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PREPARED BY:

**THE STATE OF ALASKA
AND
THE UNITED STATES**

DEPARTMENT OF TRANSPORTATION

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JULY 14, 1983

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 15, 1983

The Honorable Jalmar Kerttula
President of the Senate
The Alaska State Legislature
Pouch V
Juneau, Alaska 99811


Dear Mr. President:

It is our pleasure to submit to the Congress and the Alaska State Legislature this report as required by Section 605(a) of the Alaska Railroad Transfer Act of 1982. This report describes the rail properties, assets, and liabilities of the Alaska Railroad and other aspects of the proposed transfer of the railroad to the State.

With the delivery of this report, the Department and the State will now undertake a joint effort to complete the planning, discussions and agreements necessary for an orderly transfer of the railroad, if the State decides to consummate the transfer. Of course, as more exact information becomes available and issues are further clarified, the report can be amended by mutual agreement.

Our efforts to date have benefited from the full cooperation of the Federal Departments of Defense, Interior, and Agriculture, Office of Personnel Management, and the General Services Administration and the State Departments of Law, Labor, Natural Resources, Transportation and Public Facilities, and the Alaska Office of Management and Budget, working under the auspices of the Alaska Railroad Transfer Team. We will continue to work closely with all Federal, State and private sector parties affected by the transfer in order to achieve fair and equitable treatment of their interests within the schedule established by the Act.

Sincerely,


Elizabeth Hanford Dole
Secretary, U.S. Department
of Transportation


Bill Sheffield
Governor

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 15, 1983

The Honorable Joe L. Hayes
Speaker of the House
The Alaska State Legislature
Pouch V
Juneau, Alaska 99811

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Handwritten signature of Bill Sheffield in cursive.

Bill Sheffield
Governor

Handwritten signature of Elizabeth Hanford Dole in cursive.

Elizabeth Hanford Dole
Secretary, U.S. Department
of Transportation

ALASKA RAILROAD TRANSFER REPORT

Prepared by

The United States Department of Transportation

and

The State of Alaska

July 14, 1983

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INTRODUCTION

The Alaska Railroad Transfer Act of 1982 (Title VI of P.L. 97-468, Stat. 2556 (1983), hereafter "ARTA" or "the Act") authorizes the transfer of the Federally owned Alaska Railroad to the State of Alaska under certain terms and conditions established by the Act. Section 605(a) of ARTA requires the United States Secretary of Transportation and the Governor of Alaska jointly to prepare and deliver to the Congress and the Alaska State Legislature a Report describing the properties, assets and liabilities of the railroad that will be transferred to the State and other details of the transfer process. This Report is submitted to the Congress and the Legislature to fulfill that requirement. This Report does not constitute an agreement between the Department of Transportation and the State to complete the transfer.

The enactment of ARTA was the culmination of years of discussions between the Federal and State governments regarding the possible transfer of the railroad to the State. As the Congressional findings in the Act note, continued operation and development of the railroad are necessary to achieve national, State and private objectives, but continued Federal ownership and financial support are no longer essential. Congress found that the transfer of the Alaska Railroad is consistent with the Federal interest in shifting to the states those activities more appropriate for state ownership

and operation. Because of the critical role the railroad plays in the State's transportation system and economy, the State of Alaska has an interest that is more direct in preserving an operating railroad in Alaska.

Although the State is the preferred transferee under ARTA, transfer depends upon the Secretary of Transportation's certification that the State will acquire and operate the railroad subject to the terms and conditions of the Act. The State has not yet agreed to do so and will base its decision on the contents of this Report and the results of continuing discussions with the Department of Transportation about the required certifications and other issues noted in this Report. The State's decision also depends upon the study being conducted by the United States Railway Association (USRA) that will determine the value, if any, of the railroad, for which the State would have to agree to compensate the United States before transfer could proceed.

Providing a detailed description of the property of the Alaska Railroad is the fundamental purpose of this Report. The Report also lays the groundwork and establishes processes for continued discussions between the State and the Department that will be necessary to secure the requisite certifications, prepare transfer documents, and complete the transfer. It also reflects significant agreements between the Secretary and the Governor regarding the application of ARTA to specific

factual circumstances. Some unresolved real property issues are noted in this Report, the development of which served as a useful vehicle for identifying and defining the remaining matters to be clarified prior to transfer. Further, the Act requires USRA to use this Report in its valuation of the railroad. Finally, this Report establishes a framework for State preparation to acquire and operate the railroad in the event the transfer process is completed.

With these multiple purposes in mind, a brief description of the contents of this Report follows. Although much of the information is highly detailed and technical, this Report discusses generally key provisions of the Act and provides an overall profile of the railroad. The body of this Report discusses specific issue areas posed by implementation of ARTA. These include formal reports on the status of the railroad's real and personal property, catalogued in a manner required by the Act, as well as discussions of the allocation of the railroad's liabilities and obligations between the United States and the State; the employee protection provisions of the Act; and the regulatory issues posed by the proposed transfer. Each of these general presentations is supported by descriptive material (appendices) and/or factual lists (exhibits).

The information contained in this Report is also subject to change in ways contemplated by the Act. For instance,

revisions will occur to reflect settlement or adjudication of claims to railroad lands and to note changes in inventory resulting from normal operation of the railroad between the date of this Report and the transfer date. Accordingly, this Report should be regarded as a "snapshot" of the Alaska Railroad on the date of the Report, as well as a status report on activities being undertaken in preparation for a possible transfer to the State.

As the complexity and bulk of this Report indicate, its preparation was time-consuming and sometimes difficult. Representatives of the Secretary and the Governor who prepared this Report benefited from the full cooperation and support of the management and employees of the Alaska Railroad, as well as other Federal officials from the Departments of Agriculture (Forest Service), Defense, and Interior (particularly the Bureau of Land Management), the Office of Personnel Management, the General Services Administration, the Federal Aviation Administration and the Coast Guard who provided information and valuable assistance. Numerous State agencies also contributed to this work, under the auspices of the Alaska Railroad Transfer Team, including the Departments of Labor, Law, Natural Resources, Transportation and Public Facilities, and the Office of Management and Budget. Without the active support of these Federal and State agencies, this

Report could not have been completed within the time provided by the Act. Both the Department of Transportation and the State are grateful for their assistance.

TRANSFER OVERVIEW

This overview summarizes the basic statutory scheme for the proposed transfer of the Alaska Railroad to the State of Alaska, describes the anticipated timetable for the transfer and discusses a series of major issues that were considered in the development of ARTA.

The Act was signed into law by President Reagan on January 14, 1983. It authorizes transfer of the Alaska Railroad to the State of Alaska subject to several specified conditions, including the requirement that the State compensate the United States for the value, if any, of all rail properties transferred. Other important conditions include State commitments to continue railroad operations, to assume existing obligations, to provide employee protection for at least two years, and to protect retirement benefits.

Two key provisions, each tied to the date of enactment, establish an orderly process for State consideration of the transfer offer. Within six months from the date of enactment, this Report is required to be prepared by the Governor of Alaska and the Secretary of Transportation and submitted to the Alaska State Legislature and the Congress. Within nine months from the date of enactment, the railroad's fair market value must be determined by USRA.

Following delivery of this Report, the Secretary of Transportation has 12 months within which to certify that the

State has agreed to all conditions for transfer specified by ARTA. Actual transfer of the railroad is to take place "as soon as practicable" after these certifications are made. Within three months of certification, the Secretary and the State will agree on the actual date of transfer, which the parties hope will be no later than six months following certification. Although both parties are committed to proceeding expeditiously, a longer period may be needed to ensure an orderly process. If the State has been unable to satisfy the transfer conditions within the 12-month time period, ARTA permits the Secretary to dispose of the railroad and to give preference to a buyer or transferee who will continue to operate rail services.

Certification Process.

As noted, ARTA sets out a series of conditions that the State must meet to allow transfer certification by the Secretary. The legislation does not, however, attempt to specify how the State is to satisfy the conditions. Much will depend upon the State's decision concerning the nature of the entity it will designate or create to operate the railroad under State ownership. The working assumption of the State during development of ARTA was that State enabling legislation would be enacted to resolve this fundamental issue, and that such legislation would either satisfy the outstanding certification requirements or empower the operating entity to do so.

As a precondition to transfer, the Secretary is required to certify that the State has agreed:

- (1) to operate the railroad as a rail carrier in intrastate and interstate commerce;
- (2) to assume all rights, liabilities, and obligations of the Alaska Railroad on the date of transfer, with some limited exceptions regarding claims and causes of action;
- (3) to protect retirement benefits and to establish acceptable arrangements for continued employment during a two-year period following date of transfer;
- (4) to allow representatives of the Secretary of Transportation adequate access to railroad employees and records when needed in relation to the period of Federal ownership; and
- (5) to compensate the United States at the value, if any, determined by the valuation exercise being performed by the USRA.

Reversion.

If transferred to the State under Section 604, the railroad may revert, in whole or in part, to the United States under three separate reversion provisions in ARTA:

- (1) Under Section 610(e), any proceeds in excess of the cost of any rehabilitation and improvement and any

net liabilities from the State's sale or transfer of "all or substantially all" of the railroad within five years of transfer to an entity other than a State instrumentality are to be paid to the United States Treasury.

- (2) Section 610(a) requires the reversion to the United States, or the payment by the State of the fair market value, of all or part of the railroad's real property "converted to a use that would prevent the State-owned railroad from continuing to operate" within ten years after transfer.
- (3) Section 610(b) requires reversion to the United States generally for conveyance to the abutting owners of any land within the right-of-way if its use for transportation, communication or transmission purposes is discontinued by the State for an uninterrupted period of 18 years.

Claims Against Railroad Lands.

Approximately 4,000 acres of the railroad's non-right-of-way lands are subject to claims by Native Village Corporations under the Alaska Native Claims Settlement Act. Article II and Appendix D of this Report provide more detail regarding the lands involved. During the ten month period following the date of enactment of ARTA, the State, the Department of the Interior, and all affected Native Village Corporations are

directed to undertake a good faith effort to negotiate settlements for as many outstanding claims as possible.

If any of these claims cannot be settled within the ten-month period, they must be adjudicated by the Secretary of the Interior within two years of the date of enactment of ARTA, or 14 months after completion of the review and settlement process. All other unresolved claims against railroad lands on record in the Department of the Interior, as of the day before the date of enactment must be adjudicated within three years from the date of enactment. Resolution of claims to railroad land is not a precondition to transfer.

Survey Requirement.

