The original documents are located in Box 46, folder "1975/06/07 - Northeast and Midwest Governors (2)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

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STATEMENT OF WILLIAM T. COLEMAN, JR., SECRETARY OF TRANSPORTATION, BEFORE THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE REGARDING THE PRELIMINARY SYSTEM PLAN FOR RESTRUCTURING RAILROADS IN THE NORTHEAST AND MIDWEST, TUESDAY, MAY 6, 1975.

Mr. Chairman and Members of the Committee:

It is a pleasure to appear before you today to discuss the Preliminary System Plan prepared by the United States Railway Association under the Regional Rail Reorganization Act of 1973. These hearings are timely and constitute a very useful step in laying the groundwork for considering the Final System Plan which Congress will receive on July 26. That document will, of course, provide the blueprint for the restructuring of the seven bankrupt railroads in the Northeast and Midwest into a regional rail system and will be a first step in the process of revitalizing our national system.

At the outset, I would like to observe that the Preliminary System Plan is an exceptional achievement that was realized only by dint of the exceptional commitment of the USRA Board and staff. Few of us appreciated one year ago the magnitude of the task presented to USRA. That this task was completed on time and with distinction is particularly due to the dedicated attention given to the task by all of the Board members. There were sixteen Board meetings in the

eight-month period prior to issuance of the plan, a number of which were for two days, and the members, representing the diversity of interests required by the Act, acquitted themselves in a manner which was consistent with the broader public responsibility placed upon them. While the Board provided overall policy direction, the management and staff of USRA worked tirelessly during that period to produce this most important document. I believe that USRA has the most capable railroad planning staff assembled in the last four decades and feel that all of the people at USRA deserve public recognition and gratitude for this product and their continuing effort.

The Preliminary System Plan constitutes a comprehensive attempt to solve the problems of the region's rail system. It is, therefore, a significant policy-making document which, when finalized, will have impacts which are far wider than the reorganization of the region's bankrupt railroads. Because of this importance, the President, through his Economic Policy Board, established a task force chaired by me and composed of representatives of the Departments of Justice and Treasury, the Office of Management and Budget, and the Council of Economic Advisors to review the major findings and conclusions of the Plan. That task force's analysis

will be completed in the next couple of weeks, and thus my observations at this stage can only be tentative inasmuch as they do not reflect the final product of that group.

One of the most important of the purposes of the Act and goals of the Plan was the establishment of a rail service system adequate to meet the needs of the region. A basic step in the restructuring process was to determine which lines of the seven bankrupt railroads would be continued in operation in the reorganized system. The result of USRA's analysis in this regard would be a system which ensures continuation of service for more than 95 percent of the total traffic handled by the bankrupt carriers.

I fully support the manner in which the Association carried out the analysis on which this system is based. In particular, I agree with the operating principle used by USRA that profitable traffic should not be required to support or cross-subsidize traffic on light-density or unprofitable lines. This principle was espoused in Secretary Brinegar's February 1974 zone report on the region's rail system, as well as in other reports, and we feel it is one of the critical factors in establishing a viable rail system. Indeed, the Act itself recognizes the principle by providing a program of subsidies to reduce the impact on state and local communities of the transition to the restructured system. We also agree with the

conclusion reached by USRA that the reduction of service called for in the Plan does not, taken as a whole, produce a significant adverse impact on the utilization of fuel resources or on the environment. The Rail Services Planning Office also agreed with that conclusion.

With respect to passenger service, the Plan recommends establishment of a network of "corridor" services based on restructuring existing services and adding four new routes. Substantial additional analysis will have to be done to assess the costs and benefits of such a system before we can confidently accept or reject this proposal. However, I do wish to express my support for the principle used by USRA that freight operations should not subsidize passenger service. Application of this principle of course, requires a system for allocating costs between freight and passenger operations where there is joint use of facilities. We are continuing to examine what is the most appropriate system for such allocation.

The Plan's recommendation to separate most freight and passenger service on the Northeast Corridor is one in which the Department fully concurs. We further agree that freight carriers

presently operating in the Corridor and their successors should not be saddled with the responsibility for ownership and maintenance of the Corridor's passenger system but should, of course, pay their fair porition of the cost of shared facilities. We are presently studying the appropriate level of service in the Corridor, the best means of financing its acquisition and improvement, and the most appropriate ownership and management structure. The Final System Plan should reflect the results of that study.

The Regional Rail Reorganization Act reflects a recognition that, if rail services are to be improved in the region, there must be substantial improvement in the system's economic performance. This improvement can be achieved only by carefully analyzing the cost of services delivered by the system as compared to the revenues it produces, and restructuring it so that it is consistent with the present and projected service needs of the region. USRA concentrated its effort in this regard on properties of the bankrupt carriers. The Three-System East proposal, which calls for establishing ConRail and transferring certain properties of the bankrupt carriers to the Norfolk & Western and/or the Chessie System, was selected by USRA as the best structure, among those it analyzed, to balance the objectives of achieving an economically viable system and preserving a reasonable degree of competition among carriers within the region.

The Plan also calls for a variety of projects under which railroads share facilities through joint use arrangements and are thereby able to downgrade or eliminate redundant facilities. It should be noted that, while the proposed list of projects indicates that the profitable railroads recognize the need for such arrangements and are taking action to effectuate them, additional projects might have been accomplished if more time were available. At the outset of the planning process, the solvent railroads were slow in expressing genuine interest in working out these arrangements, and it was only towards the conclusion of the planning effort that they gave closer attention to and expressed interest in carrying out these projects.

Nevertheless, the system designed for ConRail would likely be more efficient than that presently serving the region. Moreover, the Three-System East structure will assure competition in its major markets, and such competition among balanced carriers should be a force for achieving greater economies in the future.

One other major goal of the Act was the creation of a financially self-sustaining rail service system. The Act provides up to $1.5 billion in Federal financial assistance to be used to carry out its purposes, of which up to $1 billion is to be available to ConRail. Thus, one of the critical questions is, or was, whether

ConRail can be financially self-sustaining within this limitation. The Preliminary System Plan sets forth financial pro formas which indicate that ConRail will improve the 1973 consolidated loss of the bankrupt carriers of $221 million to a net loss in 1976 of $94 million, and, by 1985, ConRail is projected to have a net income of $215 million. However, this can be achieved only with Federal assistance of $2.9 billion in the first 10 years, almost three times the amount presently available to it under the Act. All of the figures I have given you are in inflated dollars.

These financial projections are preliminary and are based on what is known as the ConRail I system which, in essence, is the consolidated and restructured bankrupt system. This structure was found by USRA to be the most profitable of those analyzed. We have not yet determined what effect the Three-System East proposal will have on those financial projections. It should also be noted that the Preliminary System Plan's financial projections do not reflect the impact of the recent economic downturn which resulted in the worst quarter for the railroad industry in more than 40 years.

One reason for the large amount of Federal funds required is the cost of rehabilitating the properties ConRail will acquire. USRA estimates that cost at $2.3 billion, uninflated. As you may know,

a group of engineers from the southern and western carriers who reviewed the properties of the bankrupt carriers reported to Secretary Brinegar and USRA that $4.6 billion would be necessary over eight years to rehabilitate the system. While the gap between these two estimates reflects both definitional and judgmental differences, it does suggest that USRA's estimate is probably at the low end of the range.

In considering the level of the Federal assistance necessary to make ConRail financially viable, it should be noted that such assistance alone will not ensure ConRail's long-term viability. That will be realized only if there is also substantial change in the regulatory and operating constraints which now severely inhibit self-sustaining operations. In other words, without adoption and implementation of legislation along the lines of the Department's proposed Rail Revitalization Act scheduled to be submitted this week, the reorganization process carried out under this Act, even with the $2.9 billion of Federal assistance, can be considered only an incomplete remedy.

In considering this projected need for Federal assistance, some have suggested that the nation might be better off if the Government were to purchase the track facilities and lease them back to the railroads. The Preliminary System Plan describes various

means whereby the operating railroad, ConRail, can be separated from the entity--dubbed ConFac--owning the properties and responsible for maintaining them. The perceived advantages of this approach are that it would reduce the Federal involvement in the operating company and, if ConFac is wholly or partly government owned, that it would provide greater security and control of the property receiving Federal assistance.

In my opinion, a structure such as ConFac is totally inappropriate as a solution to the problems presented in reorganizing the bankrupt railroads. In the first place, ConFac, in and of itself, is not a solution to any of those problems but rather is simply a conduit for Federal assistance to ConRail to relieve or reduce its debt structure and to meet future cash crises. Second, such an entity would tend to encourage continuation of existing uneconomic operations by making a permanent subsidy mechanism available. Third, I believe ConFac would greatly alter the competitive balance between ConRail and the other carriers and would thereby create irresistable pressure over the long-run for expansion of ConFac to ownership of the lives of competing carriers, and for increased Federal assistance. Finally, such a structure is totally unnecessary as a means of protecting the Federal investment or as a means of reducing or eliminating inappropriate Government involvement

in the operation of ConRail. Both of these problems can be handled either through the financing arrangements or by amending the Act to change the Government's relationship to ConRail.

We are, of course, dealing in very short time frames at this point since the Executive Committee of the USRA Board is to submit the Final System Plan to the Board on June 26 and the Board is to submit the Plan to Congress on July 26. The task force I am heading is completing its examination of the many important issues raised in the Preliminary System Plan. At the same time, USRA is continuing to review and revise its plan in the light of the report of the Rail Services Planning Office and to refine its financial projections to account for

- o the impact of the economic downturn;
- o the revised Three-System East structure which includes properties of the Erie-Lackawanna; and
- o revisions in the various operating assumptions which underlie the financial projections.

We will be analyzing the results of USRA's work as they become available to us.

I will be glad to answer any questions you might have.

Remaining Timetable of the Act
Until Conveyance of Properties to ConRail

June 26, 1975	USRA Executive Committee submits Final System Plan to the Board of Directors and to the ICC (§ 207(c)).
July 26, 1975	Approval of Final System Plan by USRA Board (§ 207(c)).
August 25, 1975	ICC submits evaluation of Final System Plan to Congress (§ 207(d)).
November 10, 1975	Final System Plan deemed approved by Congress (60 calendar days of continuous session after transmittal to Congress on July 26, based on recent Congressional calendar) (§ 208(a)).
90 Days After Congressional Approval (February 8, 1976)	Delivery of Final System Plan to Special Court and to each Reorganization Court (§ 209(c)).
100 Days After Congressional Approval (February 18, 1976)	Delivery by ConRail and solvent railroads of compensation to Special Court (§ 303(a)).
110 Days After Congressional Approval (February 28, 1976)	Conveyance of properties by estates to ConRail and other solvent railroads (§ 303(b)).

Economic Decline of Industry

Much of the rail plant in the Northeast was constructed to meet local needs rather than to serve regional and national transportation functions. Coordination of rail lines was minimal, and as a result, the present network is not the most efficient system that could have been designed. Throughout the period of their development and continuing through the end of World War II, railroads were the vital transportation link in the economic growth of this country. Since that time, however, a far different rail industry has evolved. Although railroads continue to be largest carrier of intercity freight in terms of ton-miles, they no longer dominate intercity transportation. Efficient competing systems of transportation have eroded the rail traffic base.

Revenue passenger miles declined 80 percent in the period 1947 through 1973 despite the accelerated growth in national passenger travel. High valued commodities have been diverted from rail to truck. In 1947, the railroads carried nearly two-thirds of intercity freight, but by 1973 that share had dropped to 39 percent.

Sluggish traffic and revenue growth have depressed the railroads' financial performance. Railroad earnings today are merely 3/4 of their 1947 level, after adjustment for inflation. For some time, the cash generated by the railroad industry has not been sufficient to meet the capital requirements. This, coupled with the low return on investment, has not been sufficient to enable the railroads to finance capital expenditures through the issuance of common stock.

Much of the discussion surrounding the plight of America's railroads fails to grasp the complexity of the issue. There is no single cause and no simple solution. Underlying all aspects of this problem is the significant difference in degree of public support enjoyed by the various transportation systems. The current economic condition of the railroads is attributed to many complex and interrelated factors, among the more important of which are:

1. The technological advancement of rival forms of transportation since 1920, which resulted in continual change in the competitive position of the rail industry.

2. Massive public support for truck, barge and airline technologies through provision of public funds for ground facilities and rights-of-way.

3. Basic changes in underlying market conditions, due to industrial shifts and changing traffic flows as heavy industry and agriculture evolved to a service oriented, high-technology economy.

4. The inability of the rail industry to adjust quickly to changing market conditions, due to the fixed nature of its facilities and the regulatory climate which constrains managerial flexibility.

5. The deferred maintenance and physical deterioration which has resulted from insufficient internal funds generated through normal business activities.

Goals and Issues

The numerous statutory objectives of the Regional Rail Reorganization Act are in many respects inconsistent with one another and range from the establishment of a privately self-sustaining rail system to the preservation of existing patterns of service. USRA interpreted the essence of the various statutory objectives as the establishment (1) of an adequate rail system and (2) a financially viable rail system. Three issues were identified by USRA to focus public debate during the development of the Final System Plan.

Federal Involvement

The amount of Federal financing required by ConRail will be substantially larger than contemplated in the Act. If estimated Federal funding needs for ConRail are provided, Federal debt will account for more than 50 percent of outstanding debt for at least 20 years. Hence, under the provisions of the Act, a majority of the ConRail Board of Directors will be federally appointed. In 1973 prices USRA estimates that total Federal financing requirements by 1985 will be $3 billion. In contrast, the Act contemplated a Federal involvement of roughly $1 billion to assist in the initial capitalization of ConRail.

Notwithstanding the magnitude of the recommended Federal financial involvement, USRA believes that the necessary Federal funding support can take place in a manner which does not result in de facto nationalization.

However, USRA does not elaborate on the assertion. A separate corporation which would own the rights-of-way is offered as one means for providing massive Federal assistance while limiting Federal involvement in the operating entity.

Need for Balanced Public Policy

USRA asserts an absolute necessity of providing a more even balance in public support policies and regulation of the various modes of transportation. However, several points are made which imply a need for greater financial support for the rail mode. First, shifting traffic from truck to rail would (marginally) diminish the Nation's total energy bill for freight. Second, there is a large backlog of deferred maintenance in the rail industry. Third, the effect of inflation on the competitive position of rail as compared with competing modes is uneven. Fourth, there is a natural hesitancy to provide government assistance to railroads because doing so seems to be

in conflict with the underlying philosophies of our free enterprise system. Fifth, transportation must be regulated in a balanced manner that adds to the strength of each mode.

The cross subsidy of uneconomical but essential public services has been a longstanding practice in the regulation of common carriers. As a consequence, a pattern has developed whereby the carriers, short of total cessation, diminish the level (quality) of service on uneconomical business in an attempt to minimize the overall deficit resulting from the cross subsidization. This is not totally satisfactory to either the shipper or the carrier. This was the pattern for passenger service prior to the establishment of Amtrak. It is currently the pattern of service deterioration associated with uneconomical light density rail freight lines.

In the past, the burden of cross subsidy has fallen primarily on two groups -- the owners of railroads (through reduced profit margins) and certain freight shippers (through rates higher than otherwise would be required). Since public policy relied on a flow of funds from these sources that no longer is sustainable (partly because of other public policies), the underlying concept is no longer valid. Recently, Government has begun to assume a portion of the burden through direct and indirect subsidy programs.

The issue to be addressed now is how deficits are to be funded in the future. USRA believes that abandonment of all deficit services is not an alternative, at least in the near term. The historical role of common carriage, as well as programs such as Amtrak, commuter service subsidies and funding under Title IV of the Regional Rail Reorganization Act of 1973, all suggest continuation of certain deficit rail services in the public interest.

The Regional Rail System

USRA recommends a "Three Carrier System" involving ConRail (consisting basically of Penn Central), the Chessie and the Norfolk and Western (N&W). Segments of the smaller bankrupts would be transferred to each of those three carriers.

The recommended structure maintains competitive service at major points (i.e., Newark, New York, Philadelphia, Allentown) on the eastern seaboard which are presently served predominantly by bankrupt carriers. Furthermore it purports to achieve significant rationalization of plant (especially in the New York State, New Jersey, and eastern Pennsylvania areas). Implementation of the recommended industry structure is contingent upon the participation of Chessie and the Norfolk and Western.

In arriving at the recommended structure, USRA evaluated four alternative industry structures for reorganizing the bankrupt railroads. They are:

1. ConRail I - a merger of all bankrupts.

2. ConRail East and West - ConRail East as large eastern terminal district railroad with the Western lines of Penn Central as a ConRail West.

3. ConRail North and South - essentially a breakup of the Penn Central along the lines of the former Pennsylvania and New York Central railroads, and

4. ConRail/Neutral Terminal Companies - merger of the bankrupt lines while concurrently providing solvent carrier access to the major eastern markets.

USRA concluded that none of the four structures originally considered demonstrate sufficient hope for financial viability to be offered as the preliminary system plan. Of the four alternatives, ConRail I offered the greatest chance for financial viability. However, merger of all the bankrupts into a single entity was considered inconsistent with other objectives of the Act relating to inter-railroad competition -- from the perspective of both shippers and solvent carriers. ConRail I/Neutral Terminal Companies, the fourth alternative structure, seemed to have more elements of a solution than any other alternative structure.

Alternatives

Implementation of the Three Carrier System solution depends on the successful conclusion of complex negotiations with N&W and Chessie. Non-participation by one of the two solvents would require modification of the recommended structure but would not necessarily prevent implementation of the overall objectives of the recommended structure. However, if both Chessie and N&W do not participate in the restructuring process on the eastern seaboard, the whole concept of competitive railroading in the region will be affected seriously.

If neither solvent participates, USRA recommends the establishment of "MARC-EL" consisting of the smaller bankrupts in the Mid-Atlantic region and the Erie Lackawanna (EL) extending west to Chicago, Cincinnati and St. Louis (the Cincinnati and St. Louis routes will require trackage rights over ConRail). The MARC-EL alternative would result in a less efficient regional rail system. However, it would preserve inter-railroad competition.

Other Structures

Several other structures briefly evaluated by USRA should be noted.

1. Reduced ConRail System -- This would involve reducing the ConRail System to roughly 11,000 miles rather than the recommended 15,000 miles. It would reduce overall capital requirements within the ten year planning cycle from $3.4 billion to $2.6 billion. However, it would not result in financial self-sufficiency and would entail significant disruptions in existing patterns of service. It would also result in greater labor dislocation.

2. Controlled Liquidation -- This could represent an attractive long-term solution to the region's rail viability problem. However, USRA concluded that because of difficulties involved in implementation, the strategy was unfeasible.

3. Consolidated Facilities Corporation (CONFAC) -- Three variations were identified: (a) a privately owned ConFac, (b) a government owned ConFac, and (c) a mixed ownership ConFac. USRA stated that a number of public policy, legal, tax and accounting questions remain to be resolved before any recommendation regarding this concept can be offered.

USRA, in its recommendations for improving the operations of the restructured rail system, estimated annual cost savings of $79 million by 1985 compared to 1973 levels. This figure takes into account the anticipated ConRail increase in volume from 1976 to 1985.

USRA also believes another $30 million annually could be saved in the amount of money the bankrupt carriers spend to use or hold the cars of other lines. (The calculations are on the same basis as those that were used for operations)

Light Density Lines

The light density line issue presented USRA with a significant challenge. The 1974 DOT report dealt with solvent as well as bankrupt carriers, but the Association's planning is concentrated on the light density lines of the "railroads in reorganization." The DOT report found 15,575 miles (approximately 25%) of the 61,000 miles of track studied as "potentially excess". USRA found 9,600 miles of track of the bankrupt railroads as appropriate for studies. Of that amount about 3,400 miles have been recommended for inclusion in ConRail which would carry approximately 75% of total existing traffic. The remaining 6,200 miles of track (also about 25% of total miles of track of the bankrupt railroads) are available for abandonment or subsidy under Title IV of the Act. The required subsidy level should be estimated using a formula developed by RSPO. USRA evaluated such light density lines in light of its Congressional mandate to provide "adequate service" through an "economically viable" rail system. The inclusion of all light density lines in the ConRail System would require a "cross subsidization" of the service provided on those lines that do not generate revenues adequate to cover costs.

