

Sec.

- (b) Revocation of guarantee; legal effect of guarantee; validity and incontestability of guaranteed certificate.
- (c) Enforcement by Attorney General of rights accruing to United States because of guarantee.
- 665. Utilization of services and facilities of Federal departments and agencies; reimbursement; consultation with Board; coordination of activities with Federal departments and agencies.
- 666. Court supervision of expenditures; findings; report to Secretary.
- 667. Audit by Comptroller General; report to Congress.
- 668. Guarantee fees; amount; deposit.
- 669. Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 906, 922 of this title.

§ 661. Definitions

For the purposes of this chapter—

- (1) “Secretary” means the Secretary of Transportation.
- (2) “Board” means the Surface Transportation Board.
- (3) “Railroad” means any rail carrier subject to part A of subtitle IV of title 49.
- (4) “Certificate” means certificates issued by trustees of a railroad pursuant to subsection 77(c)(3) of the Bankruptcy Act, as amended.

(Pub. L. 91-663, § 2, Jan. 8, 1971, 84 Stat. 1975; Pub. L. 104-88, title III, § 325(1), Dec. 29, 1995, 109 Stat. 951.)

REFERENCES IN TEXT

Section 77(c)(3) of the Bankruptcy Act, referred to in par. (4), was classified to section 205(c)(3) of former Title 11, Bankruptcy. The Bankruptcy Act (act July 1, 1898, ch. 541, 30 Stat. 544, as amended) was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§1161 et seq.) of chapter 11 of Title 11.

AMENDMENTS

1995—Par. (2). Pub. L. 104-88, § 325(1)(A), added par. (2) and struck out former par. (2) which read as follows: “‘Commission’ means the Interstate Commerce Commission.”

Par. (3). Pub. L. 104-88, § 325(1)(B), substituted “rail carrier subject to part A of subtitle IV of title 49” for “common carrier by railroad subject to part I of the Interstate Commerce Act (49 U.S.C. 1-27)”.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

SHORT TITLE

Section 1 of Pub. L. 91-663 provided: “That this Act [enacting this chapter] may be cited as the ‘Emergency Rail Services Act of 1970’.”

§ 662. Guarantee of certificates**(a) Authority of Secretary; prerequisites; procedures; waiver**

The trustees of any railroad undergoing reorganization under section 77 of the Bankruptcy

Act, as amended, upon approval of the court, may apply to the Secretary for the guarantee of certificates. The Secretary, after consultation with the Board, is authorized to guarantee such certificates upon findings in writing that—

- (1) cessation of essential transportation services by the railroad would endanger the public welfare;
- (2) cessation of such services is imminent;
- (3) there is no other practicable means of obtaining funds to meet payroll and other expenses necessary to provide such services than the issuance of such certificates;
- (4) such certificates cannot be sold without a guarantee;
- (5) the railroad can reasonably be expected to become self-sustaining; and
- (6) the probable value of the assets of the railroad in the event of liquidation provides reasonable protection to the United States.

The Secretary shall publish notice of his intention to make such finding in the Federal Register not less than fifteen days prior to such finding, give interested persons, including agencies of the Federal Government, an opportunity to submit written data, views, or arguments (with or without opportunity for oral presentation), and give consideration to the relevant matter presented. The Secretary for good cause shown and upon a finding that extraordinary circumstances warrant doing so may waive the requirements of the preceding sentence. Notwithstanding any other provision of this section, the Secretary, in guaranteeing certificates under this section, is authorized to waive the findings required by paragraphs (1), (5), and (6) of this subsection.

(b) Conditions to guarantee

As a condition to a guarantee, the Secretary, after consultation with the Board, shall require that:

- (1) the proceeds of the sale of certificates guaranteed under this chapter, will be used solely for meeting payroll and other expenses which, if not met, would preclude continued provision of essential transportation services by the railroad;
- (2) other revenues of the railroad will be used, to the fullest extent possible, for such expenses;
- (3) proceeds from the sale of assets will be devoted to the fullest extent possible to the provision of essential transportation services by the railroad; and
- (4) in the event of actual or threatened cessation of essential transportation services by the railroad, the Secretary shall have the option to procure by purchase or lease trackage rights over the lines of the railroad and such equipment as may be necessary to provide such services by the Secretary or his assignee, and, in the event of a default in the payment of principal or interest as provided by the certificates, the money paid or expenses incurred by the United States as a result thereof shall be deemed to have been applied to the purchase or lease price. The terms of purchase or lease shall be subject to the approval of the reorganization court and the operation over the lines shall be subject to the approval of the