SYNOPSIS OF STAGGERS RAIL ACT OF 1980

by

Gene C. Griffin

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BY

GENE C. GRIFFIN
RESEARCH ECONOMIST

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE
NORTH DAKOTA STATE UNIVERSITY
P. O. BOX 5074
FARGO, NORTH DAKOTA 58105

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Research Economist

TITLE I

RAIL TRANSPORTATION POLICY

The stated policy of the United States Government as a result of the act in regulating the railroad industry shall be to:

1. allow competition and the demand for services to establish rail rates when possible,
2. minimize federal regulation and require expeditious decisions in cases where regulation is necessary,
3. promote a safe and efficient system by allowing carriers to earn adequate revenues as determined by the ICC,
4. ensure the development and continuation of a sound rail transportation system with effective intermodal and intramodal competitions,
5. foster sound economic conditions in transportation and to ensure effective intermodal competition and coordination,
6. maintain reasonable rates where there is an absence of effective competition,
7. reduce regulatory barriers to entry and exits,
8. promote public health and safety in the operation of facilities and equipment,
9. ensure that states conform to federal statutes in the regulation of railroads,
10. encourage the elimination on noncompensatory rates,

11. limit the use of general increases and encourage individual rate increases,

12. encourage fair wages and safe working conditions,

13. prohibit predatory pricing, and industry concentration, and prohibit unlawful discrimination,

14. ensure the availability of accurate cost information in regulatory proceedings while minimizing the burden on carriers in providing information,

15. promote energy conservation.

TITLE II

SECTIONS 201-208: RAILROAD RATES AND INTERCARRIER PRACTICES

A rail carrier may establish *any* rate where market dominance is not found to exist. The Commission *does not have jurisdiction* where market dominance does not exist.

If the Commission finds market dominance to exist the rate must be reasonable.

In determining reasonableness, the policy of the Act is that the rail carriers shall earn adequate revenues.

Rates may not be established below a reasonable minimum.

Rail carriers may increase any rate subject to Commission jurisdiction up to the adjusted base rate[1] plus increases authorized with the rate flexibility zone. Such rates may not be found to be unreasonable.

General increase petitions to cover inflationary cost increases for joint rates are allowed until January 1, 1984 with authority in the Commission to delay or suspend the expiration date.

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[1]Adjusted base rate—a base rate adjusted for inflation of rail costs.

The Commission may quarterly prescribe a percentage rate increase or rate index to compensate for inflationary cost increases. The rate index may provide for rate increases within a range. Carriers must advise the Commission within 60 days of rates they intend to exclude.

"Base rate" means the rate in effect for the 24-month period beginning on October 1, 1982, the rate in effect on October 1, 1982 and for the 5-year period beginning on October 1, 1984, and each subsequent 5-year period, the rate in effect on the first day of the applicable 5-year period.

"Adjusted base rate" means the base rate multiplied by the latest rate cost adjustment factor to be issued quarterly by the Commission. A carrier may not increase a rate up to the adjusted base rate level because cost increases due to inflation are recovered through general rate increases (Sec. 10706) or inflation-based increases under Sec. 10712.

THE FLEXIBILITY ZONE

For each of 4 years beginning October 14, 1980, in addition to increases up to the adjusted base rate, the carrier may increase rates under jurisdiction of the Commission (where market dominance has been determined) an annual amount of not more than 6 percent of the adjusted base rate except that the total increase may be no more than 18 percent.

Any portion of the 6 percent not taken in applicable year may be taken in the next year. Any portion not taken in the 4 years may be taken in the two succeeding years, but not exceeding 10 percent of the adjusted rate base annually.

In addition to the above, during the 12 months beginning October 1, 1984 and each succeeding year, carriers may take not more than 4 percent annually—with no carry-over provisions.

These provisions do not apply to a carrier proposing single-line rates if such carrier earns adequate revenues.

Also, these provisions do not apply on joint rates of carriers earning adequate revenues unless the Commission cannot prescribe rules without precluding carriers not earning adequate revenues.

DETERMINATION OF MARKET DOMINANCE

Present market dominance law—and Commission rules implementing that law—applies with the following changes in the law which will necessitate changed rules.

"Fixed and variable cost" means all costs, limiting return on equity equal to embedded cost of debt.

"Cost recovery percentage" to be computed by Commission to comprise total fixed and variable cost of the transportation of all traffic by rail carrier. This is to be accomplished 180 days after October 14, 1980 and annually thereafter.