ARTA requires the Secretary of the Interior to survey within a five-year period all lands among the rail properties conveyed to the State. The parties emphasize the importance of meeting the deadline and will continue to work with the Department of the Interior to do so. Article II, Appendices B-E and Exhibit 1 of this Report provide more detail about the lands involved.

Railroad Right-of-Way.

ARTA requires the transfer to the State of all right, title, and interest of the United States to all rail properties of the Alaska Railroad, including all railroad rights-of-way. ARTA also provides that where lands or any interests within the right-of-way have been conveyed out of Federal

ownership prior to enactment, the State shall receive, at minimum, an exclusive-use easement. These two provisions are intended to ensure that the State will receive all of the interest necessary to maintain viable railroad operations.

Future Rights-of-Way.

ARTA provides for expeditious review of any future right-of-way requests by the State across Federal lands. The Act requires that such rights-of-way conform, to the extent possible, to the standards provided by the Alaska Railroad Enabling Act of 1914 and the exclusive-use easement definition contained in ARTA. Responsibility for reviewing and granting such future rights-of-way is vested by existing law in the Secretary of the Interior or the Secretary of Agriculture, with the participation of the Secretary of Transportation as appropriate, particularly with respect to the interest to be granted for operation and economic growth of the railroad.

Denali National Park and Preserve Lands.

On the date of transfer, the Secretary will deliver to the State a deed that conveys to the State (a) an exclusive-use easement for that portion of the rights-of-way within Denali National Park and (b) title to the railroad-related improvements within such right-of-way. All other railroad holdings and improvements within the Park are to be transferred to the Secretary of the Interior for administration as part of the Park. Rail properties within the boundaries of the Chugach

National Forest and the Denali National Park and Preserve will be subject to laws and regulations for the protection of forest and park values. Implementation of those regulations will be subject to prior consultation with the Governor and may not unreasonably interfere with continued or expanded operation of the State-owned railroad.

Real Property Conveyance.

Articles II and III, related to real and personal property and supported by lengthy appendices and exhibits, are the most detailed parts of this Report. The transfer from the Federal Government of its only commercial operating railroad present property questions of first impression. This transfer is further complicated by the peculiar status of many Federal lands located in Alaska. The impact of competing claims to such lands on the transfer process accounts for the complex statutory scheme provided in ARTA and for the detailed treatment of the railroad lands in Article II.

The Act provides for four different types of conveyance documents to be issued to the State on the date of transfer. Each document will convey interests in land based on the status of the affected parcel on that date.

First, the State will receive an "interim conveyance" of lands that, like the patented lands, are free of claims by others but, unlike the patented lands, are not yet surveyed. When these lands have been surveyed after the date of

transfer, the interim conveyances will be converted into patents.

Second, the State will receive a patent for railroad lands that are surveyed and are not subject to unresolved claims made by third parties under a variety of Federal laws.

Third, the State will receive an exclusive-use easement, as defined in ARTA, for right-of-way lands within Denali National Park and Preserve.

Fourth, the State will receive a license allowing it the exclusive right to use the railroad lands that are subject to claims of third parties (such as Native Corporations) on the date of enactment but which have not been resolved by the date of transfer. As these claims are settled or decided, the lands in the license category will either be placed in the interim conveyance category (if the third party's claim is denied) or conveyed to the claimant (if the claim is approved). The real property conveyance provisions of ARTA thereby require that certain railroad lands be held in escrow (i.e., under license) until their ultimate ownership is determined through settlement or by adjudication.

Employee Protection.

The work force of the Alaska Railroad (described in the "Profile" section) remains one of its most valuable assets. The employee protection provisions of ARTA, more fully discussed in Article VI, testify to the continuing interest

of the State and the United States in protecting the employees' well-being in the face of the proposed transfer to the State. The provisions also are intended to facilitate and indeed encourage the transfer of the Alaska Railroad work force to the State-owned railroad, in recognition of its critical importance to the ongoing viability of the railroad. Although care has been taken to preserve employee options to elect not to transfer and to protect their rights in the event they decide to separate from the railroad upon transfer, the Secretary and the Governor hope that the vast majority of employees will remain with the State-owned railroad.

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ALASKA RAILROAD PROFILE

The Alaska Railroad is a 520-mile standard gauge railroad that operates from the ice-free ports of Seward and Whittier on the south coast of the Kenai Peninsula through Anchorage to the Fairbanks area. Authorized by an Act of Congress in 1914, the railroad was completed in 1923. The Alaska Railroad is an operating agency of the Federal Railroad Administration (FRA), United States Department of Transportation. A map is provided as Appendix F.

The Alaska Railroad provides both freight and passenger service between the Kenai Peninsula and Fairbanks area, with railcar barge interchange service available via Whittier; Trailer-on-Flatcar and Container-on-Flatcar (TOFC/COFC) interchange service via Anchorage; and transshipment capabilities available at Nenana for ports on the Tanana and Yukon Rivers.

This section of the Report offers a brief profile of the Alaska Railroad as it exists today. Particular emphasis is given to issues pertinent to the pending transfer. While it is not meant to be a legal description, every effort has been made to provide the most current and accurate information available, some of which is necessarily approximate. The USRA valuation report also is expected to contain additional profile information including current statistical and operating condition information.

The Physical Plant.

Track and Road Structure.

The Alaska Railroad operates 520 miles of single track main and branch lines between Seward and Fairbanks via Anchorage, Wasilla, Healy, and Nenana. In addition, there are six branches presently in use with an aggregate total length of 64 miles. These include the 28-mile line from Fairbanks to Eielson Air Force Base, the 10-mile Fairbanks International Airport line from Fort Wainwright to the airport, the four-mile coal branch from Healy to Suntrana, the seven-mile line from Matanuska Junction to Palmer, the three-mile Anchorage International Airport spur, and the 12-mile line between Portage and Whittier.

The main line has only mild gradients along the sea level route between Whittier and Anchorage and up the Susitna Valley as far north as Gold Creek. However, the severe grades on the next 35 miles to the summit of the pass through the Alaska Range reduce the tonnage ratings of locomotives. The grades on the north side of the range are less severe. The main line north of the range to Fairbanks and the Eielson Air Force Base line pass through generally rolling country with mild gradients. The steepest grades on the railroad are on the line from Portage to Seward, which crosses two mountain barriers. Both affect southbound traffic between Portage and Seward.

Northward grades are lower but are still more demanding than any segment of the line north of Portage.

The track structure of the Alaska Railroad is generally in good condition, particularly considering the severe weather extremes in Alaska. All main line track is 115-pound per yard in weight. There are certain areas where reconstruction or realignment might be necessary for the State-owned railroad to overcome future operating constraints. Most notable are Healy Canyon and the Portage-to-Seward line where substantial reconstruction and track relocation may be desirable over time to sustain potential future coal export traffic or other new bulk commodity movements if those markets develop. The capacity of a single track line like the Alaska Railroad is more limited than a double track system. The addition of a basic signal system could double traffic capacity, while a more sophisticated system could double it once again. Thus there is no apparent need to construct a double track in the near future, although a limited number of additional side tracks for passing trains may be needed if traffic volumes increase substantially.

The track and bridges of the main line are maintained to accommodate cars carrying loads up to 100 tons, although the Eielson Air Force Base and Suntrana branches have lower loading limits. Present operating policy limits 100-ton capacity cars to 80 tons when they are used to move bulk products,

such as coal and gravel, resulting in reduced track wear, more efficient train handling and lower fuel consumption.

Alaska Railroad track is inspected by FRA on the same regular basis as other railroads. Any repairs or maintenance indicated in the course of such inspections have routinely been undertaken. See Article VII, Section 1 and Exhibit 8, for a fuller discussion.

Yards.

The railroad also operates and maintains a number of yards and shops to classify cars, maintain its equipment, and serve local industries. The yard at Seward serves the railroad-owned port facilities at that location and includes a number of car marshalling tracks, a small equipment maintenance facility, the dock facilities, and several spurs to local industries. Because Whittier is the interchange point for interline railcar service via barge to the Lower 48 states and Canada, the railroad's major structures at this location are barge slips and other facilities to unload rail barges. Other railroad facilities in Whittier are used for the passenger-auto shuttle service that operates between Whittier and Portage. Railroad property at Whittier is also used for a military dock and as a petroleum terminal.

Facilities in Anchorage include the railroad's headquarters building, including the passenger terminal, a major classification yard, locomotive and car maintenance shops, and

car storage facilities. The Anchorage yards also serve a number of industries and installations including the Port of Anchorage, Elmendorf Air Force Base, the Anchorage International Airport, and Fort Richardson. There are also COFC/TOFC facilities in Anchorage which is the major interchange point for containerized cargo.

At Healy, the railroad's property includes a small yard and locomotive service facility which primarily serves the nearby coal mines. The Nenana yard is primarily a service facility for the river port that provides connecting service to river barges operating on the Tanana and Yukon Rivers. Railroad facilities at Fairbanks consist of a small classification yard, limited locomotive and car shops, and trackage to serve local industrial facilities. The yard is also the base for service to Fort Wainwright and Eielson Air Force Base as well as the North Pole Refinery.

Buildings.

More than 90 percent of the Alaska Railroad's buildings are located at Anchorage, Fairbanks, Whittier, Seward, and Healy. These facilities are used for maintenance and repair of equipment; administration; warehousing; section houses and living quarters; transit sheds; and terminal facilities. Most of these buildings are at least 20 to 25 years old. As a Federal agency, the Alaska Railroad has not been subject to the same health, safety, and local building code standards

that apply to non-Federal businesses. Railroad management has attempted to provide a safe workplace in full compliance with standards applicable to Federal agencies. However, upon transfer, normal Occupational Safety and Health Act standards and state and local codes will apply. The State has commissioned a survey and analysis to determine the cost of compliance with state and local building codes and is also reviewing current Alaska Railroad estimates of the cost of full OSHA compliance, which will be followed by a voluntary compliance inspection by State OSHA personnel. Although not finished, the State's studies suggest that compliance may prove costly. It is clear given current State law and policy that the State will have to address these problems following transfer. When completed, the study may be added as an amendment to Exhibit 8, if appropriate.

Equipment.

The Alaska Railroad uses a variety of equipment to produce revenue and maintain property. The largest and costliest units are the railroad's 62 locomotives which have an average age of 14 years. The most modern of the units are 15 3,000-horsepower road-switcher locomotives built by General Motors between 1975 and 1978. Recently, five rebuilt units have been purchased and four new GP-49 road-switcher locomotives have been ordered. These new acquisitions are comparable to the most modern equipment on any railroad. Ten older

1,600-horsepower road-switcher locomotives were completely rebuilt in 1977 and have a useful economic life at least through 1992. Of the remaining units, only about 10 to 15 are usually in service under present traffic conditions.