It is the Association's judgment that the light density lines are a significant part of the total industry problem in the Region. The overcapacity of the system, the overlapping service areas of the bankrupt carriers, the extremely poor physical condition of the light density lines, the amount of money and material needed to upgrade the track, the operating deficits on the light density lines - all made clear the impossibility of building a restructured system with service continuing on all branch lines. USRA included lines that could become financially

self-sustaining with small revenue increases and relatively short term traffic growth and indicated that the other lines were available for the rail continuation subsidies authorized by Title IV of the Act.

Impact on Communities and Shippers

The Region represents a significant portion of the Nation's economic activity, containing approximately 38 percent of the employment, 55 percent of the personal income and 48 percent of the population of the Nation. There could be a significant adverse local, industrywide or regional impact from reductions in the size of the rail system. However, four factors serve to diminish the potential widespread impacts. First, the planning process is directed toward the revitalization of the system as well as its restructuring, and many users will benefit greatly from improvements in rail service. Second, the restructured system will represent a sizeable portion of the Region's rail system. Virtually all areas of the Region will continue to have access to rail service.

Third, the ubiquity of highways and the ready availability of private, contract and common motor carriage serve further to diminish the potential impacts of reductions in the size of the rail system in any given area. Fourth, the adverse economic effects of abandonments tend to be minimal except for quite specific local communities and shippers that are involved directly.

The methodology used by the Association almost automatically includes those lines in ConRail whose volume of rail traffic is significant. Any adverse effects of the discontinuance of service along certain rail lines will flow into the area's economy through the impact on the specific shippers that use them. The actual magnitude of the impacts will depend on the effect of increased production costs on the firm's market and profit and on the effectiveness of management in its attempts to minimize potential adverse effects. These factors depend, in turn, on the relative importance of transportation costs to total costs, the availability and substitutability of other modes and the firm's ability to pass cost increases forward through price increases. All these factors vary from area to area and shipper to shipper.

Analysis of the potential area impacts from a reduction in the size of the rail system indicate that the potential overall impact from the termination of rail service on all of the potentially excess lines of the DOT report represents a very small proportion of the counties' existing economic bases. In only 15 of the 451 counties did the estimated decrease in industrial employment exceed 1 percent and the potential reduction in county income is less than 1 percent in 80 percent of the counties. Finally the results indicate that the potential increase in transportation costs as a percent of income is less than 1 percent in 99 percent of the counties studied. In only 32 of the 510 counties studied do any of the projected impacts exceed 2 percent.

In short, even the most pessimistic estimates of the adverse impacts on the Region and areas within the Region indicate that the effect of the suggested reduction in the size of the rail system would be negligible. In contrast, the expected benefits to the users of the remaining restructured system will far outweigh anticipated adverse impacts.

Financial Analysis

The financial statements presented in the PSP lead to the following main conclusions:

1. ConRail will ultimately be a better operating railroad than any of the bankrupts and is expected to break even and begin earning a profit in its third year of operation. During its first year of operations in 1976, ConRail is projected to show a $91 million net loss, which would make it $130 million more profitable than the bankrupts, whose consolidated net loss totaled $221 million in 1973. This decrease in net loss is not a result of operating improvements, but is due primarily to the special accounting treatment of given ConRail and to decreased interest expense (as a result of restructuring the bankrupt railroads' indebtedness). These two factors together account for a $156 million improvement in net income in 1976.

   By year ten ConRail earns a profit of $382 million, as compared to a net loss of $91 million in its first year.

   The $472 million improvement in net income from 1975 to 1985 results from the two-fold effects of revenue increases and operating cost controls. Most of the revenue increase comes from higher freight volume and favorable changes in freight mix, and reflects anticipated traffic growth and aggressive marketing.

   The effects on consolidation, rationalization, and rehabilitation greatly impact operating expense. Total operating expense in 1985 is $79 million less than in 1976, even though ConRail will be handling more traffic.

   Although improvement is shown for all operating expense categories, the most significant efficiencies and cost savings are reflected in transportation expense which is reduced from 46 percent of revenue in 1976 to 39 percent of revenue in 1985. The reduction results from rehabilitation of the railroad network and from the implementation of improved car handling procedures and systems.

2. The levels of operational efficiency which will be achieved by ConRail are expected to be better than railroad industry averages. In 1985 ConRail is expected to have an operating ratio (operating expenses divided by operating revenues) of 71.7, which compares very favorably with the current operating ratios of all of the solvent railroads in the industry.

3. Such operating efficiencies can, however, only be achieved at the expense of massive investment in fixed plant. The cost of rehabilitating ConRail's facilities during the 1976 to 1985 time period is estimated to be $1.9 billion in 1973 dollars and $3.9 billion in inflated dollars.

4. In order to support a negative cash flow from operations in the early years, and then to fund the necessary massive investments in fixed plant, ConRail will have to accumulate significant amounts of debt. By 1985, ConRail's financial structure, when inflation is taken into account, will contain some $500 million in equipment obligations and some $3 billion in "other" debt.

5. Despite the high level of operational efficiency achieved by ConRail in 1985, its debt load will be so great and its interest charges so high that when the effects of inflation are considered, both net income and fixed charge charge coverage will be low. It is unlikely that the private sector would find ConRail an attractive debt investment and the $3 billion in "other" debt would probably need to be Federally funded or Federally supported. In 1985, ConRail's fixed charge coverage is projected to be 1.61, which is far below any cutoff point normally accepted by private sector investors.

6. The level of Federal funding is far beyond the amount which were contemplated by the Regional Rail Reorganization Act, which now provides only $1 billion. Moreover, Federal involvement in that amount of financing would mean that the period in which more than 50 percent of ConRail's debt would be "Federal" would be more than twenty years, during which time the majority of ConRail's board would be appointed by the Government.

Passenger Service in Region

USRA includes a general discussion and analysis of the present condition and expected market for rail passenger service in the Region, and concludes that only in the Northeast Corridor is there sufficient justification to support the expenditures required to upgrade the railroad for high speed passenger service.

By 1982, coexistence of freight and passenger service on the NEC will result in either exorbitantly high investment cost to install additional freight trackage or include capacity constraints that will result in the inability to handle the expected patronage and provide adequate service to shippers. As a result, the USRA is recommending the removal of most of the through freight traffic from the Penn Central NEC right-of-way and upgrading parallel routes to handle this freight traffic. It is estimated there is an approximate 4:1 capital cost advantage in favor of the USRA recommendation. Because of the decision to move the freight off the Penn Central right-of-way, the NEC rail properties are not included in the PSP.

The PSP does not provide recommendations regarding ownership and operational responsibilities of the NEC but summarizes three alternatives:

1. A Federal Corporation/Regional Authority, Amtrak, and a Fixed Plant Entity. The latter being a variant of ConFac.

2. Finally, the PSP states the Department is preparing a detailed plan for specific improvement to the NEC which will be available at the time of the Final System Plan.

3. USRA summarizes current Amtrak service deficiencies as: equipment failures; on time performance and reservation grievances. It suggests that a strategy be developed (as in the Amtrak Five-year Plan) to concentrate funding to major improvements of a small number of Corridors. Three major criteria (previously used by DOT in developing the original Amtrak route structure) were used:

   .end point cities with Standard Metropolitan Statistical Area (SMSA) population of one million persons or more.

   .distance of 300 miles or less between points.

   .rail right-of-way with potential for upgrading to average speeds competitive with highway.

In addition to major improvement of the Northeast Corridor, the Association recommends the development of 16 passenger corridors:

	Transit Time	Number of Daily round trips
Chicago to Milwaukee	1'15"	10
New York to Buffalo	7'20"	(4)
Chicago to St. Louis	4'30"	4
Chicago to Detroit	5'00"	4
Detroit to Cincinnati*	5'30"	2
Pittsburgh to Indianapolis	7'30"	2
Chicago to Cincinnati	6'15"	3
Cleveland to Pittsburgh*	3'00"	3
Cleveland to Cincinnati*	5'30"	3
Cleveland to Buffalo*	3'15"	2
Philadelphia to Pittsburgh	7'00"	2
Washington to Pittsburgh	6'00"	2
Washington to Norfolk	4'00"	2
Detroit to Buffalo	5'00"	1
Cleveland to Chicago*	5'45"	3
Indianapolis to St. Louis	4'00"	2

(4) 3 round-trips Buffalo to Syracuse; 4 round-trips Syracuse to Albany; 7 round-trips Albany to New York.

* No service presently.

This results in a 20 percent increase in daily train miles offered (from 75,000 to 90,000) while increasing the current annual operating deficit less than 7 percent. In addition the result will be an integrated network of corridor trains offering service to major population centers in the region.

In general, it is assumed that full implementation of the recommended concept after completion of the detailed planning and market analysis required would take from three to seven years. In most cases the proposed speeds cannot be obtained without significant right-of-way improvement. In addition, time is required to meet equipment needs either through new production or major refurbishment.

CONTROLLED TRANSFER

Some believe that a more desirable restructuring than that proposed by USRA could be effectuated by transferring the properties of the bankrupts to existing solvent railroads. Such an approach is called "controlled transfer."

The ultimate objective of controlled transfer is to effect an industry structure in the Midwest and Northeast region which will improve the level of service, economic efficiency and viability of the region's rail industry and avoid nationalization. Other objectives related to the implementation of the desired industry structure include: minimizing Federal financial assistance; avoiding unnecessary industry instability; and minimizing the time required to complete the process.

A principal advantage of controlled transfer is that it permits a realignment of the industry's competitive structure and, thereby, effects a fundamental improvement in the economic efficiency of the

region's rail system. The potential benefits of this derive from the following factors. First, intra-regional transfers of a parallel type will permit a significant reduction of the region's excess rail capacity. Excess capacity has been identified in numerous studies as a fundamental cause of the region's rail viability problem. Second, transfers of an end-to-end type, primarily inter-regional, could lead to the establishment of a national rail system in which a greater proportion of the origin to destination movements are under the control of a single management more capable of providing competitive service with alternative modes. A further advantage of end-to-end mergers is a lessening of the inter-regional rate division problem, one which could be corrected either through end-to-end trans-continental mergers or regulatory reform.

A second principal advantage of controlled transfer is that it relies upon private enterprise to manage the region's rail system (albeit initially aided by Federal financial assistance). The advantage of this derives from the observation that incentives for and pressures upon private enterprise are more likely to result in efficient operations than would result from a publicly controlled ConRail. Controlled transfer of all the bankrupt properties to solvent railroads would avoid the inherent problem of a publicly controlled ConRail. A related management advantage of controlled transfer is that it

disaggregates the region's railroad problem (as embodied in the bankrupt estates) into smaller and, thereby, more manageable portions and spreads the "management" problem among two or more proven, successful management teams.

Another potential advantage of controlled transfer is that it will be able to employ the financial resources of the acquiring railroads. To the extent that the acquiring carriers contribute financially to the acquisition and rehabilitation of the bankrupt properties, the Federal financial exposure will be reduced.

Under a successful controlled transfer process, solvent railroads in the Northeast and/or in other parts of the country would purchase and operate properties of the Penn Central and other bankrupt lines in the Northeast. Negotiations would be conducted with the solvent railroads in order to arrive at an agreement for acquisition of the properties either from ConRail or directly from the estates of the bankrupt railroads. There are numerous control elements about which the transfer process can be structured. These include the size and vehicle of Federal financial assistance, the manner in which the properties are packaged, the timing of the property transfer, and eligibility standards for solvent participation.

The process will be designed so that, if it does not result in the establishment of a more efficient and viable railroad operation than

would be achieved by a permanent operating ConRail, ConRail would be created or continued as proposed in the PSP. Thus, in any event, the level and extent of service designated in the PSP would be provided.

It is not clear yet how the solvent railroads will respond to this opportunity, but some solvent railroads already find the proposition worthy of exploration. While the USRA Board has selected the Three Carriers East system structure, it has not decided whether to recommend a controlled transfer process.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

■

CONTINUATION OF LOCAL RAIL SERVICE

Procedures and Requirements Regarding Applications and Disbursement

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[FRA Economic Docket No. 3, Notice No. 2]

PART 255—ASSISTANCE TO STATES AND LOCAL AND REGIONAL TRANSPORTATION AUTHORITIES IN THE REGION FOR CONTINUATION OF LOCAL RAIL SERVICES UNDER SECTION 402 OF TITLE IV OF THE REGIONAL RAIL REORGANIZATION ACT OF 1973

Procedures and Requirements Regarding Applications and Disbursement

Proposed procedures and requirements regarding the filing of applications for and disbursement of rail service continuation subsidies under section 402 of the Regional Rail Reorganization Act of 1973 ("Act") (45 U.S.C. § 701 et. seq.) were published in the FEDERAL REGISTER on April 5, 1974 (39 FR 12528). Section 402 of the Act establishes a transitional program, whereby the Secretary of Transportation ("Secretary") or his delegate, in accordance with the regulations issued by the Department of Transportation shall provide financial assistance to a State or a local or regional transportation authority in the northeast and midwest region of the United States for the continuation of local rail services.

Section 402 of the Act provides that a State in the region is eligible to receive assistance if:

1. The State has established a State Rail Plan for rail transportation and local rail services which is administered or coordinated by a designated State agency and such plan provides for the equitable distribution of such subsidies among State, local, and regional transportation authorities;

2. The State agency has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail services; employs or will employ, directly or indirectly, sufficient trained and qualified personnel; and maintains or will maintain adequate programs of investigation, research, promotion, and development with provision for public participation;

3. The State provides satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under Title IV of the Act to the State; and

4. The State complies with the regulations of the Secretary issued under this section.

The section 402 assistance program under the Act is meant to facilitate the transition from the existing rail system in the region to a more efficient system. During this period of transition, interim assistance will enable States and localities to continue local rail services which are not designated for preservation in the Final System Plan, but should be continued at least on an interim basis due to the excessive cost of abandonment of these services in terms of lost jobs, energy shortages, and degradation of the environment.

To facilitate this transition, the Congress provided for basic entitlement funds and discretionary funds, under section 402 of the Act, as a source of assistance for the continuation of local rail services in the region. Basic entitlement funds are to be applied first to those eligible rail services to be discontinued as a result of the implementation of the Final System Plan and which the State determines should be continued.

In addition to meeting any deficiencies in the basic entitlement funds as provided in subsection 402(b)(1) of the Act, discretionary funds will be available for the following purposes:

1. To assist an eligible applicant to pay allowable planning costs expended in developing its State Rail Plan, provided that the Final System Plan is approved by the Congress and the State Rail Plan is approved by the Administrator and provided further that this assistance in the aggregate shall be limited to five percent of the total Federal funds otherwise provided to the State under section 402 of the Act. The Federal share of an applicant's allowable planning costs may not exceed 70 percent of these costs. An applicant may expend additional funds for planning other than its matching share.

2. To assist the States in providing rail service continuation subsidies to those rail services to be discontinued as a result of the implementation of the Final System Plan in instances where basic entitlement funds are used to the maximum extent available but are insufficient to provide for the continuation of these services;

3. To assist an eligible applicant in a State contiguous to a State in the region having a portion of its territory located in the region, which is not eligible for basic entitlement funds under subsection 402(b)(1) of the Act in providing rail service continuation subsidies;

4. To assist an eligible applicant in the acquisition and modernization of rail properties as provided in sections 402(b)(2) and 403 of the Act; and

5. To assist an eligible applicant in providing rail service continuation subsidies to the remaining rail services in the region whch are eligible under section 255.3 of the regulations, other than those discontinued in response to the Final System Plan, and which have been identified in the State Rail Plan as candidates for subsidy, in instances where basic entitlement funds under subsection 402(b)(1) of the Act are insufficient to ensure continuation of these services.

In reviewing requests for discretionary funds, the Federal Railroad Administration ("FRA") will give consideration to this general set of priorities.

As previously noted, proposed procedures and requirements regarding the filing of applications for and disbursement of rail service continuation subsidies under section 402 of the Act were published in the FEDERAL REGISTER on April 5, 1974. Numerous persons, organizations, and governmental entities filed comments in response to this publication and each comment was given due consideration by FRA. As a result of the comments received, and the passage of Pub. L. 93-488 (October 26, 1974) which amended the Act, several substantive changes are being made in the regulations.

The following issues were the subject of the comments: (1) Eligibility of rail services for Title IV assistance under the Act; (2) funding for State rail planning; (3) definitive criteria which FRA will apply in accepting or rejecting the State Rail Plan; (4) extension of the time period for the States to submit the State Rail Plan; (5) availability of data to the States which will be needed in the formulation of the State Rail Plan; (6) definitive criteria which will be used in awarding discretionary funds; (7) use of basic entitlement funds for acquisition and modernization; (8) eligibility for rail service continuation subsidies after receiving an acquisition or modernization loan or both; (9) standards for determining a designated State agency; (10) eligibility of a local or regional transportation authority to receive basic entitlement funds directly; (11) requirement that a local or regional transportation authority contribute at least a 30 percent matching share of the total program; (12) eligibility of the States of Wisconsin, Kentucky, and Missouri for basic entitlement funds; and (13) regulations for filing applications for assistance under section 403 of the Act. Each of these issues is discussed below.

There was objection to the requirement in the proposed regulations that only those local rail services proposed to be discontinued or abandoned under section 304 of the Act as a result of the adoption of the Final System Plan could be continued, acquired or modernized with section 402 assistance. The Congress has amended the Act in Pub. L. 93-488 to clarify the eligibility requirement under section 402 and § 255.3 of the regulations has been revised accordingly. The statutory amendment is as follows:

* * * Rail freight services eligible for rail service continuation subsidies pursuant to subsection (b) of * * * section [402] are—

(A) those rail services of railroads in reorganization in the region which the final system plan does not designate to be continued:

(B) those rail services in the region which have been at any time during the 5 year period prior to the date of enactment of this Act, or which are subsequent to the date of enactment of this Act, owned, leased, or operated by a State agency or a local or regional transportation authority or with respect to which a State, a political subdivision thereof, or a local or regional transportation authority has invested at any time during the 5 year period prior to the date of enactment of this Act, or invests subsequent to the date of enactment of this Act, substantial sums for improvement or maintenance of rail service; and

(C) those rail services in the region with respect to which the Commission issues a certificate of abandonment effective on or after the date of enactment of this Act.

Clarification was also sought as to whether costs incurred by a State in developing its State Rail Plan for rail transportation and local rail services would have to be borne exclusively by the State, or whether these costs were eligible for consideration as part of its share of a rail service continuation subsidy. FRA has concluded that a State may use a reasonable proportion of its Federal funds to assist in the development of the State Rail Plan, provided that the Final System Plan is approved by the Congress and the State Rail Plan is approved by the Administrator. This assistance in the aggregate shall be limited to five (5) percent of the total Federal funds otherwise provided to the State under section 402 of the Act. The Federal share of an applicant's allowable planning costs may not exceed 70 percent of these costs. An applicant may expend additional funds for planning other than its matching share.

Some States requested that FRA develop definitive criteria to be used in accepting or rejecting the State Rail Plan. The only criterion which FRA will employ in accepting or rejecting a State Rail Plan will be whether it complies with the requirements of the statute and regulations, as required under subsection 402(c) of the Act.