To determine the "cost recovery percentage" only, revenue/variable cost percentage means the quotient expressed as a percentage obtained by dividing total revenues by total variable cost.

A carrier does not have market dominance during the noted time periods if the charged results in a revenue/variable cost percentage less than:

> 160 percent to 9/30/81; 165 percent to 9/30/82; 170 percent to 9/30/83; 175 percent (or the cost recovery percentage whichever is less to 9/30/84); and the cost recovery percentage for each succeeding 12-month period.

The cost recovery percentage as defined above shall not be less than a revenue/variable cost of 170 or more than 180.

A finding that a rate results in a revenue/variable cost percentage equal to or greater than the above does not establish a presumption that the carrier has market dominance or that the rate exceeds a reasonable maximum.

BURDEN OF PROOF

If market dominance is determined the rate must be reasonable.

The shipper challenging such a rate has the burden of proving that the rate is not reasonable if:

1. *The rate is a flexibility zone rate* and results in revenue/variable cost greater than the lesser of:

   A. 20 percent above applicable revenue/variable cost percentage,

   B. revenue/variable cost percent of 190.

2. *or* the Commission does not begin an investigation,

The rail carrier shall have the burden of providing the rate is reasonable if such increased rate results in revenue/variable cost ratio equal to or greater than the lesser of the percentages described in A or B above.

3. *and* the Commission begins an investigation.

The Commission *may not suspend* increases taken under the rate flexibility zone.

MINIMUM RATES

Rates may not be established below a reasonable minimum.

A rate not contributing to going concern value is presumed not reasonable.

A rate contributing to going concern value is conclusively presumed to be not below a reasonable minimum.

A rate that equals or exceeds variable cost is conclusively presumed to contribute to going concern value.

The Commission has 90 days to act on a complaint alleging violation.

Complainant has the burden of proof and the Commission may order a rate raised, but only to the minimum level.

COMMISSION INVESTIGATION REGARDING FLEXIBILITY ZONE

The Commission may not *suspend* increases taken under flexibility zone. Also, the Commission may not *investigate* flexibility zone rates *unless* the rate increase results in revenue/variable cost ratio equal to or greater than the lesser of:

> 20 percent above the revenue/variable cost ratio prior to the increase *or* a revenue/variable cost ratio of 190.

To investigate the Commission shall set forth its reasons, considering:

1. amount of traffic moving at revenues not contributing to going concern value and efforts made to minimize such traffic,

2. amount of traffic contributing only marginally to fixed costs and extent to which rates can be changed to maximize revenue,

3. impact of proposed rate of attainment of national energy goals and the need for a sound transportation policy.

When a shipper by complaint challenges a rate increase as violating the flexibility zone of 6 percent which is less than the lesser of (1) 20 percent above the r/vc ratio or (2) a r/vc ratio of 190, the Commission shall consider, in determining reasonableness,

whether the carrier is earning adequate revenue as per Sec. 10704 (a) (2) giving regard to preventing carriers with adequate revenue from realizing excessive profits and bringing to an adequate level the revenues of carriers not having an adequate level.

In determining reasonableness in (1) above, the Commission shall consider:

1. amount of traffic moving at revenues which do not contribute to going concern value and efforts made to minimize it,
2. the amount of traffic contributing only marginally to fixed costs and extent to which rates can be changed to maximize revenues,
3. the carrier's mix of traffic to determine whether one commodity is paying an unreasonable share of overall revenues,
4. evidence of the underlying rail rate is admissible.

A finding that a rate increase exceeds the increase authorized under the flexibility zone does not establish a presumption that:

1. the rail carrier has or does not have market dominance,
2. the proposed rate exceeds or does not exceed a reasonable maximum.

The authority of the Commission to prescribe rules, practices and rates may not be used to limit increases under this Section.

RECYCLABLES

Within 90 days rails to take actions necessary to reduce rates on recyclables, other than recycled steel, to r/vc levels equal to or less than average r/vc necessary to recover total operating expenses plus a reasonable profit.

RATE REGULATION PROCEEDINGS—ADEQUATE REVENUES

The Commission has 230 days to conduct a study to determine whether and to what extent product competition should be considered to determine reasonableness of rail rates.

Product competition means availability to a consignee at a competitive delivered cost and in sufficient quantities of products and commodities of same type regardless of origin; capable of being effectively utilized. Coal from alternative sources must be of the same specifications, relative btu's, sulphur, and ash.