The freight car fleet numbered 1,653 units on May 6, 1983. Exhibit 5 of this Report shows the distribution of freight cars by functional type. The freight car roster is dominated by open cars, including flat cars, gondolas, open hoppers, and dump/ballast cars. This is consistent with the types of traffic being handled with most of the tonnage consisting of bulk materials, such as coal, gravel, logs, and pipe along with TOFC/COFC service. Tank cars, used for petroleum product distribution throughout the rail belt, are another important component of the car fleet. The fleet also includes boxcars.

The average age of the freight car fleet is 30.5 years. Many of the older cars have limited capacity. Even though the fleet has been well maintained, maintenance will become more costly as the cars age. National railroad safety standards limit the age of equipment that may be used in interline service. As is typical of the railroad industry, the railroad operates a number of older cars under waivers of Federal safety laws and regulations and national standards provided the cars are not interchanged.

The passenger car fleet consists of 46 units owned by the Alaska Railroad and six leased from Amtrak largely for increased summer service. Although not as old as the

railroad's freight fleet, many of the passenger cars will continue to require rebuilding if the present level of service is to be continued. In recognition of this need, the railroad recently rebuilt 11 passenger cars.

In addition to revenue-producing equipment, the Alaska Railroad has over 200 units of maintenance and emergency equipment. This is supplemented by a fleet of on- and off-track machinery used in maintenance and in-house construction work.

Real Property.

The railroad's land holdings are its most valuable fixed asset and are used principally for operations, maintenance, and traffic development purposes. The Alaska Railroad controls or exclusively uses approximately 41,000 acres of land. Of the total, about 12,000 acres are used for the right-of-way, which is 200 feet wide at most places. The remaining 29,000 acres are used or reserved for marine and rail terminals; gravel resources; right-of-way erosion protection; industrial leases; material and rock reserves; railroad administration; and future development and facility expansion.

These non-right-of-way lands have been set aside or acquired to support operations of the railroad. About 1,000 acres are under lease to businesses which provide approximately \$3 million a year in rental income and generate traffic

for the railroad. Nearly 11,000 acres are used as active gravel and rock quarries, or are held to stockpile gravel and rock for railroad needs. Roughly 7,000 acres are used for terminal and yard areas. The remaining acres are being used for watershed or held for future development purposes primarily in remote areas.

Some 4,000 acres of non-right-of-way lands are subject to claims by Native Village Corporations under the Alaska Native Claims Settlement Act. Most significant among such lands are roughly 280 acres at Nenana, 250 acres near Birchwood Airport, almost 600 acres of gravel and rock reserves near Eklutna, and a 1,800-acre parcel at Eagle River. Approximately 20 percent of the railroad's known gravel resources are subject to such claims, including almost all such resources outside the right-of-way between Portage at Milepost 65 and Talkeetna at Milepost 223. This is an area with high gravel needs due to relatively heavy rail traffic and special topographical conditions. (See Article II, Appendices B-E and Exhibit 1 for a detailed discussion.)

The right-of-way crosses a number of military installations that are vital to the military's defense mission in the region. These installations are Elmendorf Air Force Base and Fort Richardson in the Anchorage locale, Clear Air Force Station situated roughly midway between Denali Park and Fairbanks, and Fort Wainwright and Eielson Air Force Base in

the Fairbanks area. Historically, the Department of Defense and the Alaska Railroad have worked together closely to accommodate one another's interests and needs. The parties to the transfer will strive to maintain this relationship intact through the transfer process and after transfer. The Department of Defense has expressed concern about the effect on military security of possible unrestricted public access to its installations through the State-owned right-of-way. This concern is one which all parties acknowledge will require further discussion. The State and the Department of Defense will work to achieve mutually acceptable arrangements for protecting legitimate military security interests.

The State believes these concerns can be addressed by memoranda of understanding establishing rules concerning public access that do not impair the State's statutory right to own and use the right-of-way for transportation, communication, and transmission purposes and for support functions associated with such purposes.

The Department of Defense believes that, in order to properly carry out the military mission, prevent compromise of security, and assure adequate protection of defense resources within the installations, easements dealing with military security, safety zones, fire suppression and police functions must be reserved which would permit proper fire and police protection and restrict public access to railroad properties where they cross military reservations.

The parties have already made progress toward resolving related issues, which are unique in the transfer process. Existing military uses and ingranths on the right-of-way have been identified for reservation to the United States by easement and are presently being reviewed by the State and the railroad to determine whether they are consistent with ARTA. Additionally, avigational easements will protect military air space over the right-of-way by establishing appropriate ceilings for railroad activity. A radar easement will be reserved at Clear Air Force Station. The process of formulating appropriate terms and procedures is presently underway and should be completed prior to transfer.

Several other land issues deserve brief mention here, and are treated more fully in Exhibit 1. Presently, whether the railroad branch line track on Eielson Air Force Base should be transferred under the Act remains unresolved. The State and the Department of Agriculture have not agreed to the disposition of a number of parcels permitted to the railroad, including important gravel sources within the Chugach National Forest. The Department of the Interior and the State have not agreed to the disposition of part of a trackless right-of-way that the Alaska Railroad still claims and considers important for possible renewed operations to coal-rich areas east of Anchorage. These matters involve unresolved questions of fact, statutory interpretation and Congressional intent. The

parties interested in each of these issues intend to continue efforts to reach mutually acceptable solutions consistent with the Act prior to the date of transfer.

Profile of Railroad Work Force.

On December 30, 1982, the railroad had 507 permanent employees, 465 of whom were full-time and 42 of whom were part-time or seasonal. A substantial number of the employees have worked for the railroad for many years. In addition, the railroad normally hires around 200 temporary, seasonal employees to help with summer track and equipment maintenance programs. As of December 30, 1982, the average age of permanent employees of the Alaska Railroad was 40.8 years. In 1982, total payroll (including temporary and permanent employees and cost of living adjustments) was \$29 million from total revenues of \$58.8 million.

At the present time, five different unions represent employees of the railroad: the Brotherhood of Railway Carmen, the American Train Dispatchers Association, the United Transportation Union, the American Federation of Government Employees, and the International Association of Machinists and Aerospace Workers. The railroad presently has collective bargaining agreements in effect with these five unions that contain provisions governing compensation, benefits, operations and work rules. About 90 permanent employees, primarily

working in administration and management positions, are not represented by any union.

Unlike the employees of other railroads in the United States, the Alaska Railroad's employees are also Federal employees with all of the rights and benefits provided by the Federal Civil Service System. In particular, the present employees of the railroad have participated in and made contributions to the Federal Civil Service Retirement and Disability Fund; at present these contributions amount to seven percent of the employees' basic pay. The railroad has made employer contributions out of railroad revenues to the fund matching the retirement contributions made by all current employees. For calendar year 1982, for example, the Alaska Railroad withheld \$1.5 million from employees as their seven percent contribution to the fund and this contribution was matched by a \$1.5 million employer contribution from the Alaska Railroad. As of December 31, 1982, the total employee and employer contribution plus interest was approximately \$35.4 million for existing permanent employees.

Alaska Railroad records show that 136 permanent employees would be eligible for retirement over the next five years. As indicated by the following table, annual totals are subdivided to show the number of employees who would be eligible for optional retirement based on achieving the number of years of service and/or age required for a full annuity and those who satisfy the age and service requirements for eligibility to

receive a reduced annuity for discontinued service beginning in the year indicated.

Employees Eligible for Retirement
Over Next Five Years

<u>Year</u>	<u>Total</u>	<u>Voluntary(1)</u>	<u>Discontinued Service</u>	<u>Mandatory (2)</u>
1983	63	17	46	0
1984	16	1	15	0
1985	20	1	17	2
1986	23	4	17	2
1987	<u>14</u>	<u>2</u>	<u>12</u>	<u>0</u>
TOTAL	136	25	107	4

- (1) Voluntary retirement includes those with a minimum of 30 years service and 55 years of age or those with 5 years of service and 62 years of age.
- (2) Mandatory retirement is required for any employee 62 years of age with 15 years of Alaska service.

A variety of other Federal benefits are available to employees of the railroad. They include relocation and turn-around travel allowances for certain employees, health and life insurance benefits, accrued sick and annual leave, credit for all time served as Federal employees, and protection against arbitrary dismissal.

Financial Profile.

The Alaska Railroad has operated at a loss over most of its history except during short periods of rapid economic development in Alaska. Although railroad operations provide most of the Alaska Railroad's revenues, income from leased lands is critical to sustained viability. Historically, the

volatile nature of the Alaska economy has directly affected the railroad's financial performance. It enjoyed some of its better years during the mid-1970s when oil-related construction on the North Slope was at its peak. As that activity has declined, so have railroad revenues. The railroad estimates that in FY 1982 pipe-related movement for the North Slope accounted for roughly 16 percent of freight revenue. However, in FY 1983 with that traffic at a stand-still, current projections indicate that this traffic will generate less than five percent of the total freight revenue. Light density railroads like the Alaska Railroad almost by definition have relatively high, largely fixed costs. Accordingly, even rather slight shifts in traffic dramatically affect overall performance.

The viability of the Alaska Railroad is significantly affected by its commitment to continue providing passenger service, which historically has represented an important and disproportionate element in the railroad's cost structure. For example, although passenger and mixed (freight and passenger) train service together represented over 45 percent of annual train miles, passenger service contributes a much smaller share of total revenues.

Freight is concentrated among a limited number of commodities moving between limited points. Local movements within Alaska generate the most tonnage (i.e., Healy coal, Palmer-to-Anchorage sand and gravel). Interline traffic

essentially consists of the interchange traffic from railcar barges through Whittier and trailer and container movements through Anchorage. Although both types tend to provide reasonably constant traffic levels that are consistent with the size of the railbelt economy, both fluctuate in tune with the boom-or-bust cyclical nature of the Alaska economy.

The railroad's status as a Federal agency affects its financial performance. Financial reporting has more closely followed Federal agency budget practices than private railroad businesses although the railroad recently has been making progress in developing data that are similar to other railroads and more consistent with normal industry practices. The railroad as a Federal agency does not have access to capital markets. It cannot borrow funds for equipment or mortgage its property to generate capital. The only means available for obtaining capital have been operations (depreciation charges or surplus revenues) or Federal appropriations. Although this has reduced operational flexibility, the railroad will emerge from Federal Government ownership debt-free.