To assist the States in responding quickly to the Final System Plan, to facilitate a rapid review of a State Rail Plan by FRA, and to assess the States' total funding requirements, provision has been made in paragraph (b) of § 255.9 of the regulations for a two phase State planning process. Phase I and Phase II of the planning process will constitute the State Rail Plan.

Phase I of the State Rail Plan will be required to explain in detail how the State intends to conduct its assistance program. This shall include identification of the data to be acquired on the rail system in the State, the methodology to be used in determining which essential rail services should be continued, the criteria to be employed in ranking these services according to their service priority, and an explanation of the goals to be used in the development of the State Rail Plan. The States will be required to apply the Phase I methodology, criteria, and goals to Phase II of the State Rail Plan in response to and consistent with the Final System Plan.

In Phase II, the States shall identify:

1. The specific data utilized;

2. The specific services which should be continued as determined by the application of the Phase I methodology, criteria, and goals;

3. The order of funding priority of those services; and

4. The amount and form of the assistance required.

Another comment was that the requirement that a State submit its State Rail Plan to the Administrator within 45 days of the date of the submission of the Final System Plan to the Congress does not allow sufficient time for complete and comprehensive planning. FRA has modified this submission date in the regulations to afford the States additional time to develop the State Rail Plan. Paragraph (d) of § 255.9 of the regulations provides that Phase I of the State Rail Plan shall be submitted to the Administrator by May 15, 1975. Phase II of the State Rail Plan shall be submitted to the Administrator for approval within 30 days after the date of approval of the Final System Plan by the Congress. Approval of the State Rail Plan shall be evidenced by written notification to the State. Inasmuch as the States will have knowledge of the Final System Plan during the period the Congress is considering it, sufficient time is provided for completion of Phase II of the State Rail Plan. States encountering unusual difficulties in meeting this requirement may apply to the Administrator for a waiver under § 255.17 of the regulations. However, FRA believes that the actions of the United States Railway Association ("Association") in providing the States with the data necessary for the preparation of their State Rail Plans, and in otherwise aiding a State or a local or regional transportation authority in its planning efforts, as well as the assistance of the Rail Services Planning Office, will make the need for waiver the exception rather than the rule.

Many States urged that the regulations provide that all commercial and financial data relevant to the restructuring process be made available to a State, or a local or regional transportation authority, to assist them in formulating the State Rail Plan. They further urged that definite procedures be established to guarantee that the States receive data on a timely basis. The Association is currently receiving, compiling, and making available to the States data with respect to those services of the railroads in reorganization which may be threatened with discontinuance as a result of the implementation of the Final System Plan. The Association has indicated its willingness to work with the States in analyzing the services of the other railroads in the region which are candidates for assistance. Therefore, FRA does not believe it is necessary to promulgate regulations regarding data availability.

An issue raised by the comments but not addressed in the proposed rules is whether definitive criteria would be developed and employed with respect to the availability of discretionary funds. Discretionary funds under subsection 402(b)(2) of the Act will be available on the basis of the criteria discussed in paragraph (b) of § 255.7 of the regulations.

It was further submitted that a reading of sections 402 and 403 of the Act indicates that a State may utilize basic entitlement funds for acquisition and modernization. The FRA does not agree with this view. Only subsection 402(b)(2) of the Act specifically authorizes the Secretary to provide discretionary funds "for the purposes enumerated in section 403" which includes acquisition and modernization.

The States also inquired as to the meaning of the proviso in subsection 403(a) of the Act and its reference to section 402 of the Act, and whether an entire State would be barred from obtaining rail service continuation subsidies, if it obtained a loan for a particular rail service in the State. In Pub. L. 93-488, the Congress amended this proviso to clarify that a particular rail service for which an applicant receives a loan under section 403 of the Act is no longer eligible to receive a rail service continuation subsidy under section 402 of the Act.

Several comments expressed dissatisfaction with the manner in which the State agency has been or will be designated to administer or coordinate the State Rail Plan for rail transportation and local rail services. Citizen input to the designation or planning processes, or vigorous Federal controls, were sought to ensure that the designated State agency reflects the public interest. The Act, however, does not make any provision for FRA intervention into the designation process. Thus, FRA will accept the designation of a particular State agency if it determines that it meets the requirements under section 402(c) of the Act. In addition, paragraph (a) of § 255.9 of the regulations does require a State to provide an opportunity for public and private agencies, and other interested persons, to participate in the development of the State Rail Plan.

It was also contended that a reading of sections 402 and 403 of the Act made local or regional transportation authorities eligible to receive basic entitlement funds directly. FRA disagrees with this view because subsection 402(b)(1) of the Act provides that each State is entitled to receive these funds and does not make any reference to local or regional authorities. The only sections making local or regional authorities eligible to receive direct assistance are sections 402(b)(2) and 403 of the Act. However, local or regional transportation authorities may only be direct recipients of discretionary funds under section 402 of the Act if their projects are consistent with the State Rail Plan and they are eligible under paragraph (b) of § 255.5 of the regulations.

Similarly, it was argued that the matching share requirement under section 402 of the Act refers only to a State and not to a local or regional transportation authority. Comments cited subsection 402(a) of the Act, which refers only to Federal and State matching shares. This section, however, makes clear that with respect to basic entitlement funds the Federal share shall be 70 percent and the State share shall be 30 percent. With respect to discretionary funds, the State share shall be a minimum of 30 percent. Thus, the Federal share may not be more than 70 percent, but may be less with respect to the discretionary portion of the program. This ratio is also maintained with respect to section 403 assistance. Accordingly, FRA has concluded that it was the intent of Congress that the Federal share may not exceed 70

percent of either the basic entitlement or the discretionary programs and that all participants in these programs must provide their matching shares. However, a State or a local or regional authority may obtain its matching share from shippers or other available sources.

It was further contended that the State of Wisconsin should be eligible for basic entitlement funds, in accordance with the definition of the term "region" under subsection 102(13) of the Act. However, FRA has concluded that only those States enumerated in subsection 102(13) of the Act as existing entirely within the region, including the District of Columbia, were intended to be eligible to receive basic entitlement funds. Wisconsin, together with the States of Missouri and Kentucky, remain eligible to apply for discretionary funds, provided they comply with the requirements of subsection 402(c) of the Act and with the regulations.

There was also a request that the final regulations include a provision implementing section 403 of the Act. Regulations for section 403 of the Act will be published separately.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended by adding a new Part 255, to read as follows:

REGULATIONS GOVERNING APPLICATIONS AND DISBURSEMENTS

AUTHORITY: Regional Rail Reorganization Act of 1973, as amended, 45 U.S.C. 701 et. seq., The Department of Transportation Act, 49 U.S.C. 1651 et. seq.

REGULATIONS GOVERNING APPLICATIONS

§ 255.1 Definitions.

As used in this part—

(a) "Act" means the Regional Rail Reorganization Act of 1973, as amended.

(b) "Administrator" means the Federal Railroad Administrator or the Deputy Administrator or his or her delegate.

(c) "Applicant" means the designated State agency of a State in the region or a local or regional transportation authority in the region meeting the requirements of § 255.5.

(d) "Association" means the United States Railway Association.

(e) "Basic entitlement funds" means each State's share of the appropriated sums allocated to the States as provided in subsections 402(b)(1) and 402(i) of the Act for each fiscal year for the continuation of local rail services.

(f) "Commission" means the Interstate Commerce Commission.

(g) "Designated State agency" means the State agency designated in the State Rail Plan to administer or coordinate that plan as provided in subsection 402(c)(1) of the Act and paragraph (a) of § 255.5

(h) "Discretionary funds" means financial assistance, in addition to the basic entitlement funds, as provided by subsections 402(b)(2) and 402(i) of the Act.

(i) "Final System Plan" means the plan of reorganization for the restructure, rehabilitation, and modernization of railroads in reorganization prepared under section 206 and approved under section 208 of the Act.

(j) "Office" means the Rail Services Planning Office established in the Commission under subsection 205(a) of the Act.

(k) "Rail properties" means assets or rights owned, leased, or otherwise controlled by a railroad which are used or useful in rail transportation service; except that the term, when used in conjunction with the phrase "railroad leased, operated, or controlled by a railroad in reorganization," may not include assets or rights owned, leased, or otherwise controlled by a Class I railroad which is not wholly owned, operated, or leased by a railroad in reorganization but is controlled by a railroad in reorganization.

(l) "Railroad in reorganization" means a railroad which is subject to a bankruptcy proceeding and which has not been determined by a court to be reorganizable or not subject to reorganization under section 207(b) of the Act. A bankruptcy proceeding includes a proceeding under section 77 of the Bankruptcy Act (11 U.S.C. 205) and an equity receivership or equivalent proceeding.

(m) "Rail service continuation subsidies" means subsidies calculated in accordance with the provisions of subsection 205(d)(3) of the Act to cover the costs of operating adequate and efficient rail service in the region, including where necessary, improvement and maintenance of tracks and related facilities.

(n) "Region" means the States of Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia; the District of Columbia; and those portions of contiguous States in which are located rail properties owned or operated by railroads doing business primarily in those jurisdictions (as determined by the Commission by order, set out in Appendix B).

(o) "State" means any State or the District of Columbia.

(p) "State in the region" means the States enumerated in subsection 102(13) of the Act.

§ 255.3 Applicability.

The provisions of this part are applicable to rail freight services as follows:

(a) Those rail services of railroads in reorganization in the region which the final system plan does not designate to be continued;

(b) Those rail services in the region which have been at any time during the 5 year period prior to the date of enactment of this Act, or which are subsequent to the date of enactment of this Act, owned, leased, or operated by a State agency or a local or regional transportation authority or with respect to which a State, a political subdivision thereof, or a local or regional transportation authority has invested at any time during the 5 year period prior to the date of enactment of this Act, or invests subsequent to the date of enactment of this Act, substantial sums for improvement or maintenance of rail service; and

(c) Those rail services in the region with respect to which the Commission issues a certificate of abandonment effective on or after the date of enactment of this Act.

§ 255.5 Eligibility.

(a) State in the Region. A State in the region is eligible to receive basic entitlement funds and discretionary funds if:

(1) The State has established a State Rail Plan for rail transportation and local rail services which meets the requirements of § 255.9 and which is administered or coordinated by a designated State agency, and such plan provides for the equitable distribution of such subsidies among State, local and regional transportation authorities;

(2) The State agency has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate and efficient local rail services; employs or will employ, directly or indirectly, sufficient trained and qualified personnel; and maintains or will maintain adequate programs of investigation, research, promotion, and development with provision for public participation;

(3) The State provides satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this program to the State; and

(4) The State complies with the requirements of the Administrator prescribed in this part and with the terms and conditions included in the grant of assistance.

(b) Contiguous States. A State contiguous to a State in the region having a portion of its territory located in the region as determined by order of the Commission, is eligible to receive discretionary funds, provided that the approved State Rail Plan may be limited to that portion of the State which is within the region, and the designated State agency may be either a State agency if it meets the conditions of paragraph (a) of this section, or a local or regional transportation authority within the region if it meets the conditions of paragraph (c) of this section.

(c) Local or Regional Transportation Authority in the Region. A local or regional transportation authority in the region is eligible to receive discretionary funds if:

(1) Its application is consistent with an approved State Rail Plan;

(2) It provides assurances that it has adequate authority and administrative jurisdiction and fiscal controls consistent with those required by paragraphs (a)(2) and (3) of this section; and

(3) It complies with the regulations of the Administrator prescribed in this part and with terms and conditions included in the grant of assistance.

§ 255.7 Rail Service Continuation Assistance.

(a) Basic Entitlement Funds. (1) Basic entitlement funds are to be allocated to each State in the region in the ratio which the total mileage in each State measured in point to point length (exclusive of yard tracks and sidings) bears to the total rail mileage in all the States in the region. The Administrator has determined that the total track mileage of all States in the region is 61,184 miles; that the total track mileage in each State in the region and their ratio to the total track mileage in the region is as follows:

State	State mileage	Percent of total miles in region	Percent of basic entitlement
Maine	1,666	2.7	3
New Hampshire	817	1.3	3
Vermont	766	1.3	3
Massachusetts	1,430	2.3	3
Connecticut	664	1.1	3
District of Columbia	30	0	3
Rhode Island	146	.2	3
New York	5,595	9.1	9.1
New Jersey	1,742	2.8	3
Pennsylvania	8,273	13.5	10
Delaware	291	.5	2
Maryland	1,110	1.8	3
Virginia	3,895	6.4	6.4
West Virginia	3,569	5.8	5.8
Ohio	7,804	12.8	10
Indiana	6,405	10.5	10
Michigan	6,159	10.1	10
Illinois	10,822	17.7	10

(2) The Federal share of the total cost of providing rail service continuation subsidies under subsection 402(b)(1) of the Act shall be 70 percent of that cost. The balance of such cost shall be provided by the State and the State share may not be augmented by any Federal funds, directly or indirectly, unless the funds are provided through a Federal program which specifically authorizes the augmentation of a non-Federal share of a federally subsidized program with such funds.

(b) Discretionary Funds. (1) In addition to meeting deficiencies in the basic entitlement funds as provided in subsection 402(b)(1) of the Act, discretionary funds will be available for the following purposes:

(i) To assist an eligible applicant to pay allowable planning costs expended in developing its State Rail Plan, provided that the Final System Plan is approved by the Congress and the State Rail Plan is approved by the Administrator and provided further that this assistance in the aggregate shall be limited to five percent of the total Federal funds otherwise provided to the State under section 402 of the Act. The Federal share of an applicant's allowable planning costs may not exceed 70 percent of these costs. An applicant may expend additional funds for planning other than its matching share.

(ii) To assist the States in providing rail service continuation subsidies to those rail services to be discontinued as a result of the implementation of the Final System Plan in instances where basic entitlement funds are used to the maximum extent available but are insufficient to provide for the continuation of these services;

(iii) To assist an eligible applicant in a State contiguous to a State in the region, having a portion of its territory located in the region, which is not eligible for basic entitlement funds under subsection 402(b)(1) of the Act, in providing rail service continuation subsidies;

(iv) To assist an eligible applicant in the acquisition and modernization of rail properties as provided in sections 402(b)(2) and 403 of the Act; and

(v) To assist an eligible applicant in providing rail service continuation subsidies to the remaining rail services in the region which are eligible under § 255.3, other than those discontinued in response to the Final System Plan, and which have been identified in the State Rail Plan as candidates for subsidy, in instances where basic entitlement funds under subsection 402(b)(1) of the Act are insufficient to ensure continuation of these services.

In reviewing requests for discretionary funds, the Administrator will give consideration to this general set of priorities.

(2) The Federal share of the total cost of accomplishing those purposes for which discretionary funds are provided shall not exceed 70 percent of that cost. The applicant shall provide the remainder of the cost. The applicant's share may not be augmented by any Federal funds, directly or indirectly, unless the funds are provided through a Federal program which specifically authorizes the augmentation of a non-Federal share of a federally subsidized program with these funds.

(c) Term of Rail Service Continuation Subsidies. Rail Service continuation subsidies between a State or a local or regional transportation authority, and the Corporation or other responsible person (including a Government entity) may not exceed a term of two years.

(d) Return of excess funds. Basic entitlement funds which are not expended or committed by a State for rail service continuation subsidies as provided in subsection 402(b)(1) of the Act during the ensuing fiscal year shall be returned to the Administrator who may use these funds as provided in subsection 402(b)(2) of the Act.

(e) Ineligibility for subsidy after receipt of a section 403 loan. Any rail service for which a State or a local or regional transportation authority receives a loan under section 403 of the Act is no longer eligible for a rail service continuation subsidy under section 402 of the Act.

§ 255.9 Requirements for State Rail Plan for Rail Transportation and Local Rail Services.

(a) State planning process. Consistent with the purposes of the Act, the State Rail Plan required under § 255.5(a) shall be based upon a comprehensive and coordinated planning process for the provision of rail transportation services in the State, which are essential to meet the economic, environmental and energy needs of the citizens of that State, and to provide for the development of a coordinated and balanced transportation system within the State or the affected portion thereof. This plan shall be developed with opportunity for participation by public and private agencies having authority and responsibility for rail activity in the State and adjacent States where appropriate. Provision shall be made for affording interested persons, such as users of rail transportation, labor organizations, local governments, environmental groups and the public generally, timely opportunity to express their views in the development of the State Rail Plan. As part of the planning process, the designated State agency shall establish procedures whereby local and regional transportation authorities may review and comment on appropriate elements of the State Rail Plan.

(b) Contents of the State Rail Plan. The State Rail Plan for rail transportation and local rail services shall be submitted to the Administrator in two phases.

(1) As Phase I of the State Rail Plan, a State shall submit a design of the State planning process which is consistent with the purposes of the Act and shall include:

(i) An identification of the data to be acquired on the rail network and rail services in the State (see paragraph (b)(2)(iv) of 255.9), the sources of this data, and the methodology to be employed in data collection. In considering the scope of data collection activities and subsequent analysis, it is anticipated that time constraints and limitations of the state-of-the-art will require that the State provide a broad overview of all rail services in the State while concentrating most of its efforts on the services for which it expects to require assistance in the immediate future.

(ii) Methodology to be used in the planning process, including that to be used in selecting essential lines to be considered for assistance, and indicating consideration of the advisory criteria published by the Office under subsection 205(d)(4) of the Act.

(iii) Criteria for setting priorities for rail service to be considered for assistance. In determining which rail services will receive assistance, a State should give first consideration to eligible rail freight services to be discontinued as a result of implementation of the Final System Plan.

(iv) An explanation of the goals or philosophical framework to be used in guiding the development of the State Rail Plan. Part of this explanation should be specifically devoted to the expectations of the State for the future of rail services which receive a subsidy subsequent to the expiration of the rail service continuation subsidy under the Act, including such considerations as likelihood of profitability, continued State or local subsidy, assistance under section 403 of the Act, substitution of alternate modes, and other long-term alternatives.

(v) Description of the methods by which the State will involve local and regional transportation authorities in its rail planning process, including its methods of providing for the equitable distribution of subsidies among State, local, and regional transportation authorities.

(vi) A management plan for the development of the State Rail Plan which shall include an identification of responsible individuals and a flow chart of activities with milestones.

(2) Phase II of the State Rail Plan shall:

(i) Contain general information with respect to the physical plant, traffic, and service characteristics of the existing rail system within the State;

(ii) Describe the planning process utilized in the development of the State Rail Plan, specifying the particulars as to data sources, assumptions, and special problems or conditions which may be essential to the understanding of the setting in which the State Rail Plan was developed;

(iii) Classify the rail system within the State into the following categories:

(A) Rail services in the Final System Plan;

(B) Rail services of railroads which are not railroads in reorganization which are continuing in operation;

(C) Rail services of railroads in reorganization which are not included in the Final System Plan;

(D) Rail services of railroads in reorganization for which a State does not wish to receive assistance; and

(E) Rail services for which a State wishes to receive assistance (subsidy, acquisition, or modernization) ranked in descending order of service priority as determined by the specific application of the methodology, criteria, and goals described in Phase I of the State Rail Plan and the relevant social, economic, environmental, and energy considerations, including an estimate of the amount of the Federal share of the assistance required for these services, designated as basic entitlement funds or discretionary funds;

(iv) Contain detailed and specific knowledge of the services for which assistance is requested, including: traffic density of the line; pertinent costs and revenues; a survey of the condition of the plant, equipment, and facilities; an economic and operational analysis of present and future rail freight service needs; the potential for moving rail traffic by alternate modes; the relative economic, social, and environmental costs and benefits involved in the use of alternate modes, including costs resulting from lost jobs, energy shortages, and the degradation of the environment; the competitive or other effects on or by profitable railroads; methods of achieving economies in the cost of rail system operations including consolidation, pooling, and joint use or operation of lines, facilities, and operating equipment; analysis of the potentials for rehabilitation and modernization of equipment, track, and other facilities; and an analysis of the effects of abandonment with respect to the transportation needs of the State;

(v) Include a statement of the long-term strategy that the State will apply to those rail services to receive assistance, including such considerations as: continuing subsidy; acquisition and modernization; termination; and the provision of substitute services; and

(vi) Include a statement for those services to be acquired which describes the conditions and requirements of these services, such as the rolling stock and the track improvements needed to provide minimum service.