Imported coal is not considered an alternative.

This section does not modify present standards for the determination of reasonableness or alter the meaning of market dominance.

The Commission has 180 days to determine which rail carriers are earning adequate revenues.

INVESTIGATION AND SUSPENSION OF RATES

The Commission must complete an investigation and suspension proceeding within 5 months. Another 3 months will be allowed if the reasons for the delay is reported to Congress.

If not so completed the rate becomes effective at the expiration of time period or if the rate is already in effect it will remain in effect.

A. The Commission may not suspend unless it appears from specific factors shown by verified statement that it is substantially likely that protestant will prevail in the merits.

B. Without suspension substantial injury will result.

C. The provisions of subsection (d) do not protect the protestant.

Burden is on protestant to prove A, B, C.

D. If the Commission does not suspend the rate, but investigates it, the carrier shall keep account specifying by whom and for whom amounts are paid.

Carriers are required to refund that part of an increased rate found to be unreasonable plus specified interest.

If a rate is suspended and any portion later found to be reasonable the carrier shall collect from each person the difference plus interest except that this paragraph does not apply to general increases.

If any portion of a rate decrease is suspended and later found to be reasonable, the rail carrier *may* refund any part of the portion of the decrease found reasonable if the refund is made available to shippers proportionately.

By rule the Commission may permit the carriers to waive amounts due if insignificant.

CONTRACTS

One or more carriers may contract with one or more shippers to provide specified services under specified rates and conditions specified as follows:

A. The contract must be filed with Commission together with a summary of the contract as prescribed by the Commission. Special tariff rules will be published by the Commission assuring that essential terms are available to the public.

B. A contract shall be approved by the Commission [see Subsection (c)] unless Commission [under Subsection (d)] determines contract is in violation of this section.

C. No later than 30 days after filing date the Commission may, on its own initiative or by complaint, begin a proceeding to review such contract on grounds that:

(1) Contract other than for transportation of agricultural commodities (including forest products and paper), a complaint may be filed by a shipper only on the grounds such shipper individually will be harmed because the contract unduly impairs the ability of the carrier to meet the common carrier obligations - Sec. 11101, or

(2) By a port only on the grounds that such port individually will be harmed because of the proposed contract and will result in unreasonable discrimination against it.

(3) On agricultural commodities contracts, an *additional* ground for complaint is that the shipper individually will be harmed because the rail carrier has unreasonably discriminated by refusing to contract with such shipper for rates and services for the same commodity under similar conditions and that said shipper was ready, willing, and able to enter into such a contract at essentially the same time when the disputed contract was offered or

(4) The disputed contract constitutes a destructive competitive practice.

In making a determination under the above the Commission shall consider the difference between contract rates and published single car rates.

"Unreasonable discrimination" has the same meaning as under Sec. 10741.

The Commission has 30 days, or a shorter time period as the Commission may prescribe, to determine whether the contract is in violation of this section.

Should the Commission determine on the basis of a complaint under (2) (B) (i) (Ag. provision) that grounds for the complaint have been established the Commission shall order the carrier to provide rates and services similar to the contract at issue with such differentials as are justified by the evidence.

CONTRACT APPROVAL

Contracts shall become effective when expressly approved by the Commission but not before 30 days after filing. If the Commission does not disapprove the contract within 60 days after filing it then becomes effective. The Commission may limit future contracts if they impair the common carrier obligation. The Commission may not require a rail carrier to violate terms of a contract except for war emergencies. The duties of the parties are limited to terms of the contract.

Approved contracts are not subject to rate regulation and may not be challenged before the Commission or in any court. Exclusive remedy for breach is in State or Federal District Court unless otherwise agreed. Contracts in effect when the Staggers Rail Act became effective shall have the same force and effect as new ones.

On agricultural commodities carriers cannot contract for use of rail equipment in excess of 40 percent of ownership by major car types *except* in the case of a shipper originating an average of 1,000 cars or more per year by major car types on one railroad. Not more than 40 percent of carrier equipment utilized on the average during the prior 3-year period may be contracted without prior Commission authorization. The Commission can grant relief from the requirements if it is shown additional equipment may be made available without impairing the common carrier obligation.

Equipment used under contracts shall not be subject to car service decisions.

The Commission shall establish a railroad contract rate advisory service which shall:

(1) compile and disseminate non-confidential summaries of individual contracts,

(2) advise interested parties with advice regarding contracts and

(3) assess the impact on competition among shippers of variations between contracts and published single-car rates and report to Congress not later than 90 days after passage.