A copy of the railroad's latest (FY 1982) annual report (updated through April, 1983 in the accompanying monthly financial report) appears in Appendix H. Also, three recent studies of the railroad are included in Appendix K. These studies were conducted for the State while the transfer has been under consideration.

ARTICLE I GENERAL PROVISIONS

Sec. 1. Definitions. Words defined in ARTA have the same meaning when used in this Report. ARTA is reprinted as Appendix A to this Report.

Sec. 2. ARTA References. In general, quotations from ARTA have been kept to a minimum; citations to specific provisions in ARTA appear in parentheses throughout this Report.

Sec. 3. Transfer Process. Within three months after all the tasks described in this Report have been completed and the Secretary has certified that the State has met all the conditions of transfer as provided by ARTA and this Report, the date of transfer will be set by mutual agreement between the Secretary and the Governor. If at all possible, transfer will occur within six months of certification, although a longer period may be necessary. On the date of transfer, the Secretary will deliver to the State all conveyance documents, and the State will assume all duties and responsibilities required by ARTA and this Report.

Sec. 4. Execution and Availability. The Governor and the Secretary have executed duplicate originals of this Report with appendices and exhibits for submission to the Congress and the Alaska State Legislature. Other complete copies of the Report will be available for public inspection at the offices of the Secretary, the Governor, the General Manager of the Alaska Railroad and the State Commissioner of Transportation and Public Facilities.

Sec. 5. Appendices and Exhibits. All appendices and exhibits referred to in or attached to this Report are integral parts of this Report as if fully set forth herein.

Sec. 6. Limited Agreement. This Report constitutes an agreement between the Secretary and the Governor as to a description of the properties, assets and liabilities to be transferred and any exclusions therefrom, subject to the provisions of ARTA and this Report. This Report shall not be construed to enlarge or diminish any of the respective rights or obligations of the United States and the State of Alaska under ARTA, nor does it obligate the State to undertake to fulfill any of the conditions required for transfer.

Sec. 7. Amendment. The parties believe this Report contains the best available information about the Alaska Railroad at the time the Report was prepared. Some of the information contained in it will change, due to normal operations of the railroad and the availability of more exact information before the date of transfer. The parties agree that revision of this Report and related documents will be necessary to include rail properties hereafter identified or made available for conveyance to the State by resolution of third-party claims and to improve the descriptions of rail properties to be contained in the conveyance instruments. Amendment of this Report may be made only in writing by mutual consent of both the Secretary and the Governor or their duly authorized designees.

Sec. 8. Delegation. The Secretary and the Governor may designate other appropriate officials to undertake the reporting and granting of approvals required pursuant to this Report. The Governor of the State designates the Commissioner of Transportation and Public Facilities for such purposes.

Sec. 9. References. Unless otherwise provided, specifically or in context, "Secretary" means the U.S. Secretary of Transportation and "Department" means the U.S. Department of Transportation.

ARTICLE II REAL PROPERTY

On the date of transfer, the State will receive four types of conveyance documents described in this article.

Sec. 1. Interim Conveyance. On the date of transfer the Secretary will deliver to the State an interim conveyance for all real property among the rail properties not subject to unresolved claims of valid existing rights (Section 604(b)(1)(B)) except so much of that real property that has already been surveyed and can be conveyed by patent (Sections 604(b)(2),(3)). The real property to be conveyed to the State by interim conveyance on the date of transfer is described in Appendix B. The effect of the interim conveyance will be to convey to and vest in the State exactly the same right, title, and interest in and to the described properties as the State would have received had it been issued a patent by the United States subject only to those matters described in Appendix B (Section 604(b)(3)). Where property described in Appendix B is right-of-way that has been described in a land conveyance made by the United States, the right, title and interest in such right of-way conveyed to the State by the interim conveyance will be not less than an exclusive-use easement (Section 606(b)(4)(B)).

Sec. 2. Patent. On the date of transfer the Secretary will deliver to the State a patent for all real property among the rail properties that has been surveyed by the Secretary of the Interior and is not subject to unresolved claims of valid existing rights (Sections 604(b)(2),(3)). The real property to be conveyed to the State by patent on the date of transfer is described in Appendix C. Where property described in Appendix B is right-of-way that has been described in a land conveyance made by the United States, the right, title and interest in such right-of-way conveyed to the State by the patent shall be not less than an exclusive-use easement (Section 606(b)(4)(B)).

Sec. 3. Exclusive License. (a) On the date of transfer the Secretary will deliver to the State an exclusive license to use all real property among the rail properties subject to unresolved claims of valid existing rights (Section 604(b)(1)(C)). The rail properties that are subject to such claims on the date of this Report are described in Appendix D.

(b) The exclusive license entitles the State to use, occupy and directly receive all benefits of the rail properties described in the license for the operation of the State-owned railroad, in accordance with and for the term provided in ARTA and this Report (Section 604(b)(4)).

(c) All right, title and interest of the United States in property described in Appendix D that is land within the

right-of-way subject to an unresolved Village Corporation claim will be conveyed to the State free and clear of such claim by interim conveyance (or patent if such property is surveyed) on the later of the date of transfer or the date of the day before completion of final administrative adjudication of such claim (Section 606(b)(4)(A)(ii)), or upon relinquishment of the claim.

(d) All right, title and interest of the United States in property described in Appendix D that is land within the right-of-way subject to an unresolved claim by a party other than a Village Corporation will be conveyed to the State by interim conveyance (or patent if such property is surveyed) on the later of the date of transfer or on the date the property becomes available for conveyance as a result of settlement, relinquishment or final administrative adjudication of the claim (Section 604(b)(2)). The interest conveyed under this paragraph shall not be less than an exclusive-use easement (Section 606(b)(4)(B)).

Sec. 4. Denali National Park Lands. On the date of transfer, the Secretary will deliver to the State a deed that conveys to the State (a) an exclusive-use easement for that portion of the right-of-way within Denali National Park described in Appendix E, and (b) title to the railroad-related improvements within such right-of-way described in Exhibit 3 (Section 604(b)(1)(D)).

Sec. 5. Reservations. (a) In all conveyances made to the State under this article, the existing easements for administration (including agency transportation and utility purposes) described in Exhibit 4 will be reserved to the Secretary of Interior, Defense, or Agriculture as appropriate (Section 604(c)(2)).

(b) In accordance with the terms and conditions provided in the Act, existing lease rights to 5,000 square feet of railroad land in Talkeetna, Alaska described in Alaska Railroad lease number 69-25-0003-5165 will be reserved to the Secretary of the Interior (Section 604(c)(3)).

Sec. 6. Changes and Refinements. (a) Additions to and deletions from the real property described in this Report may be made in the ordinary course of business between the date of this Report and the date of transfer (Sections 603(10), 605(b)(2)). Such changes are subject to the provisions of ARTA and this Report. The Secretary shall notify the State in writing within 30 days after any change in the property described in Appendices B-E (and any refinement of description) that does not require prior State consent under Section 605(b) of ARTA.

(b) Any proposed change that would affect property described in Appendices B-E and that requires prior State consent under Section 605(b) of ARTA shall be submitted to the Commissioner of Transportation and Public Facilities for

approval before the railroad undertakes the proposed action or incurs any obligation to do so.

(c) Unresolved claims by Village Corporations and other parties to rail property may be relinquished, settled, or adjudicated after the date of this Report and prior to the date of transfer. Upon such relinquishment, settlement or adjudication, property previously subject to such a claim will be deleted from the category of properties subject to the exclusive license (Article II, Section 3) and added to the category to be conveyed by interim conveyance (Article II, Section 1) or, if already surveyed, by patent (Article II, Section 2). The Secretary will notify the State in writing not more than 30 days after each such change occurs and the parties will revise Exhibit 1 to this Report to reflect such changes.

(d) Survey of real property among the rail properties not subject to unresolved claims of valid existing rights may be completed after the date of the Report and prior to the date of transfer. Upon such a completion, the property then surveyed will be deleted from the category of properties to be conveyed by interim conveyance (Article II, Section 1) and added to the category to be conveyed by patent (Article II, Section 2). The Secretary will notify the State in writing not more than 30 days after each such change occurs and the

parties will revise Exhibit 1 to this Report to reflect such changes.

Sec. 7. Post-Transfer Actions. The Secretary of the Interior will complete the adjudication of all unresolved claims of valid existing rights in the lands conveyed by the exclusive license not later than January 13, 1986, except the adjudication of all unresolved claims of valid existing rights by Village Corporations in lands conveyed by exclusive license will be completed not later than January 13, 1985 (Section 606(b)(2)). The Secretary of the Interior also will complete a survey of all lands to be conveyed under ARTA not later than January 13, 1988 (Id.). When land becomes available for conveyance to the State because of the relinquishment, settlement or final administrative adjudication of unresolved claims affecting it, the Secretary of Transportation will convey such land to the State by interim conveyance or, if surveyed, by patent (Section 604(b)(2)). Upon completion of the survey of lands already conveyed to the State by interim conveyance, the Secretary of Transportation will issue patents for such lands.

Sec. 8. Procedure for Granting Access After Transfer. The Act provides that the Departments of Interior, Defense and Agriculture may obtain, after consent of the State, such future easements as are necessary for administration.

Existing and future easements and their use are not to interfere with operations and support functions of the State-owned railroad (Section 604(c)(2)). After transfer of the railroad, the State or the State-owned railroad will adopt a standard procedure for processing and acting upon applications by the designated Federal agencies for access across real properties transferred to the State under ARTA.

ARTICLE III PERSONAL PROPERTY

Sec. 1. Bill of Sale. (a) On the date of transfer the Secretary will deliver to the State a bill of sale conveying all personal property among the rail properties of the Alaska Railroad in accordance with ARTA and described in this Report (Section 604(b)(1)(A)). The personal property among the rail properties on the date of this Report is described in Appendix G.

(b) The personal property that the Secretary has demonstrated in consultation with the State to be necessary to carry out functions of the United States after transfer (and hence not included in the bill of sale) is described in Exhibit 6.

Sec. 2. Changes and Refinements. (a) Additions to and deletions from the personal property described in this Report may be made in the ordinary course of business between the date of this Report and the date of transfer (Section 603(10)). Such changes are subject to the provisions of ARTA and this Report. The Secretary will notify the State in writing within 30 days after any change in the property described in Appendix G (and any refinement of description) that does not require prior State consent under Section 605(b) of ARTA. The parties will revise Appendix G accordingly.