(c) Adoption of State Rail Plan. An original and nine (9) copies of each Phase of the State Rail Plan, and any amendments thereto, shall be submitted with a certification by the Governor, or by his or her delegate, that the submission constitutes the State Rail Plan or portion thereof established by the State as provided in section 402(c)(1) of the Act.

(d) Submission and Review of State Rail Plan. Phase I shall be submitted by May 15, 1975, to the Administrator for review. Phase II shall be submitted to the Administrator for review within 30 days after the date of approval of the Final System Plan by Congress. To approve the State Rail Plan the Administrator must notify the State in writing. If the Administrator determines that the State Rail Plan is not in accordance with this part, he will notify the State setting forth his reasons for such determination, and afford the State an opportunity for a hearing and to amend its State Rail Plan to bring it into compliance with the Act and this part. Where hearings in accordance with subsection 402(h) of the Act are necessary, they shall be conducted on an expedited basis to afford the State maximum opportunity to submit an acceptable State Rail Plan on a timely basis.

(e) Review of amendments and modifications with respect to the State Rail Plan. State Rail Plans are to be reviewed and amended to reflect any changes which would affect the determinations and classifications made under paragraph (b)(2)(iii) of § 255.9. All such amendments shall be subject to the same review and approval procedures as the original State Rail Plan.

§ 255.11 Applications.

(a) Coordination and clearance. To ensure coordination with appropriate State agencies and to ensure that local and regional proposals are consistent with the State Rail Plan, applications for assistance shall be submitted by or under the coordination of the designated State agency. All applications for assistance, whether by the designated State agency or a local or regional transportation authority, shall be consistent with the approved State Rail Plan.

(b) Contents. Each application for assistance shall include:

(1) Full and correct name and principal business address of applicant;

(2) Name, title and address of the person to whom correspondence regarding the application should be addressed;

(3) Detailed description of the services for which assistance is sought, together with a map of those rail services, and certification as to their inclusion in the State Rail Plan;

(4) Evidence of review and coordination within the State in accordance with the applicable sections of the approved State Rail Plan as provided in paragraphs (a) and (b) of § 255.9;

(5) Estimate of the total amount of assistance required to continue each service and the Federal share of such assistance, designated as basic entitlement funds or discretionary funds. Where applicable, this amount shall be calculated utilizing the standards for determining "revenue attributable to the rail properties", "avoidable costs of providing service", and "reasonable return on the value", as established by the Office under subsection 205(d)(3) of the Act. (These standards are set out in §§ 1125.4, 1125.5, and 1125.7 of 49 CFR Part 1125.)

(6) Evidence of applicant's ability and intent to furnish its share of the total assistance;

(7) Description of the arrangements which the applicant has made for operation of the rail services to be subsidized including copies of the proposed operating agreements, leases or other compensation agreements under which the service is to be provided;

(8) Assurance by the applicant that the Federal funds provided under the Act will be used solely for the purpose for which the assistance is sought;

(9) Evidence that the applicant has established such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the applicant under Title IV of the Act;

(10) Evidence that the applicant has the statutory authority and administrative jurisdiction to develop, promote, supervise and support safe, adequate, and efficient rail services; that it employs or will employ, directly or indirectly, sufficient trained and qualified personnel; that it maintains or will maintain adequate programs of investigation, research, promotion and development with provision for public participation; and that it has the statutory and other authority to perform its obligations under the Act and the regulations under this part;

(11) An opinion of the counsel for applicant showing that he or she is familiar with the corporate or other organizational powers of the applicant, that the applicant is authorized to make the application, and that the applicant has the requisite authority to carry out actions proposed in the application and to assume the responsibilities and obligations created thereby;

(12) Certification that the applicant is in compliance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d et seq. ("Civil Rights Act"), and all requirements imposed by Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation ("Civil Rights Regulations"), and other pertinent directives, and that, in accordance with the Civil Rights Act, the Civil Rights Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives assistance from the Federal Railroad Administration, and the applicant will promptly take any measures necessary to effectuate this agreement; and

(13) Such other information as the Administrator may require.

(c) Execution and Filing of Application. (1) Each original application shall bear the date of execution and be signed by the Chief Executive Officer of the applicant. Each person required to execute the application will execute a certificate in the form of Appendix A to this Part.

(2) Each original application and certificate, and nine copies thereof, shall be filed with the Federal Railroad Administrator, Department of Transportation, 400 7th Street SW., Washington, D.C. 20590. Each copy shall show the dates and signatures that appear in the original and shall be complete in itself.

(d) Review and Approval of Applications. Applications for rail service continuation assistance are to be submitted to the Administrator for review and approval. In order for an application to be approved, the Administrator must notify the applicant in writing. If the Administrator disapproves all or part of an application, he will advise that applicant in writing of his reasons for such disapproval. These reasons may include insufficiency of the application, inconsistency with the approved State Rail Plan, or insufficiency in the amount of appropriated funds available to the Administrator. With respect to applications for discretionary funds, the Administrator shall determine whether sufficient appropriated funds are available for a particular service in view of the general set of priorities set forth in paragraph (b)(1) of § 255.7.

§ 255.13 Disbursement of Rail Service Continuation Assistance.

(a) Rail Service Continuation Subsidies. After receipt, review and approval of an application meeting the requirements of § 255.11, the Administrator will enter into a grant agreement with an applicant for the Federal share of the estimated amount of subsidy necessary to continue the service described in the application. The Federal share of this amount shall be payable pro rata at the end of each quarter of any fiscal year during the term of the grant agreement; provided that:

(1) After nine months from the date of the execution of the grant agreement, the estimate may be revised to reflect the actual revenues, costs, and rate of return over that period; and

(2) The final payment under the grant agreement shall only be made on the basis of an audit which has determined the actual revenues, costs, and rate of return over the entire term of the agreement;

Provided, however, That the amount of Federal assistance may not be increased unless the Administrator determines that the applicant has fulfilled its responsibilities for ensuring the proper and efficient administration of its subsidy program, the required State or local matching funds are available, and the necessary Federal funds are available.

(b) Rail Service Acquisition and Modernization Assistance. After receipt, review and approval of an application for acquisition or modernization assistance under 402(b)(2) of the Act which meets the requirements of § 255.11, the Administrator will enter into a grant agreement for the appropriate Federal share of the allowable costs of acquisition or modernization as determined by the Administrator. The terms of payment of the Federal share shall be set forth in the grant agreement.

§ 255.15 Record, Audit, and Examination.

(a) Each recipient of financial assistance under this section, whether in the form of grants, subgrants, contracts, subcontracts, or other arrangements, shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of 3 years after completion of the project or undertaking referred to in paragraph (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such receipts which in the opinion of the Administrator or the Comptroller General may be related or pertinent to the grants, contracts, or other arrangements referred to in such paragraph.

§ 255.17 Waivers and Modifications.

The Administrator may, with respect to individual requests, upon good cause shown, waive or modify any requirement of this part not required by law, or make any additional requirements he deems necessary.

This notice is issued under the authority of 49 U.S.C. 1651 et. seq.

Issued in Washington, D.C. on January 22, 1975.

ASAPH H. HALL,
Deputy Administrator.

APPENDIX A—CERTIFICATE

The following is the form of the certificate to be made by each person signing an application.

_____ certifies that he is the
(Name of Person)
Chief Executive Officer of _____,
(Name of Agency)
that he is authorized to sign and file with the Federal Railroad Administrator this application; that he has carefully examined all of the statements contained in the application relating to _____; that
(Name of Agency)
he has knowledge of the matters set forth therein and that all statements made and matters set forth therein are true and correct to the best of his knowledge, information and belief.

_____ _____
(Date) (Signature)

Subscribed and sworn to before me the ____ day of _____, 19__.

APPENDIX B

By order dated January 23, and supplemental order dated May 23, 1974, [Ex Parte No. 293, and Northeastern Railroad Investigation (Definition of the Midwest and Northeast Region)] the Commission has included, in addition to the jurisdictions specifically named, the following: (1) Points in Kentucky in the Louisville Kentucky, Standard Metropolitan Statistical Area as used in the latest national census; (2) Points in Missouri in the St. Louis, Missouri, Standard Metropolitan Statistical Area as used in the latest national census; and (3) Kewaunee and Manitowoc, and the Port of Milwaukee, Wisconsin.

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CONFAC

There are at least four possible structures for a privately owned ConFac which would own the roadbed, finance its rehabilitation, and lease it back to ConRail. None of those structures present any net financial benefits in comparison to a single ConRail structure. The only thing achieved by any of these structures is shortening the time period of government representation on the board of ConRail.

There are two general types of ConFac structures involving government ownership: a wholly owned government corporation and a mixed ownership corporation. Each assumes that ConFac will acquire the roadbed from ConRail and finance its rehabilitation; ConRail would operate over those rehabilitated tracks and pay a user charge which does not include state and local taxes or service of the rehabilitation debt. Due to the favorable user fee charged to ConRail for operating over those properties, each structure would offer important cash flow benefits to ConRail. The mixed ownership corporation would also result in improvement of the value of ConFac's stock, but it is not clear that the wholly owned ConFac would have that effect.

Both of the ConFac structures involving government ownership fail to reduce the total dollar amount of Federal financial assistance necessary. Indeed, the structures provide strong incentives for opening

up the Federal treasury to payment of the cost of acquisition and rehabilitation of rail lines nationally. Moreover, they would eliminate incentives for the operating carrier to operate efficiently since such deficit operations could be financed by reduction of the user charge that each carrier pays. Most importantly, ConFac would result in unlimited Federal involvement in the ownership and maintenance of railroad right-of-way and would thereby also result in substantial Federal involvement in rail operations.

From a management standpoint ConFac presents significant difficulties in the separation of the operating function from that of the maintenance of right-of-way. It would also have a significant impact on labor management relationships since a major part of the work force would be government employees. Finally, ConFac would greatly inhibit future adjustment of the region's and the Nation's rail system to meet changing conditions of the regional or national economy.

The United States Railway Association, in its preliminary system plan, raised the issue of whether a ConFac structure would have a beneficial impact on meeting the goals of the Act. At its meeting on May 22, the USRA Board of Directors agreed unanimously that ConFac is not desirable and would not be recommended in the final system plan. However, the final system plan would include a discussion of its advantages and disadvantages, together with the other options and proposals for government financing of the railroads.

DOT
May 2, 1975

SUMMARY OF THE RSPO EVALUATION OF THE PSP

I. Executive Summary

1. The RSPO analysis purports to show that $1.4 billion in federal grants and a matching amount from internal and private sources would be sufficient to assure ConRail viability. Unfortunately, the analysis relies upon U.S.R.A. pro forma projections, which are recognized throughout the RSPO evaluation as being overly optimistic. Monies not provided by the RRR Act would be proved by "The National Transportation Rehabilitation and Modernization Act of 1975" which has been drafted by RSPO. This bill calls for $6.25 billion for rail rehabilitation to be financed by a fuel tax. When matching funds from railroads and state/local governments are added to the federal share, about $12 billion are expected to be invested in railroads during the five years of the ICC's proposed program.

2. The RSPO favors the MARC-EL industry structure over the Three Systems East which it would accept. It would not accept a Two Systems East that would result, if either Chessie or N&W did not play. In reviewing the PSP, RSPO accepted without independent analysis the rejection by USRA of 108 coordination projects proposed by 25 railroads. Many of these would be candidates for control transfer.

3. RSPO would have ConRail continue operating all branch lines for two years while accurate data were being collected.

4. The Office is optimistic that labor will negotiate to modernize work rules and is of the view that Congress clearly expected them to be "reasonably cooperative".

5. RSPO suggests replacing government membership on ConRail's Board with ICC oversight of its management.

II. Summary of RSPO Evaluation of the PSP

The RSPO has produced a 543 page evaluation of the PSP. The bulk of the report is a reproduction of Volume II of the PSP annotated with public response and RSPO comment. The main body is a set of four chapters each of which is a critique of USRA's analyses of principal issues: (1) industry structure, (2) financial viability, (3) light-density line, and (4) other analyses (marketing and containerization, personnel, passenger service, and energy and environmental impacts). This is sandwiched between a brief summary of public response (Chapter 1) on each of these issues (except marketing and containerization) and a statement of RSPO's plan for not only financing and managing ConRail but for funding the rehabilitation and modernization of the national rail system. The principal recommendations made to USRA are presented at the beginning of the report. These are reproduced here as Attachment A and highlighted in the executive summary.

The lack of "specificity" in the PSP is the one criticism that appears repeatedly throughout the Evaluation. The Office states that the Final System Plan (FSP) should be a "prospectus." However, the RSPO neglected to summarize in one convenient place and in an organized fashion its list of items suffering from lack of specificity. The Office could provide a public service by drafting its own outline of the FSP, including a "clear and unambiguous" statement as to the level of specificity it sees necessary for each detail in the FSP.

The Office had a "field day" pointing out the inconsistencies and general problems that resulted from a lack of editing of the PSP as an entity and from the lack of time available to the USRA staff to coordinate the chapters--especially the Financial Analysis.

Chapter 1 - Public Response to the Plan (pp 9-18)

The RSPO offers a 10 page summary of public comment on the PSP from 1900 witnesses and 500 documents. Comments are organized for each of seven principal issues (which are treated by RSPO in subsequent chapters). Passing reference is made to the role of RSPO's 29 outreach attorneys but no explanation or evaluation of this role is offered. Curiously, RSPO plans no subsequent publication or analysis of public comment beyond these 10 pages which is a major shift in the policy which resulted in a 3 volume-517 page critique of the February 1974 Report by DOT.

Chapter 2 - Regional System Analysis

A. The Three Carrier System (pp 19-32)

The RSPO concludes that the recommended industry structure "Three System East" (ConRail, Chessie, and N&W) is acceptable but not the best solution in their view. The Office favors establishment of the Mid-Atlantic/Erie Lackawana System (MARC-EL). The Two System solution which would develop if either Chessie or N&W refused to play is unacceptable to RSPO.

The basic problem that RSPO has with the Three System East structure is that it sees the resulting level of competition as token rather than substantive in nature. In fact, Chessie and N&W would lose traffic originating in the markets of the LV, CNJ, and Reading. RSPO wants protective conditions developed for these solvent carriers.

The RSPO conducted its own operating analysis of the region and offers detailed technical comments on USRA's mainline identification, capacity analysis for mainlines and yards, and equipment utilization estimates.

1. RSPO disputes five lines now operated as main lines that are excluded from the PSP.

2. Choices of four mainline routes by USRA are also challenged.

3. Two short mainline segments in the Northeast Corridor are claimed by RSPO to have insufficient capacity for anticipated traffic levels.

4. USRA's yard planning is judged inconsistent and overly optimistic. Forecasts for four yards in particular are inconsistent with the Office's own observations in the field.

5. USRA's forecast of a 31 percent improvement in car utilization is dismissed on the grounds that other railroads have not been able to achieve such improvements.

RSPO basically agrees with the USRA approach to designing a rehabilitation program but is troubled by a lack of an accurate and consistent estimate of unit costs. The evaluation offers seven widely different estimates that appear in the PSP.

Each coordination project listed in the PSP is analyzed in detail in Appendix A of the Evaluation. It is worth noting, however, that the RSPO accepted without any independent analysis USRA's judgment on what projects would be rejected on the grounds that they "cannot now be found not to materially impair the profitability, either singly or cumulatively, of any railroad in the Region or ConRail." These 108 projects proposed by 25 railroads are listed in Appendix D-3, part I of the PSP. In fact, the RSPO made a rather strange and seemingly inconsistent judgment as to its responsibilities when it excluded these projects from its analysis.

B. Alternative Regional Structures (pp 32-36)

In evaluating industry structures the RSPO considered "the ability of each to achieve effective competition without sacrificing the goal of financial self-sufficiency." However, only two options are treated, Two Carrier System and MARC-EL, and no other options are even referenced including the many variations analyzed by USRA. The analysis is generally a qualitative one, although a map is presented and reference is made to the numbers of branch lines, stations, and carloads involved in the MARC-EL proposal.

The RSPO is concerned about the impact on the solvents if LV, CNJ and Reading ceased to exist, yet they see the Super-N&W or the Super-Chessie (but less so) that would develop in the Two System solution as counter to the goals of the Act.

The preferred solution of the Office is a MARC-EL system consisting of the LV, CNJ, Reading, Lehigh & Hudson River Railroads, and a reduced Erie Lackawana. EL lines in Indiana, Illinois, and most of Ohio would be taken over by ConRail under this structure. The bases of this choice are that MARC-EL:

1. will save rail service on 28 lines to 89 stations, for almost 20 thousand carloads;

2. will provide competitive local service to more areas;

3. will maintain established carrier-shipper sales and service relationships ("the intangible asset");

4. will maintain the classical advantage of smaller railroads over larger ones in maintaining "personal interaction with shippers";

5. will preserve the historical feeder function to the solvents and maintain the classic principle of dependency among railroads;

6. will avoid the necessity of bargaining with the solvents who are "hesitant" and "demanding concessions."

RSPO counters USRA's arguments against MARC-EL by noting:

1. shippers demand continuation of current levels of completion;

2. anyway, MARC-EL would not generate unnecessary competition any more than the other alternatives;

3. rehabilitation would not differ much from USRA's system.

Chapter 3 - Financial Analysis (pp 37-47)

The RSPO has not presented alternative financial projections to those contained in the PSP, nor has it definitely stated that the projections in the PSP are inaccurate and should not be considered realistic. Rather, the RSPO has chosen to strongly imply, in discussing each of the individual items in the financial statements separately (i.e. revenues, rehabilitation costs, and working capital needs), that the projections in the PSP are "overly optimistic."

The RSPO evaluation is very critical of the lack of full disclosure with regard to the content of the financial projections in the PSP. It is pointed out that the projections are not for the recommended industry structure, that it is very hard to ascertain the amounts of the rehabilitation costs included in the projections, that it is impossible to determine the size and the nature of the labor force in ConRail, etc. As a result the lack of adequate disclosure, the RSPO strongly recommends that the Final System Plan be considered in the same sense as a prospectus filed with the SEC and that all relevant information be fully disclosed. A full listing of the financial elements which the RSPO recommends should be disclosed in the Final System Plan is contained in the "Financial Considerations" portion of the principle recommendations.

In summarizing the public comments regarding the financial aspects of the Preliminary System Plan made during public hearings, the RSPO document notes that the overwhelming majority of parties who chose to comment considered the PSP projections to be overly optimistic. Also noted is that many parties were critical of USRA's use of "modified betterment" accounting rather than traditional ICC "betterment" accounting. As noted above, the RSPO implicitly agrees with the view that the projections are overly optimistic. The RSPO does not agree, however, with the criticism of USRA's departure from normal ICC accounting and is in fact, very critical of the ICC's traditional methods and espouses going even beyond "modified betterment" accounting to the use of "depreciation" accounting.

In concert with its "$12 billion financing plan" for saving the nation's railroad system, the RSPO evaluation contains some projections for ConRail's capital structure if the Federal Government were to provide grants for 50 percent of the rehabilitation costs. The RSPO analysis purports to show that with $1.4 billion in Federal grants ConRail could be made viable and could finance its additional needs in the private sector. The main limitation to the RSPO analysis, however, is that it relies upon USRA's pro forma projections, which are recognized elsewhere in the RSPO evaluation as being overly optimistic.