SECTION 209. DEMAND SENSITIVE RATES

This section repeals the demand sensitive rate provisions of the Interstate Commerce Act. This provision is the result of concerns by agricultural groups about the manner in which demand sensitive rates were being implemented.

The conference report states:

> The conferees direct the Commission to explore alternative methods of improving utilization in making railroad prices and services more responsive to market conditions instead of artificial and regulatory restraints. However, the Commission is on specific notice not to contravene the policy set out by Congress which is clearly to prevent demand-sensitive rates by any means to apply to agricultural commodities.

SECTION 210. CAPITAL INCENTIVE RATES

There is to be a phase out of capital incentive rates within five years.

SECTION 211. LIMITED LOSS AND DAMAGE LIABILITY

Carriers and shippers are now allowed to enter into limited liability rates without ICC approval. Also, a shipper and carrier may agree to a specified deductible for any claim against the carrier.

This section also specifically states where loss and damage actions may be brought. Section 1170 (d) of Title 49, in United States Code, has a new paragraph (2) (A) which reads as follows:

(2) (A) A civil action under this section may only be brought—(i) against the originating rail carrier, in the judicial district in which the point of origin is located; (ii) against the delivering rail carrier, in the judicial district in which the principal place of business of the person bringing the action is located, if the delivering carrier operates a railroad or route through such judicial district, or in the judicial district in which the point of destination is located; and (iii) against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

The above venue changes were necessitated by the fact that existing law permitted an action wherever the carrier operated, and thus venue was virtually uncontrollable and frequently inconvenient.

SECTION 212: RATE DISCRIMINATION

Differences between rates, rules or practices which result from different services do not violate Section 10741, the discriminative provisions of the Interstate Commerce Act.

Also, this section specifically exempts surcharges, approved contracts, separate rates for distinct services, rail rates applicable to different routes and customer solicitation expenses from being challenged as discriminatory.

SECTION 213: EXEMPTIONS

Under this provision, the Commission *shall* exempt a person, class of persons, or a transaction or service from application of any provision of the Interstate Commerce Act if such provision is:

(1) not necessary to carry out the transportation policy; *and,*

(2) either the service is of "limited scope" *or* application of the provision is not needed to protect shippers from abuse of market power.

The provision places certain limits on Commission authority as it relates to contractual terms relating to liability and claims.

But the limitations on the application of this provision are very few in number and as the conference report explains:

> The conferees anticipate that through the exemption process, the Commission will eventually reduce its exercise of authority to instances where regulation is necessary to protect against abuses of market power where other federal remedies are inadequate for this purpose. Particularly, the conferees expect that as many as possible of the Commission's restrictions on changes in prices and services by rail carriers will be removed and that the Commission will adopt a policy of reviewing carrier actions after the fact to correct abuses of market power.

SECTION 214: INTRASTATE RATES

Within 120 days after the effective date, each state authority exercising jurisdiction over intrastate rates, classifications, rules and practices and intrastate transportation shall submit to the Commission the standards and procedures (including timing requirements) used by such state authority in exercising such jurisdiction.

Any state authority which is denied certification or which does not seek certification may not exercise any jurisdiction over intrastate rates, classifications, rules and practices.

A certification of a state authority is valid for a five-year period.

Notwithstanding any other provisions of this subtitle, a state authority may *not* exercise any jurisdiction over general rate increases under Section 10706, inflation-based rate increases under Section 10712, or fuel adjustment surcharges approved by the Commission.

Any rail carrier may petition the Commission to review the decision of any state authority, in any administrative proceeding in which the lawfulness of an intrastate rate, classification, rule, or practice is determined.

SECTION 215: BUSINESS ENTERTAINMENT EXPENSES

Business solicitation or entertainment expenses incurred by rail carriers do not constitute illegal rebates or discrimination, if these expenses would be legal when incurred by a non-commission regulated entity.

However, these expenses are *not* to be taken into account in determining the cost of service or the rate base for rate regulation purposes.

SECTION 216: EFFICIENT MARKETING

This section allows a rail carrier to make a rate increase effective after only 20 days notice. A reduced rate can be effective after 10 days notice.

One exception to this is contract rates. It takes at least 30 days after publication before a contract rate will be allowed to go into effect.

