linkage of its system with a national system; and
- (5) the economic, safety, and service benefits to be derived from implementing improved car management procedures.

(b) The Secretary shall conduct a study respecting (1) the costs to individual railroads of installing compatible rolling stock management information systems, and (2) the economic, safety, and service benefits to be derived from compatible systems. Not later than 2 years from the date of enactment of this section, the

Secretary shall announce his recommendations for the installation of the system by individual railroads. The Secretary is authorized to provide technical assistance to railroads in the implementation of rolling stock management information systems designed in a manner consistent with his recommendations.

(c) The Interstate Commerce Commission, the Association of American Railroads, and all railroads are required to furnish to the Secretary such information as he may require in order to carry out the provisions of this section.

National Transportation Policy

Sec. 12. The National Transportation Policy (49 U.S.C., preceding sections 1, 301, 901 and 1001) is amended by:

(a) adding the word "innovative," in the second clause of the first sentence after the word "promote";

(b) adding a new clause after the second clause of the first sentence as follows:

"to promote competition between and among the various modes of transportation by water, highway, and rail;" and

(c) adding a new sentence after the first sentence as follows:

"The Commission in making any decision under this Act shall recognize the value of competition in developing, coordinating and preserving an efficient and economically-sound national transportation system and shall assure that where a particular action would substantially lessen competition, there is no less anticompetitive alternative which realizes the efficiency or transportation needs as effectively."