Chapter 4 - Light Density Line Analysis (pp 49-57)

(See also Appendix B: Light Density Line Review, pp 135-538, and Appendix C: Subsidy Analysis, pp 539-543.)

The RSPO is highly critical of USRA's light density rail line analysis because of inadequacies in the data base and in the method for the allocation of costs to each line. The RSPO recommends that branch line abandonment be delayed for two years and that the lines in dispute continue to receive service via ConRail. During these two years ConRail would gather revenue and cost data for each line that would be the basis for deciding abandonment.

ConRail would be subsidized by the Federal Government for these two years of operation for 100 percent of the losses incurred, estimated by RSPO to be $35.4 million (excluding rehabilitation costs). This estimate made use of USRA cost and revenue data but rested on two significant changes made to the Association's analysis:

1. elimination of indirect and overhead cost items, and

2. reduction of normalized maintenance costs to $1,000 per track mile (approximately one-fourth of the USRA estimate).

When the USRA costing methodology is used, the cost of this hypothetical two-year service continuation subsidy rises to $63.3 million (exclusive of subsidy costs for the rejected subsegments of some 25 branch lines slated for partial inclusion in the final system). This cost level, while almost double the RSPO estimate, is still well within the bounds of the $180 million authorized by the 1973 Act.

Chapter 5 - Other Analyses

A. Marketing Rail Freight Service (pp 59-61)

RSPO notes that the economic forecasts have not been based on analyses of changes in each of the underlying industries that generate rail traffic.

The forecasts of ConRail coal traffic are criticized for considering national growth in coal production and not limiting analysis to growth of mines potentially served by ConRail. Further, RSPO notes that no consideration is given to developments with water carriers or to technological changes that would affect the demand for rail services.

Curiously, the RSPO chides USRA for not doing rate structure analyses which the Office admits has deficiencies.

The Office notes that it "finds it difficult to understand why Penn Central is not a profitable railroad" and infers that it certainly expects ConRail "to be a successful and profitable railroad."

B. Intermodal Services (pp 61-65)

RSPO has done an in-depth analysis of USRA's proposal for expansion of TOFC/COFC services which provides a useful perspective on claims of future growth for intermodal traffic. The report notes that these forecasts are critical to ConRail's financial viability. However, RSPO is concerned with the fact that the USRA work has inconsistencies; Penn Central has been selling some truck lines; and the PSP has not allocated funds for expansion of trucking operations.

C. Personnel Planning and Policies (pp 66-69)

RSPO is greatly concerned that the manpower planning process will not be handled properly. It is concerned about the depersonalization of the process, the lack of input from employees (both labor and management), and the failure to consider "quality" of employees (seniority not withstanding).

The Office notes that the PSP infers that very little use will be made of the $250 million labor protection fund provided in Title V of the RRR Act. Their calculations indicate a reduction of 5200 employees by 1985 including retirees who represent 30 percent of the work force, which "would not be expected to have a very harsh impact on the ... fund." The Office is optimistic that labor will negotiate to modernize work rules and is of the view that Congress clearly expected the unions to be "reasonably cooperative."

D. Passenger Service (pp 69-71)

The RSPO is concerned with the proposal that Amtrak operate the NEC. It criticizes USRA's methodology in identifying "other routes" and regrets that USRA was given the task.

E. Environmental and Energy Assessment (pp 71-76)

RSPO has problems with USRA's methodology for analyzing environmental impact and presents two examples of an approach it prefers. The Office points out that USRA neglected to analyze the impacts of mainline consolidations and other significant operational changes.

Chapter 6 - Funding and Management (pp 77-85)

This chapter presents the RSPO's plan for saving the railroads and, in fact, all the "basic transportation facilities" in the United States. The plan is for a five-year Federal grant-in-aid program based on 50-50 matching funds for railroads which would be financed with a fuel tax. Although not included in this report, the draft legislation prepared by RSPO requests $6.25 billion for rail rehabilitation, most of which would be matched by private railroads for a net investment of about $12 billion. (Research for vehicle improvement is the program for the other surface modes.) The impact of this plan on Conrail is discussed above (Chapter 3).

RSPO has the view that rehabilitation will solve the railroad problem. It recognizes that if this belief should prove to be in error, "nationalization might then be the only answer...."

RSPO also sees the government role on the ConRail Board of Directors as potentially damaging to the financial viability of ConRail. It presents a lengthy statement of arguments against federal membership and argues that taxpayer protection could be provided by ICC overview of ConRail operations and management. The full text of RSPO's analysis of the management problem is presented as Attachment B.

The chapter includes a review of the financial outlook for the rail industry and a summary of alternative funding proposals (nationalization, nationalization of the right-of-way, rail trust fund, subsidy equalization, regulatory reform, guarantees, and grants). In general, these are objective discussions (except the Office "doubts" that regulatory reform is "any solution to the near-term problem") and the Office begs off commenting on specific proposals such as S.1143 to nationalize the right-of-way and the Shapp Rail Trust Fund.

PRINCIPAL RECOMMENDATIONS

from the "Evaluation of the U.S. Railway Association's Preliminary System Plan"

Having reviewed the Preliminary System Plan and the public testimony which has been submitted, the Office makes the following principal recommendations to the Association:

THE FINAL SYSTEM PLAN

The Final System Plan should describe the physical characteristics of the new rail system clearly and unambiguously. It should include maps depicting in detail the railroad lines and other transportation properties which are to be included in the ConRail system or systems, or which are to be acquired by other carriers. It should contain a legally sufficient description of all properties to be acquired by ConRail.

The Final System Plan should be a prospectus providing full and fair disclosure of all facts which might materially affect ConRail's potential success, including the cost and timing of programs for rehabilitating properties to be acquired; ConRail's ability to attract traffic and transport it at a profit; its capital requirements and the availability of the needed capital from public and private sources; and the anticipated return on that capital.

THE STATUTORY GOALS

The Association should give full consideration to the social goals enumerated in section 206(a) of the Act which it appears to have subordinated to the single goal of system profitability.

The Association should not assume, as it appears to have done hitherto, that all unprofitable rail services are local in nature so that their continuation is the

responsibility of State and local governments or rail service users. Rather, it should recognize that some such services may be needed to further the national interest as expressed in the Act's social goals, and that the responsibility for their continuation falls upon the Association and upon ConRail.

THE REGIONAL SYSTEM

The Association should give further consideration to the creation of the "Mid-Atlantic/EL" System, built around the lines of the Lehigh Valley, the Reading, the Central Railroad of New Jersey, the Lehigh and Hudson River, and the eastern portion of the Erie Lackawanna, as a means of meeting the essential transportation requirements of the Region and of providing necessary competition for ConRail.

- The Office agrees with the Association that the Three Carrier System which it proposes would satisfy the goals of the Act and reasonably meet the needs of the Region, but we do not believe it to be the best solution.
- Failure of either the Norfolk & Western or the Chessie System to participate in the Three Carrier System would lead to the establishment of a Two Carrier System which would not provide an acceptable restructuring alternative.
- Establishment of the Mid-Atlantic/EL System to serve approximately the eastern half of the Region would retain existing competition in the Northeast without artifically creating new competition, and would preserve independent access to important East Coast markets for the principal solvent railroads in the Region.

The Association should give further consideration to the capacity of certain lines proposed for use as through freight routes to handle the projected ConRail traffic, and, in particular, lines upon which it is proposed to reroute through freight traffic now handled over the Northeast passenger corridor.

The Association should clearly spell out ConRail's responsibilities to the other carriers in the region for the maintenance of through routes and joint rates, and consideration should be given to the development and application of any necessary protective conditions.

The Association should reassess its estimates of yard capacities, which appear to the Office to be unduly optimistic.

The Association should initiate studies looking toward coordination and consolidation in terminal areas. Despite the complexity of a terminal rationalization project, and despite the fact that detailed analysis and final implementation would be ConRail's responsibility, the importance of terminal area improvements to the viability of the regional system demands that this task be undertaken without delay.

The Association should clarify its position with respect to the many proposed coordination projects listed in the Preliminary System Plan. The Final System Plan should provide for the joint use of rail facilities by more than one carrier wherever this would be feasible and cost-effective.

FINANCIAL CONSIDERATIONS

The Association should assure that the Final System Plan embodies full and fair disclosure of all the pertinent financial and operational facts and risks with such detail, accuracy, and clarity as to facilitate analysis and elicit confidence in the integrity of the pro forma financial statements.

The Final System Plan should disclose—

- The identity of the management of ConRail with sufficient detail as to the background, qualifications, and potentially conflicting interests, if any, of the directors and principal officers as will permit informed assessment by interested parties of their abilities to achieve the results projected in the pro formas.
- The values of the rail properties to be acquired by ConRail or other carriers pursuant to the Final System Plan.
- The capital structure of ConRail; the values of the securities to be issued by it; the "other benefits," as required by section 206(f) of the Act; and the values of the considerations to be exchanged by other railroads in the Region for properties or rights to be conveyed to them.
- The manner in which employee stock ownership plans may be utilized for meeting ConRail's capital requirements, as required by section 206(e)(3) of the Act.
- The proposed treatment of leased lines and the effects of such treatment on ConRail's pro forma balance sheets, income statements, and funds requirements.
- The extent, if any, to which the pro forma projections apply to a system structure other than the one actually proposed in the Final System Plan, and the degree of similarity of such other structure to the actual proposal.
- All the significant assumptions, calculations, data and estimates affecting the pro forma income statements, balance sheets, and funds requirements statements in such detail as will permit the application of customary analytical and verification techniques.
- The degree, if any, to which the reimbursement provided for in section 509 of the Act will fail to cover ConRail's employee protection costs.
- Pending or anticipated litigation, if any, which might materially affect the financial self-sufficiency of ConRail or the value of its securities.
- The amount, if any, of liability for unfunded pension benefits.
- Separately, the amounts of equipment rentals expected to be paid and to be received, by type of equipment, for each pro forma year.

LOCAL SERVICE

The Association should scrutinize with great care the results of any attempt, based upon purely statistical methods, to identify particular rail facilities as redundant, and should test any such statistical conclusions in the light of empirical evidence of local conditions.

The Association should consider lines as segments of a total system and evaluate their capabilities for contributing to overall system efficiency, rather than requiring that each line or mile of track meet a test of independent profitability.

The Association should review the underlying data relied upon by it in making light-density line decisions in light of the evidence submitted to the Office and summarized in Appendix B to this report.

The Association should review its light-density line methodology with a view toward assuring that—

- The lines and line segments to be reviewed as light-density lines are selected on a rational basis.
- Due consideration is given to the potential for industrial growth of the area served by each line subjected to the light-density analysis.
- Out-of-service lines that would meet important service needs if restored to operation or that have the potential for becoming profitable are not overlooked.
- All revenue sources for each line are properly identified.
- Costs be calculated on the assumption that operations will be conducted efficiently and not on the basis of operations utilizing obsolescent facilities.
- Return on investment not be included as a cost; or if it is to be included, that it be based on actual property values, less the cost of dismantling and disposition.
- The cost figures used in the light-density line analysis represent, wherever possible, actual costs incurred rather than estimates made by those not personally aware of local conditions or based on system-wide averages.

The Association should review its decisions resulting in the exclusion of light-density lines from the ConRail System from a broad perspective to assure that they would not result in the complete withdrawal of ConRail from a particular market area which, while it might not support all present rail services provided by the bankrupt carriers, would support at least some of those services.

The Association should consider the overall impact of the elimination of light-density lines on ConRail and the railroad industry as opposed to the impact on the particular railroad currently serving the line.

TRANSPORTATION DATA

The Association should assure that a comprehensive information system be installed in ConRail which would provide complete and accurate data upon which to base management decisions at all levels of operations.

MARKETING

The Association should continue its efforts to develop an enlightened marketing strategy, including a regional industrial development strategy, for ConRail's consideration. In doing so, it should reassess its freight revenue forecasts in the light of realistic appraisals of the outlook for the business activity of the Region and of industry served by ConRail.

INTERMODAL SERVICES

The Final System Plan should contain pro forma estimates as to the effects on ConRail's net income of the greatly expanded TOFC/COFC services proposed in the Preliminary System Plan.

The Association should consider the extent to which cooperation with motor carriers could achieve coordinated coordination efficiencies and service advantages, thus maximizing ConRail's earnings potential.

PERSONNEL PLANNING AND POLICY

The Association should recognize that the Final System Plan's, policies and programs affecting personnel will be of major importance, and they should be reviewed by experienced, understanding personnel experts before their release. The Association should not commit ConRail's management to rigid negotiating positions in advance of collective bargaining.

ConRail management should initiate meaningful discussions as soon as possible with contract and non-contract employees or their representatives.

The Final System Plan should make full and fair disclosure as to its personnel plans and policies, their effects on ConRail's finances, and their effects on the employees.

PASSENGER SERVICES

The Association should include in the Final System Plan a clear designation of the entity to own the Northeast Corridor; the price, conditions and timing of the transfer of ownership; and the entity to be responsible for Corridor operations and on what terms. It should give careful consideration to the potential disadvantages of designating Amtrak or some other entity without demonstrated railroad operating capabilities as the operator of the Corridor Services.

The Association should consider the advisability of doing in-depth studies of at least some of the passenger routes outside the Northeast Corridor which it has proposed for upgrading.

The Association should detail in the Final System Plan those lines over which are performed commuter services operated under contract to regional transportation authorities, the duration of those contracts, any unique considerations, and the recommended status of these lines in the proposed operating plan.

LEGISLATIVE RECOMMENDATIONS

The Final System Plan should contain the Association's legislative recommendations addressed to—

- Such changes as the Association thinks desirable in the provisions of section 301(d) of the Act affecting the composition of ConRail's board of directors.
- The means to be adopted for financing ConRail.
- Such changes as the Association considers necessary to limit or eliminate Con-

Rail's exposure to a deficiency judgment under section 302(c)(2)(C) of the Act.

- The action urged upon Congress, at page 134 of the Plan, to provide a means of encouraging the prompt resolution of interterritorial divisions disputes.

The Congress should move promptly to amend the Act to mandate another approach to the light-density line problem. The Office recommends that all lines not recommended for inclusion in the restructured rail system be kept in service for two years by ConRail, which would be reimbursed for any losses from the subsidy funds available under the Act. During the two-year period, accurate data would be assembled and further local-service line analysis performed. At the close of that period, the individual line retention decisions would be made, with ConRail acquiring the properties to be retained as provided in the Act. The two-year Federal 70 percent matching grant subsidy program would go into effect then for lines not acquired by ConRail.

The Congress should consider establishment of a broad-based Federal grant-in-aid program to provide funding to rehabilitate the Nation's railroad properties. The Office suggests a program by which matching fund grants would be made directly to rail carriers or to State transportation authorities for this purpose. It suggests, also, that this program be financed by the assessment of a tax on the fuel used by certain surface transportation vehicles and vessels.

Source: "Evaluation of the U.S. Railway Association's Preliminary System Plan" - April 27, 1975

Management

The Associations' expressed belief that management with the ability to distinguish essential goals and achieve them, and to motivate employees, will be the key ingredient of the Final System Plan's credibility has been endorsed elsewhere in this report and in the public comments received during the hearings.

The Plan's delicately worded reference to the desire to "potentially reduce government managerial involvement" suggests, although it avoids so stating, that the Association may be concerned with the proviso in section 301(d) of the Act. This requires that, so long as 50 percent or more of ConRail's debt is guaranteed by the United States, the majority of the Corporation's board of directors shall be government nominees, and three of the members shall be the Secretary of Transportation and the Chairman and President of the Association. Based on the Plan's over-optimistic pro formas, such a situation would obtain for years, primarily because of the massive rehabilitation costs. Were it not for these rehabilitation costs, the threat of government managerial involvement would be a lesser concern and, as discussed above, there are other ways than ConFac to fund the rehabilitation.

If the section 301(d) proviso is a concern, as it well might be, the Office thinks it preferable that this be openly disclosed, discussed and resolved without resort to subterfuge or obfuscation. Below are some considerations with respect to which the Association might wish to entertain responses from the public and its elected representatives. In listing these considerations, the Office does not necessarily express a view with respect to any of them at this time.

(1) ConRail has incorporators, but no management. It seems imperative that a qualified and respected top management be obtained promptly. The tasks confronting management would be imposing, but the challenge and opportunity inspiring if the Final System Plan is competently constructed. Expressed in blunt terms, a politically-dominated board might not attract management capable of assuming responsibility for achieving business goals.

(2) Unless the Act is clarified, the Amtrak precedent seems likely not only to create an obstacle to ConRail private market financing, but also possibly to augment

the scope of any Tucker Act award. Amtrak, under the 1970 Rail Passenger Act, was to be a "for-profit" corporation. It has not been, and apparently has no intention of becoming one. Railroad companies which turned passenger operations over to it and were required to subscribe to its capital stock have, at the demand of their auditors, written the stock down a zero value immediately upon receipt. Burlington Northern, for example, has written off Amtrak stock for which it paid $33.4 million, and Penn Central has reserved $52.4 million in anticipation of a similar loss. If ConRail has a politically-dominated Board, this precedent is likely to cause the recipients of its stock or other securities to accord them similar value, or be required by their auditors or regulators to do so.

There is a difference between the two situations. Railroads subscribing to Amtrak shares did so voluntarily, to escape their passenger losses. The holders of ConRail stock will receive it involuntarily through a reorganization "cram-down" process. The creditors of the bankrupts may be expected to make the most of this point in the Court of Claims. If by the time of trial ConRail has a record of substantial earnings, the value of the comparison of course would be diminished.

(3) The Supreme Court, at page 46 of its decision upholding the constitutionality of the Act, dealt with the creditors' argued that ConRail, by reason of its Government-controlled Board, will be a federal instrumentality. "The responsibilities of the federal directors are not different from those of other directors—to operate Conrail at a profit for the benefit of the shareholders." If the shareholders cannot control ConRail's Board, they will have no opportunity to direct its financial or business policies and no effective voice in its management. The Court appears to be inviting ConRail's shareholders, should they come to feel that the Corporation is operated for political, rather than profit-maximizing purposes, to file derivative stockholders' suits against the government-nominated directors. Whether the government could properly reimburse directors for losses incurred through such suits is unclear. But investors probably will not assign high investment quality to securities of a corporation the management of which must be sued to make it perform in a business-like manner, unless these securities are guaranteed.

(4) ConRail's stock, being essentially non-voting, may not be eligible for listing on any major exchange, and thus may have limited marketability.

(5) The government's representatives on the Board may, in fact, entertain only profit-making thoughts, but unless the Corporation is outstandingly profitable, who will believe it? The judgment of any corporation director is fallible, and sometimes the best business decisions must take account of political and social considerations. But so long as the Board is controlled by political nominees, investors will believe it to be politically motivated.

(6) The selection process for Secretaries of Transportation or the officers of the Association does not necessarily insure that they will have experience or expertise in finance or the operation of a large, complex, and highly competitive transportation enterprise.

(7) Lastly, the specification of the named government officers paves the way for built-in conflicts of interest. The Secretary of Transportation is responsible for regulating ConRail's safety of operations and that of its competitors. He awards funds for highway construction and other transportation purposes that would benefit ConRail's competitors. The officers of the Association are ConRail's bankers. True, bankers serve on the boards of private corporations, but the government usually has frowned on the practice. Section 10 of the Clayton Act is specifically intended to prohibit it. Certainly the government's investment should be protected, but control of the Board is not necessary for this purpose. Two or three directors of outstanding business capabilities could assure that the government's interest is represented, and the Corporation would, in any event, be required to report regularly to the Interstate Commerce Commission and other government bodies.