SECTION 217: COMPENSATORY JOINT RATE RELIEF

As the conference report explains, today most of the property transported by rail moves over through routes subject to joint rates, and the revenue derived from these movements is divided among the participating carriers according to divisions prescribed by the Commission or mutually agreed to by the participating carriers.

According to the conference report, existing joint rates and divisions do not allow some rail carriers to recover even the variable costs of providing transportation services on certain through routes.

Under existing law, unless all carriers participating in the joint rate concur, these rates and divisions can be changed only by protracted proceedings before the Commission.

It is the intention of this section to alleviate the above-mentioned problems in that by assuring that a carrier, with a minimum of regulatory interference, will be able, by applying surcharges or directly cancelling routes, to either earn revenues over all lines equal to or exceedings 110 percent of unadjusted ICC formula variable costs *or* to close routes not providing this level of earnings.

This section not only deals with assessment of surcharges in regard to joint rates but it also covers assessment of surcharges on rates applying to commodities moved on light density rail lines. Railroads earning less than adequate revenues, on lines carrying less than 3,000,000 gross ton miles, will be allowed to increase rates to 110 percent of variable costs *plus* 100 percent of such carrier's reasonably expected costs of continuing to operate such line. The same holds true for railroads earning adequate revenues, except only with respect to lines carrying less than 1,000,000 gross ton miles.

SECTION 218: EXPEDITED DIVISION OF REVENUES PROCEEDINGS

The Commission may begin a proceeding to establish joint rates, through routes and a division of revenues of those joint rates, on its own initiative or on a complaint. Evidentiary proceedings to adjust the division of joint rates must be completed within nine (9) months. Final action must be taken with 180 days after completion of the evidentiary proceedings except if the railroad is reorganized and it is contended the existing division does not cover the variable costs of handling the traffic. The proceeding must then be given preference and completed within 100 days after the evidentiary proceedings. Extensions to these time limits must be reported to Congress.

SECTION 219: RATE BUREAUS

Rate bureaus may not: (a) allow railroads to discuss or vote upon single line rates proposed by another railroad, or (b) allow railroads to discuss or vote upon interline rates unless the carrier practicably participates in the movements. Nonparticipating railroads can still discuss interline rates until 1984 for general increases or broad tariff changes.

Rate bureaus must provide transcripts or sound recordings of their meetings along with records of their votes. These materials are to be submitted to the Commission however they are to be confidential and not subject to disclosure.

Railroads are allowed to enter into an agreement that provides solely for the compilation, publication, and other distribution of rates in effect or to become effective.

The ICC may not take any action with respect to the elimination of general increases prior to April 1, 1982.

SECTION 220: LONG AND SHORT HAUL TRANSPORTATION

A railroad is allowed to reduce a rate for transportation in competition with a water route even if the purpose of the reduction is the elimination of water competition.

SECTION 222: SERVICE DURING PERIODS OF PEAK DEMAND

A railroad does not violate its common carrier responsibilities because it fulfills commitments under contracts before responding to reasonable requests for service.

SECTION 223: RECIPROCAL SWITCHING

The Commission may require railroads to enter into reciprocal switching agreements where such agreements are practicable and in the public interest or are necessary to provide competitive rail service. The Commission shall set the compensation for such switching when the carrier's can't agree.

SECTION 224: CAR SERVICE COMPENSATION

Repeals restriction on Commission's ability to increase car compensation by an incentive element.

Shipper organizations formed to discuss allowances to be paid by railroads for shipper owned equipment must receive approval of the Commission. If the railroads and shippers cannot agree on such compensation, the matter will be submitted to the Commission.

SECTION 225: CAR UTILIZATION

Railroads will be permitted to establish tariffs containing premium charges for special services or special levels of service not provided for in any other tariff otherwise applicable to the movement.

SECTION 226: CAR SERVICE ORDERS FOR EXIGENT CIRCUMSTANCES

When the Commission finds that shortage of rail equipment, congestions of traffic or other failure of traffic movement exists creating an emergency of such magnitude as to have substantial adverse effect on rail service, the Commission for a period not to exceed thirty (30) days may:

a. suspend any car service rule;

b. take action to promote service regardless of ownership or compensation terms for equipment;

c. require joint or common use of facilities;

d. give directions for priorities or embargoes;

e. extend thirty (30) day period when full Commission finds emergency exists.

SECTION 227: EMPLOYEE PROTECTION

Provides for various employee protections in the event of abandonments, etc.