(b) Any proposed change that would affect property described in Appendix G and that requires prior State consent

under Section 605(b) of ARTA shall be submitted to the Commissioner of Transportation and Public Facilities for approval before the railroad undertakes the proposed action or incurs any obligation to do so.

Sec. 3. Revolving Fund. On the date of transfer the Secretary will pay to the State any moneys in the Alaska Railroad Revolving Fund except:

(a) any unobligated funds appropriated from general tax revenues; and

(b) an amount demonstrated by the Secretary to be needed to pay liabilities arising from Alaska Railroad operations that would have been paid from the Revolving Fund during the period of Federal ownership and that remain obligations of the United States after the date of transfer.

This Report does not attempt to estimate the amount in the Revolving Fund which the State will receive upon transfer. The Revolving Fund balance is subject to fluctuation and the amounts needed to be withheld, if any, cannot be determined at this early date in the transfer process. The parties accept that there will be additions to and deletions from the Revolving Fund due to normal operations following the date of this Report. The State will receive the Alaska Railroad's monthly financial statement which reports the status of the Revolving Fund. The Secretary will notify the State as soon as estimates of amounts likely to be withheld can reliably be made and of changes in such estimates as they may be made.

While both appropriated funds and railroad revenues are deposited into one Revolving Fund account, historically all appropriated funds have been obligated for capital improvements to the railroad, not for operating subsidies. Congress appropriated \$6.1 million in FY 1982 and \$7.6 million in FY 1983 for a total of \$13.7 million. Of this amount, \$12.7 million has been obligated for capital improvements and major maintenance. The remaining \$1 million in appropriated funds has been obligated to pay for ARTA implementation and transition expenses. It is not anticipated that any funds will be appropriated to the Alaska Railroad Revolving Fund for FY 1984.

The Department will withhold an amount from the Revolving Fund to satisfy known obligations as of the date of transfer, including:

- (a) accrued annual leave of non-transferring employees;
- (b) accrued turn-around leave of non-transferring employees; and
- (c) accrued relocation travel for non-transferring employees.

The parties acknowledge that other obligations may become known prior to the date of transfer for which withholdings may be necessary and will amend this Report to reflect any such additional obligations. The amount withheld will be reasonably sufficient to cover the obligations and any excess

amount remaining upon satisfaction of the obligations will be paid to the State-owned railroad.

The Department also will withhold amounts reasonably sufficient to satisfy various contingent liabilities unless the State agrees to indemnify the United States for any such liabilities, up to the amount in the Revolving Fund transferred to the State. In the event funds are so withheld, the Department will pay to the State any amount in excess of any amount actually required to satisfy such contingent obligations following their determination and satisfaction.

ARTICLE IV LIABILITIES AND OBLIGATIONS

Before the Alaska Railroad can be transferred to the State the Act requires the Secretary to certify that the State has agreed to operate the railroad as a rail carrier and to assume certain liabilities and obligations on the date of transfer (Section 604(d)). The Act describes specific obligations that will be assumed by the State and those obligations that will remain Federal responsibilities.

On the date of transfer, the United States will have no further responsibility nor authority to own or operate the railroad under the Alaska Railroad Act of 1914 which will be repealed on the date of transfer (Section 615(a)(1)).

Sec. 1. Description of Liabilities and Obligations.

(a) Real Property. The State will assume certain obligations incident to the real properties that will be conveyed by the conveyance documents to the State. These include obligations arising under existing leases, permits and easement agreements affecting railroad property that will continue after transfer and also claims to certain rail properties that may not be decided until after the date of transfer. Obligations incident to transferred lands are described in Article II and Exhibits 1, 2 and 4.

(b) Employees. The State-owned railroad will assume certain obligations with respect to employees who elect to

transfer to the State-owned railroad. These obligations are described in detail in Article VI.

(c) Rail Carrier. The State will be required to operate the railroad as a rail carrier in intrastate and interstate commerce subject to the jurisdiction of the Interstate Commerce Commission ("ICC") under Chapter 105 of subtitle IV of Title 49, United States Code (Sections 604(d)(1) and 608(a)(1)). Subject to the approval of the ICC, the State will assume all Alaska Railroad rates, tariffs, contract rates, shipping agreements, and agreements with other carriers in force on the date of transfer. At the time of this Report the Alaska Railroad had entered into over 12 contract rate agreements with shippers and over 30 agreements with connecting carriers for the movement of freight. In addition, numerous general tariffs are available at railroad headquarters at Anchorage and on file with the ICC in Washington, D.C.

(d) Other Contracts Involving Third Parties. On the date of transfer the State will take an assignment of certain rights and will assume certain liabilities and obligations resulting from other agreements or arrangements with third parties. Some of these agreements are incident to the transfer of assets described elsewhere in this Report. Others include accounts receivable (for transportation services provided to shippers by the railroad), accounts payable (for

goods and services that have been provided to the railroad), and contracts with businesses and individuals, such as on-going procurement and construction contracts.

(e) Litigation and Claims. Responsibility for claims and causes of action against and on behalf of the Alaska Railroad will be distributed to the State and the Federal Government on the basis of several provisions in the Act. The Federal Government will remain responsible for:

1. "all claims that result in a judgment or award against the Alaska Railroad before the date of transfer" (Section 604(d)(2)(B)(ii));
2. "all claims and causes of action against the Alaska Railroad that accrue on or before the date of transfer, regardless of the date on which legal proceedings asserting such claims were or may be filed, except that the United States shall, in the case of any tort claim, only be responsible for any such claim against the United States that accrues before the date of transfer and results in an award, compromise, or settlement of more than \$2,500, and the United States shall not compromise or settle any claim resulting in State liability without the consent of the State, which consent shall not be unreasonably withheld" (Section 604(d)(2)(B)(i)); and
3. any cause of action for an action of the Federal Government arising from transferred employees' continued participation in the Federal Civil Service Retirement System under Section 607(a)(1).

The State will assume responsibility for all claims and causes of action that accrue after the date of transfer with the exception of those actions that remain Federal responsibilities under subsection (e)(3) above. The State will also be responsible for tort claims resulting in liability of

\$2,500 or less that accrue before the date of transfer (Section 604(d)(2)(B)(i)). On the date of transfer the State will also acquire the right to pursue any pending claim or cause of action on behalf of the Alaska Railroad.

A description of all claims and causes of action against and on behalf of the Alaska Railroad pending on the date of this Report is included in Appendix I.

(f) Federal Law Obligations. The Act provides that certain obligations will be assumed by the State-owned railroad due to the application of various Federal laws that apply to rail carriers. As long as the railroad remains an instrumentality of the State after transfer it will continue to be exempt from certain Federal requirements that apply to private railroads. Section 608(a)(1) establishes the legal framework that will apply to the State-owned railroad:

. . . the State-owned railroad shall be . . . subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of title 49, United States Code, and all other Acts applicable to rail carriers subject to that chapter, including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. § 3201 et seq.), the Railway Labor Act (45 U.S.C. § 151 et seq.) the Act of April 22, 1908 (45 U.S.C. § 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

The effect of this section is to bring the State-owned railroad under the terms of the interstate commerce laws to the same extent as other rail carriers. Under Federal ownership, the railroad has been subject to regulation by the ICC only as to its rates which are required to be filed with the ICC by Executive Order. The Executive Order would no longer apply after transfer. The ICC regulatory authority over the State-owned railroad will be the same as that for comparable railroads, with the exception that Section 608(b) requires the ICC to promulgate an expedited procedure for providing, on the date of transfer, a certificate of public convenience and necessity and postpones for two years the requirement that the State-owned railroad submit valuation information to the ICC pursuant to subchapter V of Chapter 107 of Title 49, United States Code.

Although ARTA recognizes the governmental nature of the railroad by granting exemptions from a number of Federal laws, the continued availability of these exemptions, as well as its tax-exempt status under Federal tax laws (Section 608(a)(6)), depend upon the State-owned railroad being operated as an "instrumentality of the State." In the event the railroad ceases to be an instrumentality of the State, these laws would apply and its specified tax status probably would change. Accordingly, the State's flexibility in the operation of the railroad may be constrained in a major way. If it were

operated in any form other than a State "instrumentality," considerable expense could be required to comply with all the Federal laws that apply to private railroads.

Other Federal laws will apply to the State-owned railroad including railroad safety statutes and regulations administered by the United States Department of Transportation. Although these laws generally have not been legally binding on the Alaska Railroad while it has been an agency of the Federal Government, the railroad has operated as if they were applicable. It has been inspected on a regular basis by Federal railroad safety inspectors and has either corrected deficiencies or sought exceptions where appropriate. A discussion of the existing exceptions and the procedure for continuing the exceptions after transfer are contained in Article VII, Section 1 and relevant inspection reports are provided in Exhibit 8.

The Occupational Safety and Health Act (OSHA) presents additional problems for the State-owned railroad. Although application of OSHA to the railroad has been unclear under Federal ownership, Federal and State laws will clearly apply to the State-owned railroad. The Alaska Railroad generally has operated in compliance with OSHA to the extent required of Federal agencies (basic work procedures and rules, recent acquisitions and construction), but the railroad does not fully comply with all OSHA requirements that would apply after

transfer. A compliance survey was undertaken by the railroad in 1977 and has been updated periodically to reflect corrections. The updated survey is provided in Exhibit 8. The State is undertaking a review of the survey and has commissioned additional work to determine the cost of compliance with State and local building codes. Costs of compliance which the State will have to meet following transfer, appear costly. When completed, the State's studies may be added as amendment to Exhibit 8, if appropriate.

As noted in the Transfer Overview, the Act reserves to the United States substantial reversionary interests under three separate provisions which represent additional encumbrances on the State-owned railroad.

(g) Access to Information. The State will have a continuing obligation to allow Federal access to transferred employees and records of the railroad after transfer. Section 604(d)(4) provides:

Prior to the date of transfer, the Secretary shall also certify that the State has agreed to allow representatives of the Secretary adequate access to employees and records of the Alaska Railroad when needed for performance of functions related to the period of Federal ownership.

(h) Compensation. Before the Alaska Railroad can be transferred, the State must agree to pay the fair market value determined by the USRA under Section 605(d). At the time of

this Report, USRA had not completed its valuation study of the railroad. Consequently the State has not decided whether to agree to this obligation. The USRA valuation study is due before October 14, 1983. If the State agrees to pay the value determined by USRA, mutually acceptable compensation terms will be developed prior to the date of transfer.