If the Association does not believe the Congressional intent that ConRail be a profitable corporation to be a serious one, the foregoing considerations are immaterial to the Final System Plan. If, however, the Association does believe that ConRail should be managed with profit-making intent, and if it considers any of these considerations to impose material obstacles, it should bare its concern to the public and to Congress, with recommendations for action.

Precedent can be cited for changes in section 301(d) of the Act. Although commercial lenders have at times controlled the managements of their borrowers, this is usually a course adopted with reluctance, the results of which have not always been fortunate.

The Pacific Railroad Act of 1864 (13 Stat. 356) made available substantial government loans and grants to the Central Pacific (now Southern Pacific); the Union Pacific; and Leavenworth, Pawnee & Western (now part of the Union Pacific.) The government's junior lien bonds were 50 percent of the authorized debt of these companies, but it nominated only 5 of Union Pacific's 20 directors, and none for the other companies. The Northern Pacific, also granted major government assistance in 1864 and subsequently, had no government nominees on its board.

The Reconstruction Finance Corporation and the Public Works Administration did not insist on controlling the boards of directors of the railroads to which they made loans; although it did at times impose limitations on the compensation of the debtor railroads' officers and attorneys, primarily as an inducement to prompt repayment of the debt. It also sometimes as-

sisted railroads (the Baltimore & Ohio for example) in obtaining high-caliber management for reasonable salaries. It is generally thought that the RFC operated businesslike way and amply protected the government's interests.

To sum up, the Office believes that the problems of providing funding and management for ConRail are inter-related and that any solutions to them should be considered in relation to the funding, rehabilitation and management problems of railroads outside the Region. It believes that private ownership and management of the Nation's railroads can be preserved, if that is the public's wish, but not without some public assistance. It urges that all the funding approaches discussed above be considered objectively by the Association in formulating the Final System Plan.

DEPARTMENT OF TRANSPORTATION | NEWS

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20590

STATEMENT BY U.S. SECRETARY OF TRANSPORTATION WILLIAM T. COLEMAN, JR., ON THE RAILROAD REVITALIZATION ACT AT THE WHITE HOUSE NEWS CONFERENCE, WASHINGTON, D.C., MONDAY, MAY 19, 1975

President Ford is sending the Railroad Revitalization Act to Congress today. This legislation is designed to meet immediate and desperate needs of the Nation's railroads.

Directly or indirectly, every American is served by low cost, fuel efficient rail transportation. The railroads are a pivot point for our entire economy. And -- the railroads are in deep trouble. A number are bankrupt. Others are on the brink of financial collapse. The terrible deterioration of track and rail cars prevents efficient operation. The Railroad Revitalization Act will begin a long overdue effort to restore and revitalize this essential industry by eliminating excessive regulatory restrictions and by providing critically needed financial assistance.

A major cause of the deterioration of the railroad industry is an overly restrictive Federal regulatory system.

The regulatory process has retarded technical innovation, impeded economic growth and hampered the improvement of services.

The Railroad Revitalization Act will remove unnecessary and excessive regulatory restraints. The main thrust of the reforms is to place greater reliance on competitive forces, while preserving protection for shippers, carriers and labor.

The ratemaking provisions of the Act will cause a reduction of rates that are too high and unfair to shippers, and will cause an increase of rates that are too low and not compensatory to carriers.

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Railroads will be able to adjust their rates within a "no suspend zone," without fear of suspensions. The ICC would also be prohibited from holding up a rate of a carrier for the purpose of protecting a carrier of a different mode of transportation.

Among the other regulatory reforms proposed are an acceleration of the ICC's review process in cases of new services requiring a capital investment of $1 million or more dollars, restrictions on the anticompetitive activities of rate bureaus, an improvement in intrastate ratemaking procedures, and the prohibition of discriminatory taxation of railroad properties.

Regulatory reform is one part of the long term restoration process. To meet the immediate need for essential improvements in roadbed, track, terminals and other operating facilities, the Act provides $2 billion in loan guarantee authority.

Loans guaranteed under the provisions of the Act may be financed through the Federal Financing Bank, thus enabling railroads to borrow at rates more advantageous than private financial markets. Additionally, the Secretary of Transportation would be authorized to defer principal and interest payments, thus making feasible major rail undertakings that hold little prospect of short-term payoff, but which would improve earnings over the long-term.

Duplicative and redundant facilities are another major cause of the poor financial health of railroads. If we are to prevent the westward spread of the chaos now existing in the Northeast, a restructuring and streamlining of the National rail system must be set in motion. The ponderous and laborious deliberations of the ICC are not adequate to meet this need.

As a condition of receiving loan guarantees under the Act, we propose that a railroad may be required to enter into an agreement to restructure its facilities. Such restructuring could be in the form of merger, consolidation, sale or acquisition of assets or joint operation.

The procedures proposed by the Act would enable a coordinated DOT-ICC decision on such agreements within nine months, in stark contrast to the ICC's 12-year deliberation in the case of the Rock Island.

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FACT SHEET

THE RAILROAD REVITALIZATION ACT

The President is transmitting to Congress today the Railroad Revitalization Act which will eliminate excessive and antiquated regulatory restrictions, increase competition in the railroad industry, improve customer services, strengthen the ability of the railroads to adjust to changing economic conditions, and provide financial assistance in the form of loan guarantees to help the railroads make needed improvements in their facilities.

This is the first piece of the President's overall program to achieve fundamental reform of transportation regulation. Similar reform measures for truck and airline regulation will follow shortly. Taken together, these proposals, representing the most comprehensive approach to reform in the long history of economic regulation of the transportation industry, will substantially benefit consumers annually and conserve scarce energy resources.

BACKGROUND

This legislation builds on the Transportation Improvement Act which was introduced in the 93rd Congress. Congress also considered the Surface Transportation Act. A modified version of that bill, incorporating many features of the TIA, was passed by the House, but final action was not taken by the Senate. This legislation proposes a number of fundamental changes designed to significantly reduce government intervention in the day-to-day business of the railroads and their customers.

PRINCIPAL OBJECTIVES OF THE LEGISLATION

1. To provide for more efficient, more competitive, and thus less costly rail transportation. This Act will substantially increase reliance on normal competitive market forces to set shipping rates. It is specifically designed to cause a reduction in rates which are too high and are inequitable to shippers and consumers. For the first time, railroads will be able within reasonable limits to adjust rates without ICC interference. In addition, the regulatory decision making process will be simplified, thereby eliminating the high costs involved in lengthy litigation.

2. To increase intermodal competition and encourage a better utilization of resources by assuring that goods are transported by the most efficient means of transportation. The present regulatory process enables the ICC to hold railroad rates at unreasonably high levels in order to protect other modes of transportation from the effects of competition. As a result, traffic which can most economically be moved by rail is often diverted by the rate structure to other forms of transportation. This results in higher shipping costs and consumer prices. By providing for greater pricing flexibility, shippers will be able to take greater advantage of low cost, energy efficient rail transportation. Substantial fuel savings will also result from these reforms.

3. To eliminate certain antitrust immunities which permit carriers to set and hold rates at unreasonably high levels. At present rate bureaus or carrier associations sanctioned by the ICC are permitted to act collectively to establish rates and charges for transportation services. Their actions are now immune from Federal antitrust laws to which nearly every other business in the country is subject. The proposed legislation seeks to prohibit rate bureaus from engaging in certain specified rate making activities which serve to stifle competition and discourage new service innovation. For example, it will prohibit rate bureaus from discussing and agreeing on rates involving only one railroad. The legislation will make anticompetitive rate bureau activities subject to normal antitrust prosecution, while preserving their legitimate service functions.

4. To assure that regulation provides adequate protection to consumer interests. The Administration does not seek to eliminate all regulation. For example, the protection of shippers and carriers from predatory pricing practices is a proper function of government. This legislation carefully preserves regulation which acts to serve the public interest. The user of rail transportation services is assured an appropriate right of redress for what he considers to be an unfair or illegal rate and the legitimate interests of competing carriers are protected as well.

5. To provide needed financial assistance to the railroad industry. An efficient, financially sound rail system is a great national asset. The legislation would provide up to $2 billion in Federal loan guarantee authority to finance improvements in rights of way, terminals, rail plant facilities, and rolling stock. Naturally,

these loans will be subject to specific conditions in order to assure that the capital improvements being financed will contribute to the overall efficiency of railroad operations.

6. To encourage speedy and rational restructuring of the railroads which will improve their economic health. At present, our railroads are in serious need of restructuring. Basically, the problem is one of excess capacity in some areas, including, for example, excessive duplication of parallel mainlines, and inadequate capacity in other areas. This contributes significantly to the uneconomic and inefficient operation of the railroads. In the past, efforts to restructure the system through merger or various cooperative agreements between railroads have been thwarted by cumbersome regulatory procedures.

   This legislation establishes a new procedure which will enable the Secretary of Transportation, as a condition for granting financial assistance, to require applicants to undertake fundamental restructuring actions. This provision will permit the Secretary and the ICC to expedite many merger proceedings and facilitate some of the restructuring necessary to preserve a viable private sector rail industry.

SECTION-BY-SECTION ANALYSIS

1. Railroad Ratemaking and Abandonment. This section more clearly defines the principles of ICC ratemaking powers in terms of particular actions that may or may not be taken. For example, the ICC may not find rates too low if they cover a carrier's costs; the ICC is prohibited from protecting one carrier against competition from a carrier of another mode; the ICC is instructed to consider the effect of rates on transportation efficiency in exercising its decision making authority, etc.

   The RRA also establishes new procedures to ensure adequate prior notice of proposed rail abandonment actions.

2. Anticompetitive Practices of Rate Bureaus. This portion of the bill provides for the removal of antitrust immunities from certain anticompetitive rate bureau practices. Such action will prohibit collusion on rates for single-line freight movements; limit participation in rate actions to those carriers actually involved, and prohibit joint actions to protect or request suspension of rates.

In addition, the bill requires rate bureaus to maintain voting records on each of their members which are open to public inspection, and requires bureaus to act within 120 days on any rule, rate, or charge appearing on its docket.

3. Intrastate Railroad Rate Proceedings. The Act gives the Interstate Commerce Commission authority to determine an intrastate rate which is the counterpart of an already approved interstate rate in the event that the appropriate State agency has failed to take final action on a rate change within 120 days from the time it was filed by a carrier.

4. Suspension of Railroad Rates. One of the basic purposes of the RRA is to provide increased pricing flexibility for the railroads. Section 5 of the Act establishes a phased approach to providing the necessary flexibility and specifically limits ICC suspension powers. It permits railroads to adjust rates up or down without fear of ICC suspension so long as the change is within certain percentage limits: 7 percent in the first year; an additional 12 percent in the second year; and another 15 percent in the third year. Such an approach will result in the creation of a control-free "zone of reasonableness" of approximately 40 percent during a three-year phase-in period. Following the third year, the ICC may not suspend a rate decrease for being too low, so long as a carrier's costs are covered. Similarly, rate increases of 15 percent or less will not be subject to ICC suspension. In cases where the ICC retains the power to suspend rates, they will be required to make findings such as a court does when it issues a temporary restraining order -- that the action will result in immediate and irreparable damages.

   In addition, the bill sets a 7-10 month time period for completion of hearing procedures in rate cases. In cases involving large capital expenditure ($1,000,000 or more), the ICC will be required to act within 180 days after the filing of the notice of a proposed tariff. To encourage investment and provide a period of stability, such rates may not be suspended or set aside for a period of five years.

5. Railroad Revenue Levels. The Act provides that the ICC shall prescribe uniform criteria for determining the financial condition of a railroad, including such things as estimating the rate of return on capital and adequacy of cash flow.

6. Discriminatory Taxation. Section 7 of the RRA adds a new provision to the Interstate Commerce Act prohibiting the levying of discriminatory State or local property taxes on common carriers, thus eliminating excess taxes on railroads of approximately $55 million annually.

7. Uniform Cost and Revenue Accounting. This section requires the ICC and the Department of Transportation to study and recommend uniform cost accounting and revenue accounting methods for rail carriers. Present accounting systems are outmoded and inadequate to resolve the complex cost accounting problems of modern transportation firms.

8. Financial Assistance. The Act authorizes the Secretary of Transportation to issue loan guarantees of up to $2 billion for the purpose of financing improvements in rights of way, terminals, rolling stock, and other operational facilities. These loan guarantees will be based on (a) the contribution the proposed improvement will make to the betterment of our nation's rail system, (b) the ability of the recipient to repay the loan, and (c) the recipient's ongoing program to upgrade his physical plant. As a condition for granting the assistance, the Secretary may require the applicants to undertake specific restructuring actions. This section establishes a new procedure by which the Secretary, the Attorney General, and the ICC can expedite approval of restructuring activities and assure a proper balance between competitive interests and transportation needs.

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RAILROAD REVITALIZATION ACT

ANALYSIS OF THE NEED FOR THE BILL

In 1974, the Administration proposed the Transportation Improvement Act of 1974 ("TIA"), which was designed to deal with a number of problems affecting the rail industry. Extensive hearings were held on the TIA and on alternative rail improvement legislation, the Surface Transportation Act ("STA"). The House passed a modified version of the STA which incorporated many of the concepts of the TIA, but the bill did not reach the floor of the Senate. The Railroad Revitalization Act ("RRA") builds upon the experience of the TIA and STA. Like the TIA and STA, the basic thrust of the RRA is three-fold:

1. Improve the regulations under which railroads operate and promote economic efficiency and competition;

2. Provide necessary financial assistance to rationalize and modernize rail facilities; and

3. Encourage restructuring of the nation's rail system to improve its long term viability.

There follows an outline of the major rail industry problems which the bill addresses, along with an analysis of the effect of the bill in redressing these problems.

Improvements in Ratemaking

The current system of rate regulation severely limits an individual railroad's freedom to establish rates and innovative new services. As a consequence, it has created serious rigidity and distortions in railroad service and rate structures. This rigidity has hindered the introduction of new services and prevented railroads from responding effectively to the needs of the changing transportation market. It has also interfered with the establishment of cost-related rates and has prevented railroads from offering shippers the lower rates which would attract them

from relatively less efficient modes. Greater flexibility in ratemaking is essential to allow railroads to attract traffic by offering shippers the opportunity to share in the financial advantages offered by lower rail costs of long-haul main line operations.

Efficient allocation of transportation resources requires that low-cost carriers have wide latitude to set rates to reflect their efficiencies as long as those rates do not fall below variable costs. Available evidence indicates that some railroad rates are far above the fully allocated costs of providing service while others do not even cover their variable costs. This results in some shippers subsidizing other shippers and in misallocation of traffic among competitor modes. Railroads should be able to attract additional traffic by reducing rates on overpriced rail service and removing the subsidy from that traffic which is not paying its way. The time, expense, delay and uncertainty associated with obtaining rate bureau approval and then Interstate Commerce Commission approval to adjust rates have stifled the adjustment process. This has resulted in many railroad rates being held at levels far above the economic cost of providing the service. As a result, it appears that traffic which could be moved most economically by a well-maintained rail system is moving by other modes. This results in higher shipping costs and higher prices to the ultimate consumers.

The basic thrust of the bill is to place greater reliance on competitive forces in ratemaking while preserving the protection for shippers and carriers of appropriate regulatory supervision. Giving greater scope to individual carrier initiative in rate setting will result in improved service, a more economical distribution of traffic among the modes, and a lower and more equitable overall freight bill.

To provide for greater rate flexibility and to expedite the hearing process, the bill would set a definite time limit for completing rate-increase hearings at the ICC, establish a no-suspend zone in which carriers could introduce nondiscriminatory rate changes without fear of Commission suspension, and provide that rates which are compensatory could not be attacked as being too low.

Specifically, the bill would require the Commission to complete its rate hearings and render a final judgment within seven months of the time the rate was scheduled to go into effect. This time limit could be extended an additional three months if the Commission made a written report to Congress explaining the need for the delay. At present, there is no time limit for Commission hearings, and this provision should greatly expedite Commission proceedings.

The bill would also create a no-suspend zone in which increases or decreases could not be suspended pending investigation for being too high or too low, although they still could be suspended for violating sections 2, 3, or 4 of the Interstate Commerce Act, which are the basic sections prohibiting discrimination and prejudice to either an individual shipper or community.

The no-suspend zone would be phased in over a three-year period (up to 7 percent rate increases or decreases in the first year; 12 percent in the second year; 15 percent in the third year; and thereafter 15 percent for increases, with no limit for decreases). This no-suspend zone is a refinement of the approach proposed in the TIA which did not include a provision for phasing. It is similar to, but of longer duration than, the provision in the House-passed STA. The no-suspend zone will allow carriers to respond rapidly to market conditions and will improve the rate decision making process. Today, rate cases are often decided in a world of hypotheticals and "maybe's". Where rate proposals are suspended by the ICC, the hearing on the lawfulness of the rate is without the benefit of real world experience regarding the effect of the rate. The no-suspend provision will change this process, and allow rates within the zone to go into effect prior to hearing, thus providing concrete facts for the decision maker. We note that the Commission in its latest rate case, Ex Parte 313, has agreed not to suspend any of the proposed increase at least until protests can be received and considered. The bill will also provide that the ICC must make findings similar to those required in temporary restraining orders before allowing a suspension.

The present regulatory process has also resulted in the rates of one mode being held high by the ICC to protect another mode, causing a waste of resources, adversely affecting the financial condition of the more efficient mode, and increasing the total cost

to shippers and ultimately to consumers. Section 15(a) of the Interstate Commerce Act was amended by the Congress in 1958 in order to allow carriers greater ratemaking freedom to meet the competition of carriers of other modes. While the amendment was a step in the right direction, the full benefits of greater intermodal competition have not been realized because the amendment has been interpreted by the ICC to allow them to hold the rates of one mode above the rates of another mode to protect that mode. The bill meets this problem by prohibiting the ICC from holding the rates of a carrier of one mode up to a particular level for the purpose of protecting the traffic of a carrier of another mode. The bill also provides that a railroad rate which equals or exceeds variable cost cannot be found to be unjust or unreasonable on the basis that it is too low. This provision will lead to greater flexibility in transportation ratemaking. The net result will be a more efficient transportation system.

Time, expense, delay and uncertainty associated with the regulatory process have also discourages experimentation and impeded the introduction of service innovations. The bill addresses the problem by providing that, where a tariff proposed by a railroad would require a total capital investment of $1 million or more by the carrier or a shipper or receiver, or other interested party, the ICC must determine, within 180 days from the date the carrier files a notice of intention to publish the tariff, whether the proposed tariff would be lawful. This procedure, similar to the one approved by the House in the STA, would also protect those rates from being attacked for a reasonable period of time, thus giving a carrier the certainty necessary to undertake major investments.

Contrary to economic sense, some rates are below costs. It is estimated that about 10 percent of all rail revenue is derived from traffic that does not cover the variable cost of the service. The bill confronts this problem in two ways. First, it would prohibit the Commission upon complaint from approving rate decreases which lower the rate to a noncompensatory level. Second, with respect to existing noncompensatory rates, the bill would prohibit the Commission from disapproving any increase which brings a noncompensatory rate to a compensatory level. These provisions will provide a significant source of additional

revenue to the railroads and ease the burden on those shippers who have been making up the difference. The amounts which must be made up on other traffic is in the hundreds of millions of dollars annually. Correcting this practice will reduce the misallocation and waste of resources both within transportation and in the economy at large.

Restriction of Anticompetitive Practices of Rate Bureaus

To assure that the rate flexibility proposed above is used properly, the RRA proposes significant changes to the provisions in the Interstate Commerce Act pertaining to rate bureaus. Under the present Section 5(a) of the Interstate Commerce Act, the carriers subject to the Commission's jurisdiction are permitted to act collectively and collusively in establishing rates and charges for transportation services. Such concerted action, when taken pursuant to an agreement approved by the Interstate Commerce Commission is immune from the antitrust laws which apply to the mainstream of American business. Rate bureaus or carrier associations have been established pursuant to carrier agreements approved by the ICC. These rate bureaus are the vehicles through which carriers make decisions regarding the rates which the member lines shall charge.