SECTION 228: MERGERS AND OTHER TRANSACTIONS

A railroad and a shipper may make arrangements for transportation by motor carrier prior to or subsequent to a movement by rail to inadequately served shippers located on a railroad other than the applicant railroad.

If a merger is proposed between two or more Class I railroads comments on the merger must be filed within 45 days after notice of the application is published. The Commission must conclude evidentiary proceedings on the merger within 24 months after the notice is published and issue a final order within 180 days of the completion of the evidentiary proceedings.

If the merger involves other than 2 or more Class I railroads but is of regional or national transportation importance, written comments must be filed within thirty (30) days after publication of notice. Evidentiary proceedings must be completed within 180 days after publication of notice and a final decision issued 90 days after completion of the evidentiary proceedings.

In applications other than the above two (2) types, comments must be filed within thirty (30) days after notice, evidentiary proceedings completed within 105 days and a decision issued 45 days later.

The initial comments appear to provide the Secretary of Transportation and Attorney General with the information necessary so they may determine if they should intervene in the proceeding.

SECTION 229: SAVINGS PROVISION

Any existing rate may be challenged within 180 days of the effective date of the Act as unreasonable if the carrier has market dominance. Any rate which is not challenged, or if the carrier does not have market dominance, or if the rate is found reasonable, may not thereafter be challenged in the Commission or any court. Burden of proof is on the complainant. Challenges are brought pursuant to Section 11701 (unreasonableness).

Provisions do not apply to a rate under which the volume of traffic during the 12 months prior to the effective date of the Act did not exceed 500 net tons or has increased tenfold within the three-year period immediately preceding the complaint action.

TITLE III

RAILROAD COST DETERMINATION

The opening section of the Staggers Rail Act, which deals with national transportation goals and policies, expresses the intent of congress to "ensure the availability of accurate cost information in regulatory proceedings while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information." This statement is consistent with the substance and direction of the 4-R Act regarding standards for technical information. The provisions of which resulted in the adoption of a revised uniform system of accounts, the development of a cost accounting and reporting system and the development of a new uniform rail costing system.

Title III of the Staggers Act, entitled Railroad Cost Determinations, sets forth the reasoning of Congress concerning railroad cost accounting principles and uniform accounting systems. The major provisions of the title relate to establishment of a Railroad Accounting Principles Board, which shall be "within and responsible to the legislative branch of the Federal Government."

FACTORS WHICH MUST BE CONSIDERED IN DEVELOPING COST ACCOUNTING PRINCIPLES

The Staggers Act enumerates a range of issues which must be considered by the Board in developing cost accounting principles. These include the consideration of: (1) the specific regulatory functions to which the costs will be applied, (2) the degree of accuracy which is required in each instance, (3) the capability of the carriers to provide that information and the cost of doing so, and (4) the need for confidentiality of carrier cost and how this might best be achieved.

COST REPORTING

In Title III Congress mandates that the principles established by the Board "shall require that the information be reported or disclosed only for the essential regulatory purposes as *defined by the Board.*" While the act also provides that the Commission may proceed in prescribing accounting and reporting requirements which are "consistent with generally accepted accounting principles uniformly applied to the carriers," it further stipulates that such rules must be "in accordance with the cost accounting principles established by the Railroad Accounting Principles Board." So, at least in some respects, the responsibility for improving cost accounting, reporting and cost finding procedures with respect to specific regulatory purposes no longer rest solely with the Commission.

How this affects the status and the eventual shape of Docket No. 36367 remains to be seen. This proceeding had sought to adopt a Cost Center Accounting and Reporting System for Class I railroads developed for the Commission by Deloitte, Hoskins, and Sells and Peat, Marwick, and Mitchell. As this development came in response to Section 202 of the 4-R Act, the Commission may well feel that this legislative directive stands unaffected

(which indeed the Staggers Act allows for Commission activity in this regard) and thus adopt the system pursuant to the requirements of Title III with respect to "accepting accounting principles."

COST ACCESSIBILITY

The legislation provides that carriers shall make "relevant cost data" available to those participating in Commission proceedings as "required by the rules of the Interstate Commerce Commission governing discovery in Commission proceedings." However, there is still some question with respect to what can actually be obtained, what data are strictly confidential, and in what manner the information may be used once it is accessed. There are stipulations concerning "accounting principles violations" in the bill which provides that any person "knowingly disclosing confidential data made available by a rail carrier" shall be fined up to a limit of $50,000.