Sec. 3. Confidentiality. In developing this Report and as preparations for the transfer continue after the date of this Report, the State is to be allowed access to all Alaska Railroad property, employees and records as provided by Section 605(b):

During the period from the date of enactment of this Act until the date of transfer, the State shall have the right to inspect, analyze, photograph, photocopy and otherwise evaluate all of the rail properties of the Alaska Railroad and all records related to the rail properties of the Alaska Railroad maintained by any agency of the United States under conditions established by the Secretary to protect the confidentiality of proprietary business data, personnel records, and other information, the public disclosure of which is prohibited by law.

Certain proprietary and other confidential information, particularly as it relates to pending litigation, personnel matters and rate-making activities has not been included in this Report and the Secretary has established conditions to protect the confidentiality of this information.

Specifically, the Secretary has established as a condition of State access to personnel files of the Alaska Railroad that

employee information protected by the Privacy Act, 5 U.S.C. § 552(a), will be used by the State solely for the purpose of evaluation and preparation for the transfer and that any such information evaluated, reviewed, or copied by the State will not be disclosed other than in a manner consistent with Section 3 of the Privacy Act.

Another condition of State access to railroad records is the State's agreement that certain proprietary business information will not be disclosed to the public. These records include way bills, invoices, cost and revenue details, and other marketing and financial data ordinarily treated by the railroad as confidential. These records are exempt from public disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) and Department of Transportation regulation 49 C.F.R. § 7.69(1)(5).

As a further condition of State access to railroad records, the State has agreed to withhold from public disclosure any information or documents that would not be available to a party in litigation with the Alaska Railroad. Such information is protected by Exemption 5 to the Freedom of Information Act, 5 U.S.C. § 552(b)(5). This includes inter-agency and intra-agency documents and memoranda that are part of the deliberative process of the railroad as well as all documents normally privileged in the civil discovery context.

Sec. 4. Information Monitoring and Verification. In

order to prepare this Report and assemble information for this article it has been necessary to rely on information provided by Alaska Railroad management with little opportunity for independent audit or analysis. Some of the information is necessarily approximate and will change due to ongoing operations and the availability of more exact details before the date of transfer. The State and the United States have agreed to several arrangements to continue upgrading and verifying information contained in this Report. In particular, the information in subsection (1)(e) of this article dealing with litigation and claims will be submitted to the United States Attorney for Alaska for review and comment. In addition, representatives of the State and the FRA will continue to monitor pending legal actions involving the Alaska Railroad and will supply the State with estimates of the possible outcome of those cases as well as the likelihood of future litigation against the railroad. This information will be provided to the State under terms that restrict its disclosure so as to protect proprietary confidential information and prevent the possibility of affecting the outcome of pending cases or inviting future lawsuits against the railroad.

ARTICLE V RATES, TARIFFS AND ICC PRACTICE

Sec. 1 Certificate of Public Convenience and Necessity;

ICC Proceeding. Under the Interstate Commerce Act, the State-owned railroad must obtain a certificate of public convenience and necessity before commencing operations. ARTA provides that the ICC is to promulgate a procedure "as soon as practicable after the date of enactment" for granting the State a certificate on the date of transfer. The ICC proposed such a procedure on June 20, 1983, (Notice, 48 Fed. Reg. 28163 (1983)) and gave interested parties 30 days to comment on the proposal. The State intends to file comments in the proceeding seeking to have its scope specifically include confirmation of the reporting requirements to which the State-owned railroad will be subject; that the Alaska Railroad's accounting practices and systems are capable of reporting data to the ICC in acceptable formats (Section 605(c)); that the State succeeds to the Federal railroad rates, tariffs and rate agreements; and that no inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to the Interstate Commerce Act needs to be undertaken for two years following transfer (Section 608(b)).

The Secretary supports the thrust of the State's filing in this proceeding and expects to make an appropriate filing in the proceeding. A copy of the Federal Register notice of the proposed proceeding is provided in Exhibit 7. The State's

and the Secretary's filings will be added to this Report following their filing.

Sec. 2. Accounting Practices. ARTA provides that prior to the date of transfer the Secretary shall demonstrate to the State that the Alaska Railroad accounting practices and records are capable of reporting data to the ICC in formats required of comparable rail carriers subject to the jurisdiction of the ICC (Section 605(c)).

Because the Alaska Railroad is considered a Class II carrier, it will not be subject to formal accounting or reporting rules. Accordingly, its current accounting practices and systems should be considered adequate by the ICC. Correspondence from the ICC addressing this issue is provided in Exhibit 7. Confirmation of this understanding will be sought in the certificate proceeding discussed above.

Sec. 3. Rate- and Tariff-related Litigation. The railroad's competitors have been aggressive in pursuing legal challenges to the railroad's rates in the past and may be in the future as well. Pending litigation involving the challenges to the railroad's rates is summarized in Appendix I.

ARTICLE VI EMPLOYEE PROTECTION OBLIGATIONS

The Act requires the State-owned railroad to establish a number of arrangements intended to protect the employment interests of transferred employees (Sections 604(d)(3) and 607).

Sec. 1. Transition Obligations. Section 604(d)(3)(A) provides that prior to transfer the Secretary shall certify that the State-owned railroad has established arrangements pursuant to Section 607 to protect the employment interests of employees of the Alaska Railroad during the two-year period commencing on the date of transfer. These arrangements must include provisions:

(i) "which ensure that the State-owned railroad will adopt . . . all collective bargaining agreements which are in effect on the date of transfer. Such agreements shall continue in effect for the two-year period commencing on the date of transfer, unless the parties agree to the contrary before the expiration of that two-year period. Such agreements shall be renegotiated during the two-year period, unless the parties agree to the contrary" (Section 604(d)(3)(A)(i) and Section 604(d)(3)(B));

(ii) "for the retention of all employees, other than officers of the Alaska Railroad, who elect to transfer to the State-owned railroad in their same positions for the two-year period commencing on the date of transfer, except in cases of reassignment, separation for cause, resignation, retirement, or lack of work" (Section 604(d)(3)(A)(ii));

(iii) "for the payment of compensation to transferred employees (other than the officers of the railroad) except in cases of separation for cause, resignation, retirement, or lack of work, for two years commencing on

the date of transfer at or above the base salary levels in effect for such employees on the date of transfer, unless the parties otherwise agree during that two-year period" (Section 604(d)(3)(A)(iii));

(iv) "for priority of reemployment at the State-owned railroad during the two-year period commencing on the date of transfer for transferred employees who are separated for lack of work . . . (except for the officers of the railroad, who shall receive such priority for one year following the date of transfer) . . ." and with "federal service . . . included in the computation of seniority for transferred employees with priority for reemployment . . ." (Section 604(d)(3)(A)(iv) and Section 604(d)(3)(C));

(v) "for credit during the two-year period commencing on the date of transfer for accrued annual and sick leave, seniority rights, and relocation and turnaround travel allowances which have been accrued during their period of Federal employment by transferred employees retained by the State-owned railroad (except for officers of the Alaska Railroad, who shall receive such credit for one year following the date of transfer)" (Section 604(d)(3)(A)(v));

(vi) "for payment to transferred employees retained by the State-owned railroad during the two-year period commencing on the date of transfer, . . ." (or, in the case of officers of the railroad retained or separated under Section 604(d)(3)(E), "for one year,") of ". . . an amount equivalent to the cost of living allowance to which they are entitled as Federal employees on the day before the date of transfer," provided that such payment "shall not exceed the percentage of any transferred employee's base salary level provided by the United States as a cost of living allowance on the day before the date of transfer, unless the parties agree to the contrary" (Section 604(d)(3)(A)(vi) and Section 604(d)(3)(D));

(vii) "for health and life insurance programs for transferred employees retained by the State-owned railroad during the two-year period commencing on the date of transfer, substantially equivalent to the federal health and life insurance programs available to employees on the day before the date of transfer (except for officers of the Alaska Railroad, who shall receive such credit for one year following the date of transfer)" (Section 604(d)(3)(A)(vii));

(viii) ". . . retention, for at least one year from the date of transfer, of the office[r]s of the Alaska Railroad, except in cases of separation for cause, resignation, retirement, or lack of work, at or above their base salaries in effect on the date of transfer, in such positions as the State-owned railroad may determine; or [agreement] to the payment of lump-sum severance pay in an amount equal to such base salary for one year to officers not retained by the State-owned railroad upon transfer or, for officers separated within one year on or after the date of transfer, of a portion of such lump-sum severance payment (diminished pro rata for employment by the State-owned railroad within one year of the date of transfer prior to separation)" (Section 604(d)(3)(E)); and

(ix) "[t]ransferred employees whose employment with the State-owned railroad is terminated during the two-year period commencing on the date of transfer shall be entitled to all of the rights and benefits of discontinued employees that such employees would have had under Federal law if their termination had occurred immediately before the date of the transfer, except that financial compensation paid to officers of the Alaska Railroad shall be limited to that compensation provided pursuant to Section 604(d)(3)(E)" (Section 607(c)).

The financial magnitude of the above obligations cannot be quantified with precision at this time because the number of employees of the railroad who will elect to transfer to the State-owned railroad is unknown. As part of an employee information program, the State plans to conduct a nonbinding survey of employees to determine how many expect to transfer to the State-owned railroad. The results of the survey should illuminate this issue. In addition, certain of the above obligations are not susceptible to quantification in dollar terms. The following figures, however, will illustrate in a broad way the potential impact of the obligations based upon currently available information covering the entire work force.

With respect to the requirement of Section 604(d)(3)(A)(iii) that transferred employees receive compensation at or above the base salary levels in effect on the date of transfer, Alaska Railroad records show that for calendar year 1982 the total base payroll for permanent employees was \$20.6 million. Alaska Railroad management anticipates that for calendar year 1983 the total base payroll for permanent employees will be approximately \$22.5 million.

With respect to the requirement of Section 604(d)(3)(A)(v) regarding accrued annual and sick leave, and relocation and turn-around travel allowances, Alaska Railroad records show that as of December 1982, accrued annual leave was approximately 76,000 hours for permanent employees and 5,200 for

temporaries; Section 607(d) of the Act provides that any employee who transfers to the State-owned railroad shall not be entitled to lump-sum payment for unused annual leave but shall be credited by the State with the unused annual leave balance at the time of transfer. Alaska Railroad records show that as of December 1982, accrued sick leave was approximately 237,300 hours for permanent employees and 6,600 for temporary employees.