Although rate bureaus provide a number of valuable services to their members and to the shipping public, they also dampen competitive forces in the ratemaking process and discourage pricing flexibility and service innovation. As a consequence, they have interfered with the establishment of rates based on the costs of the most efficient carrier and have provided a mechanism through which carriers seek to and do set and hold rates above a competitive level.

The associations provide a number of administrative services to carrier members, such as arranging for the interchange and facilitation of traffic moving over the lines of two or more carriers, the publication of rates, and the collection of statistics on traffic movements, rates charged, and related costs. The bill would not affect these administrative types of rate bureau activities. Rather, it is addressed only to those activities of the rate bureaus which interfere with efficient allocation of resources.

Some time ago, the Interstate Commerce Commission instituted a general investigation into the activities of rate bureaus in Ex Parte 297, Rate Bureau Investigation. While this proceeding will consider a number of important regulatory issues in connection with the activities of rate bureaus, it is not progressing rapidly. And, of course, the outcome of the proceeding is uncertain at this time. The bill addresses those aspects of rate bureau operations that clearly are in need of change. Therefore, while the Department commends the ICC for instituting this investigation, the proposed legislative action is needed and offers the best prospect for reducing the anticompetitive influence rate bureaus have on ratemaking.

The Department's proposal is designed to improve the ability of carriers to initiate rate changes and respond to competitive forces while enabling the rate bureaus to continue providing constructive administrative services for their members and the shipping public. The bill prohibits railroad rate bureaus from voting on single line movements and limits consideration of joint line rates to those railroads which hold themselves out to participate in the joint movement. The bill also prohibits rail rate bureaus from taking any action to suspend or protest rates. Thus, on single line rates individual railroads will have complete freedom to propose rates based on the cost of the most direct routing, while on joint rates the influence of carriers not participating in the joint movement will be reduced.

The bill also requires all rate bureaus to dispose of proposed rate changes within 120 days from the time they are filed. It requires all rate bureaus to maintain and make available for public inspection the records of the votes of members. These provisions are designed to bring about speedier rate bureau treatment of proposed rate changes and to encourage greater initiative by individual carriers in making rate changes.

While some antitrust immunity is retained for joint rates, the proposed legislative change with respect to single line rate agreements would exert a competitive influence upon joint rates because carrier territories overlap and single line rates are often competitive with joint line rates.

In connection with the rate bureau provisions of the bill, several matters should be made clear. Firstly, rather than indicating all of the many rate bureau activities which might be permitted under a Commission-approved agreement, the thrust of these changes is to indicate those specific rate bureau activities that

cannot be approved by the Commission and which will no longer be immunized from the operation of the antitrust laws. The Commission retains its present authority to review and approve all rate bureau agreements and to impose such additional limitations and conditions on the activities of rate bureaus as it believes are reasonable and necessary.

Secondly, a single line carrier will often be in competition with two or more carriers offering a joint rate and through route. As long as no concerted action is involved, nothing in this proposal would prohibit a single line carrier from individually establishing a rate competitive with a joint rate established through the rate bureau mechanism.

Thirdly, the bill is not intended to preclude discussions or agreements relating to across-the-board percentage changes in freight rates during the first three years after enactment; after that time, they would not be allowed except with respect to general rate increases based on increases in fuel and labor costs.

Finally, the feature of this proposal that prohibits the Commission from approving rate bureau agreements that allow the rate bureau to protest or otherwise seek the suspension of an individual carrier's rate does not preclude one or more carriers from exercising their right of petition under other provisions of the Interstate Commerce Act and it is not meant to repeal the decision of the Supreme Court in Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961). To the extent the antitrust laws are applicable in this area, however, this feature of the bill will permit their operation.

Railroad Abandonment Procedures

Unlike the TIA, the RRA does not propose to change the substantive standard for abandonment. The RRA changes relate primarily to procedure for initiating abandonments. The provisions of the bill dealing with abandonment provide a mechanism for providing adequate prior notice to interested parties of abandonments being considered by the railroads. This assures a more consistent and reasoned evaluation of proposed abandonments by all concerned parties, and allows local communities adequate time to plan and evaluate all alternatives. The section also provides a mechanism through which States and localities can assure continued rail service on lines that are losing money where they are willing to make up the losses.

Intrastate Ratemaking

A significant loss of revenue to the railroad industry has resulted from the failure of State regulatory agencies to act more promptly to adjust intrastate rates in accordance with ICC-approved changes in the level of interstate rates. The bill is designed to correct this problem by transferring to the ICC, exclusive jurisdiction over intrastate rates which are the counterparts to already approved interstate rates whenever State regulatory agencies have not adjusted appropriate intrastate rates promptly.

Intrastate traffic accounts for about 12 percent of the total traffic carried by the railroad industry. The revenue loss to the railroad industry because of State failure to adjust intrastate rates to the level of interstate rates approved in a series of ICC General Increase Proceedings (Ex Parte Nos. 256, 259, 262, 265, 267, 291, 305, and 310) was well over $100 million on a cumulative basis.

By depriving railroads of badly needed revenues, these time lags further weaken the financial condition of the railroad industry. In light of the serious financial difficulties facing the railroad industry today, it is imperative that intrastate ratesbbe adjusted promptly in accordance with changes in the level of interstate rates. In addition, the general public is adversely affected by this regulatory lag because without these needed revenues, the railroads' ability to provide and improve service to both intrastate and interstate shippers is impaired.

Discriminatory State and Local Taxation of Interstate Carriers

Discriminatory taxation of interstate carriers by State and local governments is widespread. As a result of State discriminatory taxation of railroad property., the railroad industry pays approximately $55 million annually in additional taxes. Such discriminatory taxation places an unjust burden upon these carriers and contributes to their financial problems by taxing them at a higher rate than similar property of other businesses in the same taxing jurisdiction. The bill would prohibit discrimination in assessing the property of interstate carriers and in establishing tax rates for such property.

The purpose of the provision is simply to remove an inequitable burden from interstate carriers. Of course, any saving to the railroad and other interstate carriers from elimination of discriminatory taxation will remove a source of revenue from State and local governments. Removing this source of revenue abruptly could have a serious impact upon State and local budgetary planning and result in a substantial hardship. Therefore, the bill provides a three-year moratorium before compliance with its substantive provisions will be required. This period should provide State and local governments ample time to make appropriate plans with respect to the potential revenue losses and temper any adverse financial effects the provision might otherwise have.

Uniform Cost Accounting

The present railroad cost accounting and revenue accounting system employed by the ICC is outmoded and inadequate. The Commission's cost system relies on broad averages rather than specific experience of individual carriers. Moreover, the accounting system from which the cost data are derived is based upon outmoded classifications and specifications that no longer relate to the carrier's actual financial transactions. In addition, the accounting procedures utilized are not adequate to resolve the complex cost accounting problems which characterize modern transportation firms.

For more than a decade the ICC has had pending several proceedings dealing with the issue of developing an improved uniform cost accounting system. Docket 34013, Rules to Govern the Assembling and Presenting of Cost Evidence, and Docket 34013 (Sub-No. 1), Cost Standards in Intermodal Rate Proceedings. The proceeding in Docket 34013 was instituted by an order of the Commission dated April 16, 1962, and the Commission's decision was issued in 1970 (337 ICC 298). In February 1971, the Commission issued a new order reopening the case. In the sub-proceeding, which was initiated in early 1969, the Administrative Law Judge issued an initial decision on May 7, 1973.

The development of improved cost and revenue accounting procedures is absolutely essential to improved regulation of transportation. The bill would give priority and direction to the ICC's efforts and would require the ICC jointly with the Secretary of Transportation to study and recommend uniform cost accounting and revenue accounting methods for rail carriers, and to issue regulations prescribing new uniform cost and revenue accounting methods within

two years from the date of enactment of the bill.

Financial Assistance through Loan Guarantees

An efficient, financially sound rail system is a great national asset. The railroad system in the United States is experiencing severe financial difficulties. Modernization of both the regulatory system and physical plant is essential to the long term viability of the nation's railroads.

The ratemaking and related regulatory improvements proposed in the Department's bill are a vital first step. There remains the task of rationalizing and upgrading the facilities and equipment necessary to provide efficient rail transportation service.

Substantial parts of the rail plant in the United States are in a deteriorating state and the general deterioration of plant and service which is now prevalent in the East and Midwest could spread to other portions of the country.

Because of the industry's low rate of return, railroads are generally unable to generate adequate internal capital to make needed capital improvements. The investment community has been reluctant to provide further external capital because of the limited security that is afforded due to the heavy level of existing liens on rail properties. Marginal railroads can obtain financing for rolling stock but only at high interest rates. The bill would provide up to $2 billion in Federal loan guarantee authority to finance improvements in rail plant facilities, track, terminals, and rolling stock. Loans guaranteed by the Secretary could be financed through the Federal Financing Bank at interest rates below the rates available in the private market. Also, the provision is written in broad terms to allow financing with deferral of interest and principal payments. The conditions precedent to the guarantee would assure that the capital improvement would make a significant contribution

to the overall efficiency of rail operations. Thus, the loan guarantee provisions of the bill are designed to encourage needed long-term restructuring of the existing rail system.

The bill authorizes the Secretary to guarantee railroad loans for plant improvements based on the following criteria:

1. The contribution which the improvement will make to the establishment of a rational, efficient, and economical national railroad transportation system;

2. The ability of the railroad requesting the loan guarantee to repay the loan;

3. The railroads' ongoing programs to upgrade plant facilities.

In connection with loan guarantees for rolling stock, the Secretary is required to consider the present and future need for rolling stock and the protection of the United States afforded by the marketable nature of such stock in the event of default. It further requires him to consider the effect of realizable improvements in freight car utilization.

For any loan guarantee, the bill requires the Secretary to consider among other things the expected return on investment of the proposed improvement, and the potential for intermodal connections and substitutions. These criteria are designed to help achieve through the loan guarantee program the needed modernization of the existing rail system.

The bill would also authorize the Secretary to condition the granting of loan guarantees on an agreement among applicants or other railroads to restructure their facilities. Such restructuring could include merger, consolidation, sale or acquisition of assets, or joint use of facilities. Such agreements would be voluntary and the Secretary could not require a railroad to enter into such an agreement except as a condition for loan guarantee. The essential purpose of this provision is to improve the efficiency of the nation's railroads by eliminating duplicative and excessive facilities.

The Interstate Commerce Commission, in its interpretation of section 5 of the Interstate Commerce Act, has hindered this needed restructuring by failing to reach a decision upon proposed agreements within a reasonable time and by dissipating the benefits of proposed agreements by imposing third-party conditions to such agreements. This bill will remedy these two defects by providing a new hearing procedure and new definition of "public interest" where restructuring accompanies financial assistance. Essentially, the bill calls for a two-part procedure. Agreements will first be considered by the Secretary in a public procedure similar to that used in rulemaking. Notice of the agreement will be given to the public, and comments may be made in writing or in an informal oral hearing. The Secretary may then initially approve the agreement which contains the restructuring terms if it is in the public interest and certify the agreement to the ICC. The ICC will then have 6 months to decide whether the agreement is in the public interest. The "public interest" is defined in the bill to mean that (1) the efficiency gains of the transaction substantially outweigh any adverse effects on competition, and (2) there are no substantially less anticompetitive alternatives to the transaction. Unless the ICC specifically finds, by "clear and convincing evidence," that the proposed agreement is not in the public interest, it must approve the agreement. The Act, in addition to its concern for the preservation of competition, makes specific provision for the rights of labor and shippers. If the ICC should fail to act within the specified time, it must certify the proceeding back to the Secretary, and the Secretary with the concurrence of the Attorney General, must, on the basis of the ICC proceedings and his own information and data, approve, modify, or reject the proposed agreement in accordance with the public interest standard. Both the final decisions of the Secretary and the ICC can be appealed to the United States Court of Appeals for the District of Columbia.

Rolling Stock Scheduling and Control System

One of the basic problems in the railroad industry is the low rate of freight car utilization. An average freight car moves loaded a total of only 25 days and moves empty only 18 days out of a calendar year. Thus, for approximately 322 days in a calendar year, or 88 percent of the time, the average freight car stands idle in railroad yards or at customers' siding. Improving freight car utilization would result in substantial benefits to the railroad industry and the shipping public by reducing the railroad industry's need for capital

expenditures and reducing operating costs. Freight car ownership represents about 25 percent of the railroad industry's net investment. A 20 percent increase in car fleet productivity, for example, would reduce the annual needs of new cars by approximately 10,000 to 15,000 cars. This would enable the railroad to save as much as $300 million in new car purchases annually.

Achieving a more efficient utilization of the car fleet requires a more effective system of car fleet management. Although individual railroads have made some progress in developing better control over their car movements, this Nation still lacks an effective national freight car control system. Such a system has been made possible by recent advances in communications, computer data processing, and applied mathematical analysis. In order to take advantage of these developments and expedite and assure the development of an effective rolling stock scheduling and control system, the bill authorizes the Secretary to conduct research into the design of a national rolling stock scheduling and control system which would be capable of locating and expediting the movement of rolling stock on a national basis.

Section-by-Section Analysis of 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 and to develop a rolling stock scheduling and control system, and for other purposes.

Sec. 1. Cites the proposed Act as the "Railroad Revitalization Act".

Railroad Ratemaking and Abandonment

Sec. 2(a)(1). Amends section 1(5) of the Act by (i) incorporating the definition of "rates" and, with some modification, certain ratemaking considerations now appearing in Section 15a(1) of the Act; (ii) adding to the existing requirement that rates be just and reasonable a provision that a compensatory rate may not be held to be unjust or unreasonable because it is too low; (iii) incorporating provisions from subsections 15a(2) and (3) requiring the Commission to consider the effects of rates on the movement of traffic and the need for adequate and efficient railway transportation service, and prohibiting the Commission from holding up to a particular level the rate of a carrier or freight forwarder subject to the Act to protect the traffic of a carrier of another mode; (iv) providing that a carrier's rate is compensatory when it equals or exceeds the particular carrier's variable cost of providing the specific transportation to which the

rate applies; and (v) prohibiting rate decreases below variable cost, and prohibiting the Commission from disallowing a carrier's rate increases where the increase does not increase that rate beyond the carrier's variable cost.

(5). Strikes the existing paragraph (22) of section 1 of the Act (paragraph 22 is restated in paragraph 26) and adds paragraphs (22) through (26) establishing new rail abandonment procedures to ensure adequate prior notice of rail abandonments, as follows:

(22)(a). Within 90 days after enactment of the bill, the Secretary of Transportation (hereafter "the Secretary"), in consultation with the Commission, must develop and publish standards for the classification of low density railroad lines according to their level of usage and probable economic viability.

(22)(b). Within 90 days of the publication, each railroad must submit to the Secretary and the Commission a schedule of low density lines, as determined by applying the classification standards.

(22)(c). A carrier may initiate an abandonment proceeding by filing a notice with the Commission at least 90 days prior to the proposed date of abandonment. Unless a line has been listed for at least 6 months on the schedule required by subparagraph (b), it may not be abandoned if it is opposed by a user or State or local government served by the line.

(22)(d). If the Commission permits abandonment of a line, it must calculate the difference between the "revenue attributable to the line" and the "cost of operating the line".

(23). If a State or local agency or shipper notifies the Commission of its intention to provide an operating subsidy and the Commission determines that the State or local government has or will acquire within six months the legal capacity to provide the subsidy or that the shipper is willing and able to provide the subsidy, it may order an additional postponement for not more than six months to implement a subsidization plan. If the Commission determines that the revenues for the line, including the subsidy, are at least equal to the cost of operating the line, the Commission must order continued operation of the line.

(24). The Secretary and the Commission are required to develop within 90 days following the date of enactment of the bill interim standards for determing the "cost of operating the line" and "revenue attributable to the line". Such standards must recognize that "cost" means all costs, including capital recovery and a reasonable return on investment, which would change if the line were abandoned, and "revenue" means all revenue which

would be lost if the line were abandoned. The interim standards must be adopted by the Commission and within one year the Secretary, in consultation with the Commission, must develop final standards for determining these terms and those standards must be adopted by the Commission.

(25). Provides that if the Commission permits abandonment, it shall impose labor protection at least equal to the 4 year protection provided in section 5(2)(f) of the Interstate Commerce Act.

Rate Bureau Procedures

Sec. 3(a). Amends section 5a of the Act by:

(1). Amending paragraph (3) to require that all rate bureaus maintain records of the votes of their members on each matter voted on, and that the records of all rate bureaus be available to public inspection through the Commission.

(2). Renumbering the existing paragraphs (7) through (10) as (8) through (11) and adding a new paragraph (7)(A) prohibiting agreements among railroad carriers that (i) permit discussions, agreements or voting on a single-line movement; (ii) permit carriers that do not hold themselves out to participate in a joint movement to participate in the consideration of rates related to the movement;

or (iii) permit joint consideration or action protesting or seeking to suspend rates. As used in paragraph (7), a "movement" is the transport of a commodity between any two points for which a tariff has been filed. Paragraph 7(B) precludes discussions, agreements, and votes relating to across-the-board percentage changes in freight rates three years after the enactment of this Act except for general rate increases based solely on increases in fuel or labor costs.

(3). Making a conforming amendment to paragraph (9).

(4). Requiring every rate bureau to take final action within 120 days on any rule, rate, or charge docketed with it.

(b) Invalidates all agreements to the extent they permit actions prohibited by the new paragraph (7).

Intrastate Railroad Rate Proceedings

Sec. 4. Amends section 13 of the Act by adding a new paragraph (5) vesting the Commission with exclusive authority to determine and prescribe an intrastate rate which is a counterpart to an approved intrastate rate if a carrier has filed with the appropriate State agency a change in an intrastate rate, and the State agency has not finally acted on the rate change within 120 days from the filing of the rate.

Suspension of Railroad Rates

Sec. 5. Amends section 15(7) of the Act to provide that:

(1) The Commission may initiate hearings with respect to new rates upon complaint or upon its own initiative and after hearing issue an appropriate order. Hearings must be completed within 7 months of the date the rate was scheduled to become effective, unless the Commission reports to the Congress the reason it is not possible to comply with this requirement. If a report is made the Commission must still complete the hearing within 10 months of the date the rate was scheduled to go into effect. If the hearing is not completed, the rate goes into effect. That rate may be later contested, but the burden of proof shifts to the complainant. This section, therefore, preserves the existing burden of proof presently provided in the Interstate Commerce Act.

(2) This section institutes a 4-year phasing to allow for more rate flexibility and limits the Commission's suspension power. A rate may still be suspended for 7 months (or for 10 months if the report to Congress is made) but a rate may not be suspended on the ground that it exceeds a just and reasonable level or that it is below a just and reasonable level if the rate increase or decrease is within certain percentage limits. 7% for the first year; 12% for the second year; and 15% for the

third year. After the end of the third year, rate decreases may not be suspended for being unreasonably low and rate increases may not be suspended if not more than 15%. The percentage limits are yearly aggregates. This limitation upon the Commission's suspension power does not apply to general rate increases or to challenges to the increase or decrease under sections 2, 3, and 4 of the Act, but in order to suspend under these sections or any other section the Commission must make findings similar to those a court would have to make to issue a temporary restraining order. It should also be noted that the limitations upon the Commission's suspension power does not affect the Commission's power to make a final determination.

(3) If the hearing involves a proposed rate increase and the rate is not suspended pending hearing, the Commission must require the carrier to keep an account of all amounts it receives because of the increase, from the date the rate became effective until an order is issued, until seven months elapse (or ten months if the hearing is extended) whichever is sooner. Interest must be paid by the carrier at a rate determined by the Commission, but in no event may the interest rate be lower than the rate on three month government securities.