Here it should also be noted that the Accounting Principles Board is directed to consider issues such as confidentiality, data requirements, and regulatory purposes in initially developing its principles. Therefore, because this aspect of the legislation is open to future interpretation of principles, the issue is largely unsettled with respect to considerations of cost accessibility and reporting requirements.

IMPLEMENTATION OF THE PRINCIPLES AND THE COMMISSION'S PURVIEWS

In addition to providing considerations input to the development of accounting principles by the Board the ICC is directed to review the rules and principles with respect to "the achievement of regulatory purposes."

Thus, the Commission will likely have a counter balancing influence with respect to the implementation of the provisions of Title III.

Essentially a series of checks and balances will be created between the Commission and the Board. For example, the Act directs the ICC to review developed principles to insure "that the rules promulgated are the most efficient and least burdensome means by which the required information may be developed for regulatory purposes." However, as mentioned earlier, in prescribing its own cost reporting and accounting procedures the ICC must do so in accordance with the intent of the cost accounting principles drafted by the Board.

TITLE IV

RAIL MODERNIZATION ASSISTANCE

Title IV of the Staggers Rail Act is concerned primarily with abandonment, feeder rail development program and financing.

SECTION 401

Section 401 adds a new Section 49 U.S.C. 10910, Railroad Development. The purpose of this section is to provide shipper groups and governmental agencies an alternative to inadequate rail service or abandonment.

Essential to an understanding of Section 10910 are the following terms: *Financially responsible person* means a person who (a) is capable of paying the constitutional minimum value of the railroad line proposed to be acquired and (b) is able to assure that adequate service will be provided for a period of not less than three years. A governmental authority is included in the definition of the term. *Railroad line* (for the first three years of the Act) is a line of railroad carrying less than 3,000,000 gross ton

miles of traffic per mile and thereafter any rail line. The *Constitutional minimum value* of a particular railroad line is not to be less than the net liquidation value of such line or the going concern, whichever is greater.

When the ICC finds that the public convenience and necessity requires or permits the sale of a particular line, or a line has been placed on a system diagram map, *and* an application to purchase has been filed by a financially responsible person, the ICC shall require the railroad to sell such line at a price not less than the constitutional minimum value.

In determining public convenience and necessity, the ICC shall consider if (1) the existing carrier has refused to provide adequate service, (2) the transportation is inadequate for a majority of shippers, (3) the sale will adversely affect the financial or operational status of the existing carrier, or (4) the sale is likely to result in an improvement in transportation to shippers.

Preconditions of operating the acquired line, such as payment of a subsidy, may be required prior to the sale.

SECTION 402

Abandonment is revised by establishing a time frame for the Commission to act in. It is felt by establishing time limits that the abandonment proceedings will be expedited.

Existing Section 10905 is repealed and replaced by new Section 10905, offers of financial assistance to abandonment and discontinuance. New Section 10905 is consistent with Section 10910 in allowing financially responsible persons (including government) to purchase lines approved for abandonment. Section 10905 requires that the railroad make available information relating to subsidy need, physical condition, traffic, revenue and any other data relevant to determining the amount of financial assistance required.

SECTION 405: FINANCING

The funding provisions of the 4-R Act are increased to the stated amount: 45 U.S.C. 825 (d) (3), redeemable-preference shares, $1.4 billion; 45 U.S.C. 827 (a) and 829, fund anticipation notes, $1.4 billion. Also, $200 million is appropriated for Conrail labor protection.

Section 402 states that the financing program shall run until September 30, 1982.

Of importance to North Dakota is Section (b) (2) which states that a minimum of 5 percent of the funds shall apply to feeder development program, provided that such purchase or authorization is consistent with the State Rail Plan.

The amendment of 45 U.S.C. 725 (a) allows a financially responsible person (including government or shipper associations) to apply for available funds.

Section 403 of Title IV also provides $10,000 for the conversion of abandoned railroad right-of-ways for recreational uses.

Section 406 gives financial assistance to Montana for the rail banking of the Milwaukee Road.

Section 407 grants loan guarantees for the electrification of high density lines. Section 409 requires yearly reports with DOT on the federal assistance received by a railroad.