Under 5 U.S.C. § 5728, certain employees and their families are entitled to payment of travel costs every two years to their place of recruitment in the lower 48 states, not to exceed two trips; 5 U.S.C. § 5729 provides for the payment of travel expenses to return certain employees and their families to their place of recruitment upon completion of their tour of duty in Alaska. These travel entitlements have been extended to approximately 12 current employees of the Alaska Railroad. Although precise quantification of the statutory obligation to honor such relocation and turn-around travel entitlements cannot be calculated at the present time, Alaska Railroad management estimates that the total annual cost to the railroad in FY 1983 would not exceed \$25,000.

With respect to the Act's provisions regarding payment of an amount equivalent to the Federal cost of living allowance ("COLA"), Alaska Railroad records show that COLA payments for salaried employees during calendar year 1982 totalled

\$486,500. Alaska Railroad management estimates that such payments will be approximately \$630,000 in calendar year 1983. The COLA payments for hourly employees is included in the hourly rate as part of the union agreements and totals approximately \$4 million annually. The present COLA contribution is calculated as 25 percent of base pay. This figure is adjusted periodically by the Federal Government for all Federal employees in Alaska. For example, in 1982 the applicable percentage was 22.5 percent.

With respect to the requirement of Section 604(d)(3)(A)(vii) relating to health and life insurance programs, Alaska Railroad records show that in calendar year 1982, the railroad paid a total of \$682,000 for health insurance coverage under the Federal Employees' Health Benefits Program and that the railroad spent an additional \$56,000 for supplemental coverage of employees under the Alaska Railroad Medical Association. It should be noted that the Alaska Railroad is exempt from the statutory provision (5 U.S.C. § 8906(b)(2)) that imposes a ceiling on employer contributions to the Federal Employees' Health Benefits Program. The effect of the exemption has been to permit the Alaska Railroad to pay up to 100 percent of all health insurance premiums for certain of its employees; currently the Alaska Railroad pays 100 percent of the premium costs for about 55 percent of its employees (mostly union members).

Under the Act the State-owned railroad will be required to provide health insurance "substantially equivalent to" the Federal health insurance programs during the two-year transition period (Section 604(d)(3)(A)(vii)). Alaska Railroad employees currently can select from over 20 different health insurance plans offered by the Federal Government. The parties to this Report do not believe that the State-owned railroad is required by the Act to replicate all of the different Federal options currently available to employees as long as the alternative program offered by the State-owned railroad is "substantially equivalent" to the benefits presently provided to the employees under the Federal program. Nor do the parties believe that it would be practical to expect the State-owned railroad to duplicate all Federal health insurance plans.

The State-owned railroad also will be required to provide life insurance substantially equivalent to Federal life insurance plans. Alaska Railroad records show that in calendar year 1982, the total employer contributions by the Alaska Railroad for life insurance under the Federal program (FEGLI) was \$66,000.

Temporary employees of the railroad are not entitled to the statutory protection of continued employment provided under Section 604(d)(3)(A)(ii). However, the parties to this Report believe the temporary employees are an important part of

the railroad's work force and should be encouraged to continue working for the State-owned railroad. Accordingly, any temporary employment contract in effect on the date of transfer will remain in effect according to its terms after the date of transfer and will be assumed as a contractual obligation of the State-owned railroad under Section 604(d)(2)(A), although the new State-owned railroad will retain full authority to adjust this system as appropriate. All of the railroad's employment contracts with its temporary employees are at present terminable at will and would remain so if assumed by the State-owned railroad following transfer. The primary obligation that would be assumed in this case would be credit for accrued annual leave. As of June 11, 1983, the railroad had 350 temporary employees on the payroll with a total accrued annual leave of 7,342 hours. The total estimated dollar value of such accrued annual leave, based on the average hourly pay rate for the temporary employees, is approximately \$100,000. It should be noted that the number of temporary employees is substantially lower during the winter months.

Employees who do not transfer to the State-owned railroad shall be entitled to all of the rights and benefits available to them under Federal law for discontinued employees (Section 607(b)). This includes the right to seek other Federal employment, to receive retirement benefits for those employees who meet the applicable age and length of service requirements, and the right to receive lump sum payments for

unused annual leave. The parties have received a letter from the Office of Personnel Management (OPM) advising them that employees who choose not to transfer to the State-owned railroad will not be eligible for severance pay under 5 U.S.C. § 5595 because of the availability of comparable employment under ARTA.

Employees who elect to transfer to the State-owned railroad will be eligible to receive severance pay comparable to that available under 5 U.S.C. § 5595 from the State-owned railroad if terminated during the two-year period commencing on the date of transfer (Section 607(c)). The formula for calculating severance pay is complex, but the amounts involved can be substantial. Employees accrue one week of severance pay eligibility during each of their first ten years of Federal service, two weeks for each year of service beyond ten years, and employees over 40 years of age accrue additional credit. Total severance pay may not, however, exceed one year's pay at the rate received immediately before separation (5 U.S.C. § 5595(c)). In general, terminated employees who are retired military or are eligible for either optional retirement or discontinued service retirement are not entitled to receive severance pay.

Section 607(c) also provides that during the two-year period of protected employment, transferring employees will continue to accrue seniority and severance pay, annual leave

and retirement benefits on the same basis as if such employment had been Federal service. Transferring employees will be credited by the State-owned railroad with all unused annual leave that they have accrued as of the date of transfer. Any transferred employee who is terminated other than for cause during the protected period of employment with the State-owned railroad shall be entitled to count the period of service with the State-owned railroad as Federal service for purposes of future Federal employment. Also provided are the right to seek other Federal employment, the right to receive retirement benefits for those employees who meet the applicable age and length of service requirements, and the right to receive lump sum payments for unused annual leave.

For purposes of labor-management and employee relations, those employees who elect to transfer will become employees of the State-owned railroad on the date of transfer and will cease to be Federal employees except to the extent provided under Section 607(a)(1). Any labor-management negotiation impasse declared after the date of transfer or other employee relations dispute arising after the date of transfer will be subject to procedures applicable under State law.

Sec. 2. Retirement. Employees who elect to transfer to the State-owned railroad will receive explicit statutory protections dealing with the retirement benefits they have accrued in the Federal Civil Service Retirement System.

Whether transferred employees remain in the Federal system after transfer or are placed in an alternative retirement system comparable to Alaska's program for State employees, the transferred employees' retirement rights will be protected. Specifically, Section 607(a) of the Act provides as follows with respect to transferred employees' retirement benefits:

Sec. 607. (a)(1) Any employees who elect to transfer to the State-owned railroad and who on the day before the date of transfer are subject to the civil service retirement law (subchapter III of chapter 83 of title 5, United States Code) shall, so long as continually employed by the State-owned railroad without a break in service, continue to be subject to such law, except that the State-owned railroad shall have the option of providing benefits in accordance with the provisions of paragraph (2) of this subsection. Employment by the State-owned railroad without a break in continuity of service shall be considered to be employment by the United States Government for purposes of subchapter III of chapter 83 of title 5, United States Code. The State-owned railroad shall be the employing agency for purposes of section 8334(a) of title 5, United States Code, and shall contribute to the Civil Service Retirement and Disability Fund a sum as provided by such section, except that such sum shall be determined by applying to the total basic pay (as defined in section 8331(3) of title 5, United States Code) paid to the employees of the State-owned railroad who are covered by the civil service retirement law, the per centum rate determined annually by the Director of the Office of Personnel Management to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of title 5, United States Code. The State-owned railroad shall pay into the Federal Civil Service Retirement and Disability Fund that portion of the cost of administration of such Fund which is

demonstrated by the Director of the Office of Personnel Management to be attributable to its employees.

(2) At any time during the two-year period commencing on the date of transfer, the State-owned railroad shall have the option of providing to transferred employees retirement benefits, reflecting prior Federal service, in or substantially equivalent to benefits under the retirement program maintained by the State for State employees. If the State decides to provide benefits under this paragraph, the State shall provide such benefits to all transferred employees, except those employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5, United States Code, within five years after the date of transfer and who elect to remain participants in the Federal retirement program.

(3) If the State provides benefits under paragraph (2) of this subsection--

(A) the provisions of paragraph (1) of this subsection regarding payments into the Civil Service Retirement and Disability Fund for those employees who are transferred to the State program shall have no further force and effect (other than for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5, United States Code, within five years after the date of transfer and who elect to remain participants in the Federal retirement program); and

(B) all of the accrued employee and employer contributions and accrued interest on such contributions made by and on behalf of the transferred employees during their prior Federal service (other than amounts for employees who will meet the age and service requirements for retirement under section 8336(a), (b), (c) or (f) of title 5, United States Code, within five years after the date of transfer and who elect to remain participants in the Federal

retirement program) shall be withdrawn from the Federal Civil Service Retirement and Disability Fund and shall be paid into the retirement fund utilized by the State-owned railroad for the transferred employees, in accordance with the provisions of paragraph (2) of this subsection. Upon such payment, credit for prior Federal service under the Federal civil service retirement system shall be forever barred notwithstanding the provisions of section 8334 of title 5, United States Code.

Alaska Railroad records show that in calendar year 1982, the railroad's total payments to the Civil Service Retirement System, which was based on a base payroll for permanent employees of \$20.6 million, totaled \$2.89 million or 14 percent of payroll. This total was equally divided between seven percent deductions withheld from each employee's salary and matching seven percent employer contributions from the railroad.

An accurate estimate of the retirement obligation that would be imposed on the State-owned railroad pursuant to Section 607(a) cannot be calculated at this time. The exact number of employees who will transfer and the value of their retirement benefits will not be known until the date of transfer.

In order to assess the potential amount of the retirement obligation imposed on the State-owned railroad by the Act, the Department asked OPM to calculate retirement costs and benefits for existing employees who participate in the Federal

retirement system and to prepare an estimate of the financial consequences if all of those employees transferred to the State-owned railroad at this time. The parties to this Report do not know whether all permanent employees will elect to transfer to the State-owned railroad and consequently the actual retirement obligation may be less than the OPM calculations suggest. Nevertheless, the OPM calculations help to indicate the maximum possible retirement obligation that may be imposed on the State-owned railroad.

OPM estimated that the present value of benefits that all current railroad employees will have accrued by retirement is approximately \$219 million. In preparing its calculations, OPM assumed that if transferred employees remain in the Federal retirement system pursuant to Section 607(a)(1), the language of that provision governing the amount of the State-owned railroad's employer contributions (the percentage of total basic pay "determined annually by the Director of OPM to be the excess of the total normal cost per centum rate of the Civil Service Retirement System over the employee deduction rate specified in Section 8334(a) of Title 5, United States Code") would require the State-owned railroad to pay, as the employer contribution, 29.06 percent of basic payroll for those transferred employees into the Federal retirement fund to fully fund retirement benefits that accrue for those employees after transfer. OPM's calculation assumes the

current seven percent employee contribution would remain unchanged.