(4) This section provides a special procedure for the initial consideration and subsequent consideration of tariffs requiring large capital expenditures. A carrier is authorized to file a notice of intention to file a tariff when the implementation of the tariff would require a total capital investment of $1,000,000 or more by the carrier, or a shipper or receiver, or other interested party, individually or collectively. The filing must be accompanied by a sworn affidavit as to the investment required. An interested person may request a hearing, and the Commission must hold a hearing, but it can be an informal hearing. Unless the Commission determines within 180 days from the date of filing that the proposed tariff would be unlawful, the carrier may file the tariff anytime thereafter and it may not be suspended or set aside as being unlawful under parts 1, 2, 3, or 4 of the Act, but it may be set aside if found to be noncompensatory.

(5) After two and half years after the initiation of the no-suspend zone, the Secretary of Transportation, in consultation with the Commission is to make a report to Congress, indicating the effects of the rate flexibility introduced by this Act upon the efficiency of the national transportation system.

Railroad Revenue Levels

Sec. 6. Amends section 15a of the Act by repealing all of its provisions and re-enacting certain of them in the new section 15a and others in section 1(5) of the Act (section 2 of the bill). Also provides that the Commission, in determining adequacy of revenue, shall prescribe uniform criteria for estimating the rate of return on capital, cost impact of changes in the general level of prices, and adequacy of cash flow.

Prohibiting Discriminatory Taxation

Sec. 7. Adds a new section 26 to the Act prohibiting the levying of discriminatory State or local property taxes on common carriers subject to regulation by the Commission.

Uniform Cost and Revenue Accounting

Sec. 8. Requires the Commission, jointly with the Secretary, to study and recommend uniform cost accounting and revenue accounting methods for rail carriers. The Commission would be required to issue regulations prescribing the uniform cost and revenue accounting methods within two years from the date of enactment of the bill.

Railroad Loan Guarantees

Sec. 9. Authorizes the Secretary to guarantee any lender against the loss of principal and interest on securities, obligations, or loans issued for the purpose of financing the acquisition, construction, maintenance, or development of:

(i) track and roadbed 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

(vi) computer based data and information system.

Prior to making a guarantee the Secretary must make several findings which are designed to assure adequate protection to the U.S. in the event of default, and to assure that the improvements will contribute to a more rational, efficient, and economical rail transportation system. In addition, the Secretary must make a

finding that adequate labor protection, of at least 4 years, has been provided. Different findings must be made with respect to guarantees for rolling stock. Loan guaranteed by the Secretary pursuant to Act may be financed through the Federal Financing Bank. The guaranteed amounts outstanding at any one time may not exceed $2,000,000,000.

Railroad Restructuring

Sec. 10. This section would authorize the Secretary to condition the granting of loan guarantees on an agreement among the applicants or other railroads to restructure their facilities. Such restructuring could include merger, consolidation, sale or acquisition of assets, and joint use of facilities. Such agreements would be voluntary, and the Secretary could not require a railroad to enter into such an agreement except as a condition for loan guarantee.

These agreements would be approved in a new two part procedure with a new "public interest test". The ICC in its interpretation of Section 5 of the IC Act has hindered needed restructuring of the railroads by failing to reach a decision within a reasonable time and by dissipating the benefits of proposed agreements by imposing unnecessary third party conditions to such agreements. This section will remedy these two defects by requiring a new procedure for consideration of proposed agreements and new definition

of "public interest." Agreements will first be considered by the Secretary in a public procedure similar to that used in rule making. Notice of the agreement will be given to the public, and comments may be made in writing or in an informal oral hearing. The Secretary will then initially approve the agreement which contains the restructuring terms if it is in the public interest and certify the agreement to the ICC. The ICC will then have 6 months to decide whether the agreement is in the public interest. The "public interest" is defined in the bill to mean that (1) the efficiency gains of the transaction substantially outweigh any adverse effects on competition, and (2) there is no clear and substantially less anti-competitive transaction available. Unless the ICC specifically finds, by "clear and convincing evidence," that the proposed agreement is not in the public interest, it must approve the agreement. The Act, in addition to its concern for the preservation of competition, makes specific provision for the rights of labor and shippers. If the ICC should fail to act within the specified time, it must certify the proceeding back to the Secretary, and the Secretary, with the concurrence of the Attorney General, must, on the basis of the ICC proceedings and his own information and data, approve, modify, or reject the proposed agreement in accordance with the public interest standard. Both the final decisions of the Secretary and the ICC can be appealed to the United States Court of Appeals for the District of Columbia.

Rolling Stock Scheduling and Control System

Sec. 11. Authorizes the Secretary to promote the development of the design of a national rolling stock scheduling and control system, and requires the Secretary to develop recommendations for implementing a system. The Secretary is also required to study, and develop recommendations for participation by individual railroads in a national system.

National Transportation Policy

Sec. 12. Amends the National Transportation Policy which precedes the various parts of the Interstate Commerce Act to recognize the importance of competition.

Section-by-Section Analysis of a Bill

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Sec. 1. Cites the proposed Act as the "Railroad Revitalization Act".

Railroad Ratemaking and Abandonment

Sec. 2(a)(1). Amends section 1(5) of the Act by (i) incorporating the definition of "rates" and, with some modification, certain ratemaking considerations now appearing in Section 15a(1) of the Act; (ii) adding to the existing requirement that rates be just and reasonable a provision that a compensatory rate may not be held to be unjust or unreasonable because it is too low; (iii) incorporating provisions from subsections 15a(2) and (3) requiring the Commission to consider the effects of rates on the movement of traffic and the need for adequate and efficient railway transportation service, and prohibiting the Commission from holding up to a particular level the rate of a carrier or freight forwarder subject to the Act to protect the traffic of a carrier of another mode; (iv) providing that a carrier's rate is compensatory when it equals or exceeds the particular carrier's variable cost of providing the specific transportation to which the

rate applies; and (v) prohibiting rate decreases below variable cost, and prohibiting the Commission from disallowing a carrier's rate increases where the increase does not increase that rate beyond the carrier's variable cost.

(5). Strikes the existing paragraph (22) of section 1 of the Act (paragraph 22 is restated in paragraph 26) and adds paragraphs (22) through (26) establishing new rail abandonment procedures to ensure adequate prior notice of rail abandonments, as follows:

(22)(a). Within 90 days after enactment of the bill, the Secretary of Transportation (hereafter "the Secretary"), in consultation with the Commission, must develop and publish standards for the classification of low density railroad lines according to their level of usage and probable economic viability.

(22)(b). Within 90 days of the publication, each railroad must submit to the Secretary and the Commission a schedule of low density lines, as determined by applying the classification standards.

(22)(c). A carrier may initiate an abandonment proceeding by filing a notice with the Commission at least 90 days prior to the proposed date of abandonment. Unless a line has been listed for at least 6 months on the schedule required by subparagraph (b), it may not be abandoned if it is opposed by a user or State or local government served by the line.

(22)(d). If the Commission permits abandonment of a line, it must calculate the difference between the "revenue attributable to the line" and the "cost of operating the line".

(23). If a State or local agency or shipper notifies the Commission of its intention to provide an operating subsidy and the Commission determines that the State or local government has or will acquire within six months the legal capacity to provide the subsidy or that the shipper is willing and able to provide the subsidy, it may order an additional postponement for not more than six months to implement a subsidization plan. If the Commission determines that the revenues for the line, including the subsidy, are at least equal to the cost of operating the line, the Commission must order continued operation of the line.

(24). The Secretary and the Commission are required to develop within 90 days following the date of enactment of the bill interim standards for determing the "cost of operating the line" and "revenue attributable to the line". Such standards must recognize that "cost" means all costs, including capital recovery and a reasonable return on investment, which would change if the line were abandoned, and "revenue" means all revenue which

would be lost if the line were abandoned. The interim standards must be adopted by the Commission and within one year the Secretary, in consultation with the Commission, must develop final standards for determining these terms and those standards must be adopted by the Commission.

(25). Provides that if the Commission permits abandonment, it shall impose labor protection at least equal to the 4 year protection provided in section 5(2)(f) of the Interstate Commerce Act.

Rate Bureau Procedures

Sec. 3(a). Amends section 5a of the Act by:

(1). Amending paragraph (3) to require that all rate bureaus maintain records of the votes of their members on each matter voted on, and that the records of all rate bureaus be available to public inspection through the Commission.

(2). Renumbering the existing paragraphs (7) through (10) as (8) through (11) and adding a new paragraph (7)(A) prohibiting agreements among railroad carriers that (i) permit discussions, agreements or voting on a single-line movement; (ii) permit carriers that do not hold themselves out to participate in a joint movement to participate in the consideration of rates related to the movement;

or (iii) permit joint consideration or action protesting or seeking to suspend rates. As used in paragraph (7), a "movement" is the transport of a commodity between any two points for which a tariff has been filed. Paragraph 7(B) precludes discussions, agreements, and votes relating to across-the-board percentage changes in freight rates three years after the enactment of this Act except for general rate increases based solely on increases in fuel or labor costs.

(3). Making a conforming amendment to paragraph (9).

(4). Requiring every rate bureau to take final action within 120 days on any rule, rate, or charge docketed with it.

(b) Invalidates all agreements to the extent they permit actions prohibited by the new paragraph (7).

Intrastate Railroad Rate Proceedings

Sec. 4. Amends section 13 of the Act by adding a new paragraph (5) vesting the Commission with exclusive authority to determine and prescribe an intrastate rate which is a counterpart to an approved intrastate rate if a carrier has filed with the appropriate State agency a change in an intrastate rate, and the State agency has not finally acted on the rate change within 120 days from the filing of the rate.

Suspension of Railroad Rates

Sec. 5. Amends section 15(7) of the Act to provide that:

(1) The Commission may initiate hearings with respect to new rates upon complaint or upon its own initiative and after hearing issue an appropriate order. Hearings must be completed within 7 months of the date the rate was scheduled to become effective, unless the Commission reports to the Congress the reason it is not possible to comply with this requirement. If a report is made the Commission must still complete the hearing within 10 months of the date the rate was scheduled to go into effect. If the hearing is not completed, the rate goes into effect. That rate may be later contested, but the burden of proof shifts to the complainant. This section, therefore, preserves the existing burden of proof presently provided in the Interstate Commerce Act.

(2) This section institutes a 4-year phasing to allow for more rate flexibility and limits the Commission's suspension power. A rate may still be suspended for 7 months (or for 10 months if the report to Congress is made) but a rate may not be suspended on the ground that it exceeds a just and reasonable level or that it is below a just and reasonable level if the rate increase or decrease is within certain percentage limits. 7% for the first year; 12% for the second year; and 15% for the

third year. After the end of the third year, rate decreases may not be suspended for being unreasonably low and rate increases may not be suspended if not more than 15%. The percentage limits are yearly aggregates. This limitation upon the Commission's suspension power does not apply to general rate increases or to challenges to the increase or decrease under sections 2, 3, and 4 of the Act, but in order to suspend under these sections or any other section the Commission must make findings similar to those a court would have to make to issue a temporary restraining order. It should also be noted that the limitations upon the Commission's suspension power does not affect the Commission's power to make a final determination.

(3) If the hearing involves a proposed rate increase and the rate is not suspended pending hearing, the Commission must require the carrier to keep an account of all amounts it receives because of the increase, from the date the rate became effective until an order is issued, until seven months elapse (or ten months if the hearing is extended) whichever is sooner. Interest must be paid by the carrier at a rate determined by the Commission, but in no event may the interest rate be lower than the rate on three month government securities.

(4) This section provides a special procedure for the initial consideration and subsequent consideration of tariffs requiring large capital expenditures. A carrier is authorized to file a notice of intention to file a tariff when the implementation of the tariff would require a total capital investment of $1,000,000 or more by the carrier, or a shipper or receiver, or other interested party, individually or collectively. The filing must be accompanied by a sworn affidavit as to the investment required. An interested person may request a hearing, and the Commission must hold a hearing, but it can be an informal hearing. Unless the Commission determines within 180 days from the date of filing that the proposed tariff would be unlawful, the carrier may file the tariff anytime thereafter and it may not be suspended or set aside as being unlawful under parts 1, 2, 3, or 4 of the Act, but it may be set aside if found to be noncompensatory.

(5) After two and half years after the initiation of the no-suspend zone, the Secretary of Transportation, in consultation with the Commission is to make a report to Congress, indicating the effects of the rate flexibility introduced by this Act upon the efficiency of the national transportation system.

Railroad Revenue Levels

Sec. 6. Amends section 15a of the Act by repealing all of its provisions and re-enacting certain of them in the new section 15a and others in section 1(5) of the Act (section 2 of the bill). Also provides that the Commission, in determining adequacy of revenue, shall prescribe uniform criteria for estimating the rate of return on capital, cost impact of changes in the general level of prices, and adequacy of cash flow.

Prohibiting Discriminatory Taxation

Sec. 7. Adds a new section 26 to the Act prohibiting the levying of discriminatory State or local property taxes on common carriers subject to regulation by the Commission.

Uniform Cost and Revenue Accounting

Sec. 8. Requires the Commission, jointly with the Secretary, to study and recommend uniform cost accounting and revenue accounting methods for rail carriers. The Commission would be required to issue regulations prescribing the uniform cost and revenue accounting methods within two years from the date of enactment of the bill.

Railroad Loan Guarantees

Sec. 9. Authorizes the Secretary to guarantee any lender against the loss of principal and interest on securities, obligations, or loans issued for the purpose of financing the acquisition, construction, maintenance, or development of:

(i) track and roadbed 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

(vi) computer based data and information system.

Prior to making a guarantee the Secretary must make several findings which are designed to assure adequate protection to the U.S. in the event of default, and to assure that the improvements will contribute to a more rational, efficient, and economical rail transportation system. In addition, the Secretary must make a

finding that adequate labor protection, of at least 4 years, has been provided. Different findings must be made with respect to guarantees for rolling stock. Loan guaranteed by the Secretary pursuant to Act may be financed through the Federal Financing Bank. The guaranteed amounts outstanding at any one time may not exceed $2,000,000,000.

Railroad Restructuring

Sec. 10. This section would authorize the Secretary to condition the granting of loan guarantees on an agreement among the applicants or other railroads to restructure their facilities. Such restructuring could include merger, consolidation, sale or acquisition of assets, and joint use of facilities. Such agreements would be voluntary, and the Secretary could not require a railroad to enter into such an agreement except as a condition for loan guarantee.

These agreements would be approved in a new two part procedure with a new "public interest test". The ICC in its interpretation of Section 5 of the IC Act has hindered needed restructuring of the railroads by failing to reach a decision within a reasonable time and by dissipating the benefits of proposed agreements by imposing unnecessary third party conditions to such agreements. This section will remedy these two defects by requiring a new procedure for consideration of proposed agreements and new definition

of "public interest." Agreements will first be considered by the Secretary in a public procedure similar to that used in rule making. Notice of the agreement will be given to the public, and comments may be made in writing or in an informal oral hearing. The Secretary will then initially approve the agreement which contains the restructuring terms if it is in the public interest and certify the agreement to the ICC. The ICC will then have 6 months to decide whether the agreement is in the public interest. The "public interest" is defined in the bill to mean that (1) the efficiency gains of the transaction substantially outweigh any adverse effects on competition, and (2) there is no clear and substantially less anti-competitive transaction available. Unless the ICC specifically finds, by "clear and convincing evidence," that the proposed agreement is not in the public interest, it must approve the agreement. The Act, in addition to its concern for the preservation of competition, makes specific provision for the rights of labor and shippers. If the ICC should fail to act within the specified time, it must certify the proceeding back to the Secretary, and the Secretary, with the concurrence of the Attorney General, must, on the basis of the ICC proceedings and his own information and data, approve, modify, or reject the proposed agreement in accordance with the public interest standard. Both the final decisions of the Secretary and the ICC can be appealed to the United States Court of Appeals for the District of Columbia.

Rolling Stock Scheduling and Control System

Sec. 11. Authorizes the Secretary to promote the development of the design of a national rolling stock scheduling and control system, and requires the Secretary to develop recommendations for implementing a system. The Secretary is also required to study, and develop recommendations for participation by individual railroads in a national system.

National Transportation Policy

Sec. 12. Amends the National Transportation Policy which precedes the various parts of the Interstate Commerce Act to recognize the importance of competition.

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 develped 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 adn 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 limiations 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;

(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."

TPI
6/5/75

NOTE ON GOVERNOR SHAPP's RAIL TRUST FUND PROPOSAL

Governor Shapp has proposed that a Federally sponsored trust fund be established to make funds available to all railroads to pay for rehabilitating ROW, modernizing yards and terminals, new communications systems, signals, and electrification of main lines. According to his plan, the trust fund would issue long term bonds totaling $12.9 billion over six years. Of that, around $2 billion would be available for a revolving loan fund to pay for new rolling stock. Borrowings would be repaid by means of a surcharge on rail freight revenue (it is suggested that half of the funds generated by ex parte 305 be used). Ninety percent of the grants from the fund would be distributed based on the proportion of revenue from each carrier. The remaining ten percent would be discretionary for distribution to the most needy carriers.

Conceptually, the idea of a rail trust fund and the apparent linkage which is constructed between user charge revenues and government expenditures has, at "first blush," some attractiveness. The fund would generate money, and that money would be disbursed for the rehabilitation of rail plant. In that very simple sense, a trust fund approach would accomplish its objective (just as the highway trust fund got a lot of highways built).

There are, however, a number of disadvantages to the use of a trust fund approach to solve the railroad rehabilitation problem, both generally and specifically as Governor Shapp has proposed:

(1) It is now obvious that there is going to have to be Federal financial assistance for railroad rehabilitation, and the Administration has just proposed legislation that will incorporate $2 billion in loan guarantees for railroad investment, in addition to a wide range of very important regulatory reforms. However, it is not clear at this time to what extent the railroad problem, outside the Northeast, requires any Federal financial involvement beyond that contemplated in the Administration's program. To impose upon the private sector the amounts of Federal involvement that are implied by Governor Shapp's trust fund approach is simply not justified by the information now available.

(2) There is no doubt that rehabilitation of the railroad plant will be of little lasting value if it is not accompanied by major reforms in Federal regulation and by rationalization and restructuring of the current system. Governor Shapp's plan, by focusing on funding physical plant requirements, deals with the symptoms and ignores the real problems.

(3) Trust funds have an inherent tendency to outlive their usefulness. They can keep government expenditures flowing into areas of activity long after those expenditures have ceased to be merited.

(4) As noted above, the ultimate need for Federal financial involvement in the railroad industry is, at best, uncertain. An arbitrary formula, such as a certain percentage of railroad revenues, is almost certain to give the wrong answer.

(5) While Governor Shapp's rail fund purports to be modeled on the highway trust fund, it differs significantly in that highway monies are spent by public bodies on public facilities and all contributors have free access.

(6) Since the rail fund would be used to rehabilitate all rail lines, it would serve to exacerbate the excess capacity problem, and in fact would cause lightly used lines to be supported by funds generated by those in greater use.

(7) It is difficult to see how the 5 percent surcharge can come out of last year's ex parte 305 funds (in light of the recent court ruling that the C&O does not have to use ex parte 305 funds for rehabilitation purposes). The 5 percent would thus have to be a net add-on to whatever the going freight rates are, and the Governor's program loses some of its "magic" as the potential for traffic diversion from rail becomes very real. It is, after all, that potential which partially contributes to low rates and insufficient rehabilitation money today.

(8) Governor Shapp has not, it seems, considered the inflationary impact of mandating this large a spending program. Particularly in light of the fact that there is not generally accepted evidence that the rehabilitation problem is anywhere near $12.9 billion.