TITLE V

CONRAIL TITLE V LABOR PROTECTION

SECTION 501

Section 501 of the Staggers Rail Act deals with payments to displaced employees of Conrail or its predecessors (Penn Central, Jersey Central, Reading, Erie-Lackawanna, Lehigh Valley or Lehigh & Hudson River). The conference version follows the House bill

to eliminate expensive inequities in the current formulae. There are different amounts used for different classes of employees:

1. Non-operating employees receive a guarantee based on the rate of pay they held on September 1, 1979. If a non-op (bumps) an employee of lesser pay grade, he is entitled to the monthly differential.

2. Maintenance-of-way employees receive a guarantee based on the 1974 average monthly compensation, adjusted to reflect general wage increases.

3. Operating employees (engine and train service) receive the same guarantee subject to two modifications. There is a maximum placed upon each guarantee, based upon 1977 considerations, and if a month's earnings are less than the guarantee, only 75 percent will be paid. At the end of the calendar year, a comparison of monthly guarantee payments and annual earnings will determine if additional payments are to be made.

4. There is no change in the payments to noncontract employees.

SECTION 502

Section 502 provides for a limitation of the monthly displacement allowance. The employee would not receive an allowance for a period when the employee failed to work for reasons beyond the control of his employer (strikes, acts of God, etc.). The employee now must file any claim within 3 months entitlement, unless the claim is the subject of a pending arbitration proceeding.

SECTION 503

Section 503 of the Staggers Act addresses restrictions on the use of personnel from subsidiaries of the pre-Conrail railroads. Before the 1976 consolidation, freight cars were floated across New York Harbor in an operation which used many maritime union

employees. In addition, Penn Truck Lines, a former Pennsylvania Railroad Subsidiary, had many truck drivers and warehousemen who found their positions redundant after the merger. Under the union agreements, new vacancies must be offered to the top man on the roster, then the second, etc. The Staggers Act allows a "multiple offer" provision, by which the job can be offered to up to four employees at a time, which speeds up the process, to former maritime or Penn Truck Lines employees who are now unemployed. The law also allows Conrail to transfer employees anywhere on the system (at Conrail's expense), and allows Amtrak (which now owns the Northeast corridor) to transfer employees within their seniority districts, unless Amtrak and the affected unions agree otherwise by collective bargaining.

SECTION 504

Section 504 increases payments for the revised benefit levels and also for training purposes, to the tune of an additional $235,000,000 and directs the United States Railroad Association (Conrail's banker and overseer) to conduct an audit of the effectiveness of Title V provisions in providing a reasonable level of protection to employees and enabling Conrail to improve management of the protected employees in its work force.

SECTION 505

Section 505 gives protected separated or furloughed employees of Conrail a right of first hire on other railroads. This does not apply if the employee was fired for cause or is less qualified than other applicants. But *ceteris paribus* an ex-Conrailer will be given preference over other applicants if he should seek hire on the Chessie or other private railroad rather than collect his employee protection benefits. A similar right has been statutorily created for ex-Rock Island or ex-Milwaukee railroaders.

SECTION 506

Section 506 of the Staggers law addresses another knotty problem in labor-management relations. Section 504 (d) of the 3-R Act, which established Conrail, required the unions and Conrail to negotiate toward establishing a single collective bargaining agreement for each class and craft of employees, to replace the myriad agreements which existed under the predecessor railroads. (Under the Railway Labor Act, a successor railroad is bound by its predecessors' agreement until a new contract is negotiated.) A contract has already been worked out between the UTU and Conrail, which results in sizeable labor savings and reduced crews. Members of the union who were dissatisfied with the agreement brought suit to block the agreement. A preliminary U.S. Magistrate's findings indicate that the 3-R Act did not require the single agreement, but just encouraged its negotiation. The law has been re-enacted with stronger wording to make clear to the courts that the intention of congress has remained since 1973 that Conrail is entitled to a single collective bargaining agreement with each craft or class of workers.

SECTION 507

Section 507 of the Act adopts October 1, 1980 as the effective date of the new benefits.

SECTION 508

Section 508, entitled, "Technical Amendments," encompasses the following changes:

1. The Attorney General is now on the Board of USRA.
2. The Secretaries of the Treasury and Transportation may delegate their responsibilities in Conrail.

3. An employee is not considered to be eligible for benefits if unemployment is due to strikes or acts of God.

4. Oversight and audit functions of USRA are wide-ranging, despite any arbitration provisions elsewhere in the Act.

5. Amtrak has more flexibility in negotiating with states or transit districts in providing commuter service. (Amtrak is an intercity carrier, and may only provide commuter service if the local government absorbs any losses connected with it.)