This is an increase of 22.06 percent over the amount the Alaska Railroad has contributed as a Federal agency and reflects the manner in which the Federal retirement system is normally funded, which for Federal agencies includes other payments from the U.S. Treasury. Based on OPM's interpretation of the statute that the State-owned railroad's employer contribution would be 29.06 percent, OPM estimates that the present value of the amount the State-owned railroad would pay over the remaining working life of all transferred employees would be \$110.3 million. This is an increase of approximately \$68 million over the amount the railroad would pay if it remained a Federal agency and continued to pay the present seven percent employer contribution. If the railroad had been required to make an employer contribution of 29.06 percent in 1982, its contribution for that year would have been \$6 million, an amount \$4.5 million greater than the amount it actually paid. This amount would decline annually as the protected employees gradually retire.

If the State-owned railroad elects to withdraw transferred employees from the Federal retirement system and to set up an alternative system pursuant to Section 607(a)(2), OPM estimates the accrued employer and employee contributions, plus interest at 6 percent, that would be withdrawn from the

Federal system would total \$35.4 million. However, OPM estimates that the present value of accrued benefits for all past Federal service that would be assumed by the State-owned railroad would be \$109 million, or approximately \$73.6 million more than the amount withdrawn. These calculations assume that the State retirement system is substantially equivalent to the Federal system. If that assumption is correct, and the State-owned railroad elects to shift transferred employees into an equivalent State retirement system, the present value of the total costs to the State-owned railroad to pay both the past unfunded retirement liabilities and to pay future retirement obligations would be approximately \$142 million more than the amount that the railroad would pay if it were not transferred and remained a Federal agency.

The interpretation of the Act on which OPM bases its estimates raises issues of statutory interpretation and Congressional intent. Analysis of these issues has not been completed, but the parties are looking at situations involving quasi-Federal agencies with statutory language similar to that set forth in Section 607(a). The parties to this Report have taken no position at this time on the issues raised by OPM's interpretation. They intend to meet with OPM to discuss this interpretation and to further refine OPM's calculations. As these issues are resolved, additional information will be added to the Report by way of amendment.

Sec. 3. Process for Certification. The parties to this Report have agreed to establish an orderly process for certifying the State-owned railroad's agreements to assume the employee-protection obligations. The parties believe it is particularly important that full information concerning employees' alternatives be communicated to them in a timely and comprehensible manner in order to assist each employee in making the decision whether to transfer to the State-owned railroad. It is contemplated that specific arrangements relating to the transfer process will be fashioned well in advance of any transfer and will reflect communications and consultations with employee and union representatives.

ARTICLE VII MISCELLANEOUS

Sec. 1. Compliance With Railroad Safety Laws. Although not required by law because it is owned by the Federal Government, the Alaska Railroad has been subject to periodic, routine inspections by appropriate agencies to ensure compliance with Federal rail safety laws. The FRA performs inspections of the track, the most recent of which and a memorandum indicating responsive actions taken are provided in Exhibit 8. As is typical of the railroad industry, the railroad continues to operate older cars under waivers of Federal safety laws and regulations and national standards provided the cars are not interchanged. A list of cars currently operated under such waivers is provided in Exhibit 8. All remaining rolling stock in operation on the property complies with safety laws and regulations. The Association of American Railroads (AAR) inspects certain railroad facilities such as repair shops. The AAR inspections and certifications of Alaska Railroad facilities also are provided in Exhibit 8.

At least 120 days prior to the date of transfer the FRA shall conduct a comprehensive review of Alaska Railroad compliance with FRA railroad safety laws and regulations and national industry standards and report the results of the review to the State. The Secretary shall correct any deficiency noted in the compliance review before the date of

transfer or issue a written memorandum permitting the deficiency to continue as an exception, to the extent consistent with existing practices. Any memoranda in effect on the date of transfer shall continue in effect according to their terms as "waivers of compliance" under Section 202(c) of the Federal Railroad Safety Act of 1970 after the date of transfer.

A discussion of the application of the OSHA and state and local building codes to the State-owned railroad appears in Article IV, Section 1(f) with supporting materials provided in Exhibit 8.

Sec. 2. Rules, Orders and Regulations. A list of existing rules, orders, and regulations in effect on the date of this Report appears in Appendix J. Prior to transfer, the Department will provide the State with a list of which rules and regulations promulgated under Federal law are generally applicable to the rail industry.

Sec. 3. Certification Process. ARTA provides the framework for transfer of the railroad only after the State has satisfied a number of conditions precedent which are itemized in Section 604(d). That section sets a time limit of 12 months after delivery of this Report for the Secretary to certify that the State has satisfied the conditions enumerated in Section 604(d) and which are described in greater detail in other parts of this Report. ARTA does not outline a procedure for certification by the Secretary. However, the parties to

this Report have agreed that the State will provide the Secretary with written assurances that all of the conditions have been satisfied along with supporting documentation and a copy of any State legislation needed to establish or designate an operating entity and otherwise resolve certification issues. No later than 30 days after receipt of that assurance, the Secretary will notify the Governor that the State has satisfied the transfer conditions or that additional information is needed before all statutory conditions are met.

Sec. 4. USRA Valuation. Section 605(d) of ARTA requires USRA to determine the fair market value of the Alaska Railroad. Pursuant to Section 604(c)(5), the State, prior to transfer, must "agree to compensate" the United States for this value, if any. The Act requires USRA to take into account "all obligations imposed by this title and other applicable law upon operation and ownership of this State-owned railroad," and directs USRA to "use to the maximum extent practicable all relevant data and information, including, if relevant, that contained in the (transfer) report." This section and Appendix L, along with other parts of this Report, are intended to provide information that the Department and the State believe is relevant to determining the fair market value of the Alaska Railroad.

Several issues are raised by the statutory requirement that the appraisal of the Alaska Railroad "shall consider the

current fair market value and potential future value if used in whole or in part for other purposes" (Section 605(d)(1)). To the extent that the value of the properties to be transferred varies according to the use to which they are put, the dual valuation criteria provision requires either a decision about most likely future use of the properties (i.e., railroad or other) or some sort of weighting process between the two approaches.

After a complete review of the statutory language and legislative history that is relevant to this issue and in view of other considerations noted in this Report, the Department and the State agree that the valuation process should give primary consideration to the value of an operating railroad rather than alternative value if used for some other purpose. The underlying purpose and intent of transfer of the railroad to the State is to assure continued operation. Continued operation of the Alaska Railroad by the State is both an underlying assumption and the primary purpose of ARTA. See, e.g., Section 602(3) which provides that "continuation of services of the Alaska Railroad and the opportunity for future expansion of those services are necessary to achieve Federal, State, and private objectives." Cessation of rail service would also conflict with the State's objective of acquiring the railroad in order to assure continued and expanded rail service. Furthermore, continued rail operations are required by the military and private sector users, making abandonment

of either freight or passenger services by the railroad highly unlikely.

The Federal Government has operated the railroad for 60 years and it remains a fundamental part of the State's transportation infrastructure. Continued operation provides critical, well-recognized transportation competition between the Lower 48 states and Alaska. For many movements of bulk commodities and heavy equipment, there is no transportation alternative. State intent to continue operation is underscored by actual commitments to future and expanded rail operations. Even though State ownership is not yet certain, the State already has been actively involved in the future development of the railroad. The FY 1984 Alaska State Capital Budget proposes \$3.6 million for improvements in the Seward port area which will enhance the ability of the railroad to participate in export coal traffic. Additionally, the State has spent more than \$2 million on planning, route survey and right-of-way acquisition for expansion of the railroad east of Fairbanks. The State continues to invest substantial effort and resources in the transfer process itself. For the past three years, the State also has subsidized the railroad shuttle service between Whittier and Portage, which provides the only ground transportation between those points for passengers, vehicles and freight. These investments, along with the political considerations associated with assuming responsibility for such a critical component of the State's

transportation system, demonstrate that continued operation after transfer is a foregone conclusion.

The primary focus of the Act on continued operation is further reinforced by several other sections of ARTA. Section 610(a) requires either reversion to the United States or the payment by the State of the fair market value of any disposition or change in all or part of the railroad's real property if it is "converted to a use that would prevent the State-owned railroad from continuing to operate" any time within ten years of transfer. Section 610(b) requires reversion to the United States of any land within the right-of-way, use of which for transportation, communication or transmission purposes has been discontinued by the State for an uninterrupted period of 18 years. Under Section 610(e) the proceeds from the sale or transfer by the State of "all or substantially all" of the railroad within five years of transfer to an entity other than a State instrumentality (in excess of the cost of any rehabilitation and improvements and any net liabilities) are to be paid to the United States. Even if the State does not elect to acquire the railroad or fails to meet the certification conditions imposed by ARTA, the Secretary must "give preference to a buyer or transferee which will continue to operate rail service" (Section 611).

ARTA also contains a revenue reinvestment requirement. Section 608(a)(5) requires that

[r]evenues generated by the State-owned railroad shall be retained and managed by the State-owned railroad for railroad and related purposes.

Because income produced from the railroad's leased lands has been critical to its financial viability, the revenue reinvestment provision was included to prevent the railroad's resources from being divested. It gives the State-owned railroad some flexibility in the way the railroad's land assets are held, either as income- and traffic-generating reserves, or as a source of capital. This provision was also intended to provide a means of meeting at least some of the costs the State will face when it undertakes operation of the railroad. Some of these costs are described in Appendix L and elsewhere in this Report. Both purposes reinforce the most basic objective of the statute, the continued operation of the railroad.

The State and the Department, having reviewed the revenue reinvestment provision and researched the legislative history, agree that Section 608(a)(1) requires that all revenues, however derived, from all the rail properties, as that term is broadly defined in the Act, be retained and managed by the State-owned railroad for railroad-related purposes. Both the Department and the State have agreed that this reinvestment requirement will limit the use of revenues from the rail properties to be transferred to railroad-related activities.

Treatment of the provision in the transfer documents will include this understanding.

The Department and the State conclude that the valuation should focus on the railroad as an operating railroad, not on whatever speculative value it may arguably possess. The Act assumes that the State will continue to operate the railroad. It includes meaningful disincentives to disposition of the railroad's assets and requires that all revenues generated be reinvested in railroad operations. Further, the State has every reason to continue to operate the railroad, has already demonstrated its commitment to doing so, and has no interest in abandoning it.