

ICC TERMINATION ACT OF 1995

DECEMBER 18, (legislative day, DECEMBER 15), 1995.—Ordered to be printed

Mr. SHUSTER, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 2539]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2539), to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—This Act may be cited as the “ICC Termination Act of 1995”.

(b) *TABLE OF CONTENTS.*—

Sec. 1. *Short title; table of contents.*

Sec. 2. *Effective date.*

TITLE I—ABOLITION OF INTERSTATE COMMERCE COMMISSION

Sec. 101. *Abolition.*

Sec. 102. *Rail provisions.*

Sec. 103. *Motor carrier, water carrier, and freight forwarder provisions.*

Sec. 104. *Miscellaneous motor carrier provisions.*

Sec. 105. *Creditability of annual leave for purposes of meeting minimum eligibility requirements for an immediate annuity.*

Sec. 106. *Pipeline carrier provisions.*

TITLE II—SURFACE TRANSPORTATION BOARD

Sec. 201. *Title 49 amendment.*

Sec. 202. *Reorganization.*

Sec. 203. *Transfer of assets and personnel.*

- Sec. 204. *Saving provisions.*
 Sec. 205. *References.*

TITLE III—CONFORMING AMENDMENTS

Subtitle A—Amendments to United States Code

- Sec. 301. *Title 5 amendments.*
 Sec. 302. *Title 11 amendments.*
 Sec. 303. *Title 18 amendments.*
 Sec. 304. *Internal Revenue Code of 1986 amendments.*
 Sec. 305. *Title 28 amendments.*
 Sec. 306. *Title 31 amendments.*
 Sec. 307. *Title 39 amendments.*
 Sec. 308. *Title 49 amendments.*

Subtitle B—Other Amendments

- Sec. 311. *Agricultural Adjustment Act of 1938 amendments.*
 Sec. 312. *Animal Welfare Act amendment.*
 Sec. 313. *Federal Election Campaign Act of 1971 amendments.*
 Sec. 314. *Fair Credit Reporting Act amendment.*
 Sec. 315. *Equal Credit Opportunity Act amendment.*
 Sec. 316. *Fair Debt Collection Practices Act amendment.*
 Sec. 317. *National Trails System Act amendments.*
 Sec. 318. *Clayton Act amendments.*
 Sec. 319. *Inspector General Act of 1978 amendment.*
 Sec. 320. *Energy Policy Act of 1992 amendments.*
 Sec. 321. *Merchant Marine Act, 1920, amendments.*
 Sec. 322. *Railway Labor Act amendments.*
 Sec. 323. *Railroad Retirement Act of 1974 amendments.*
 Sec. 324. *Railroad Unemployment Insurance Act amendments.*
 Sec. 325. *Emergency Rail Services Act of 1970 amendments.*
 Sec. 326. *Alaska Railroad Transfer Act of 1982 amendments.*
 Sec. 327. *Regional Rail Reorganization Act of 1973 amendments.*
 Sec. 328. *Milwaukee Railroad Restructuring Act amendment.*
 Sec. 329. *Rock Island Railroad Transition and Employee Assistance Act amendments.*
 Sec. 330. *Railroad Revitalization and Regulatory Reform Act of 1976 amendments.*
 Sec. 331. *Northeast Rail Service Act of 1981 amendments.*
 Sec. 332. *Conrail Privatization Act amendment.*
 Sec. 333. *Migrant and Seasonal Agricultural Worker Protection Act amendments.*
 Sec. 334. *Federal Aviation Administration Authorization Act of 1994.*
 Sec. 335. *Termination of certain maritime authority.*
 Sec. 336. *Armored Car Industry Reciprocity Act of 1993 amendments.*
 Sec. 337. *Labor Management Relations Act, 1947 amendment.*
 Sec. 338. *Inlands Waterway Revenue Act of 1978 amendment.*
 Sec. 339. *Noise Control Act of 1972 amendment.*
 Sec. 340. *Fair Labor Standards Act of 1938 amendment.*

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. *Certain commercial space launch activities.*
 Sec. 402. *Destruction of motor vehicles or motor vehicle facilities; wrecking trains.*
 Sec. 403. *Violation of grade-crossing laws and regulations.*
 Sec. 404. *Miscellaneous title 23 amendments.*
 Sec. 405. *Technical amendments.*
 Sec. 406. *Fiber drum packaging.*
 Sec. 407. *Noncontiguous domestic trade study.*
 Sec. 408. *Federal Highway Administration rulemaking.*

SEC. 2. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act shall take effect on January 1, 1996.

TITLE I—ABOLITION OF INTERSTATE COMMERCE COMMISSION

SEC. 101. ABOLITION.

The Interstate Commerce Commission is abolished.

SEC. 102. RAIL PROVISIONS.

(a) *AMENDMENT.—Subtitle IV of title 49, United States Code, is amended to read as follows:*

“SUBTITLE IV—INTERSTATE TRANSPORTATION

“PART A—RAIL

<i>“CHAPTER</i>	<i>Sec.</i>
<i>“101. GENERAL PROVISIONS</i>	<i>10101</i>
<i>“105. JURISDICTION</i>	<i>10501</i>
<i>“107. RATES</i>	<i>10701</i>
<i>“109. LICENSING</i>	<i>10901</i>
<i>“111. OPERATIONS</i>	<i>11101</i>
<i>“113. FINANCE</i>	<i>11301</i>
<i>“115. FEDERAL-STATE RELATIONS</i>	<i>11501</i>
<i>“117. ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES</i>	<i>11701</i>
<i>“119. CIVIL AND CRIMINAL PENALTIES</i>	<i>11901</i>

“PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

<i>“CHAPTER</i>	<i>Sec.</i>
<i>“131. GENERAL PROVISIONS</i>	<i>13101</i>
<i>“133. ADMINISTRATIVE PROVISIONS</i>	<i>13301</i>
<i>“135. JURISDICTION</i>	<i>13501</i>
<i>“137. RATES AND THROUGH ROUTES</i>	<i>13701</i>
<i>“139. REGISTRATION</i>	<i>13901</i>
<i>“141. OPERATIONS OF CARRIERS</i>	<i>14101</i>
<i>“143. FINANCE</i>	<i>14301</i>
<i>“145. FEDERAL-STATE RELATIONS</i>	<i>14501</i>
<i>“147. ENFORCEMENT: INVESTIGATIONS; RIGHTS; REMEDIES</i>	<i>14701</i>
<i>“149. CIVIL AND CRIMINAL PENALTIES</i>	<i>14901</i>

“PART C—PIPELINE CARRIERS

<i>“CHAPTER</i>	<i>Sec.</i>
<i>“151. GENERAL PROVISIONS</i>	<i>15101</i>
<i>“153. JURISDICTION</i>	<i>15301</i>
<i>“155. RATES AND TARIFFS</i>	<i>15501</i>
<i>“157. OPERATIONS OF CARRIERS</i>	<i>15701</i>
<i>“159. ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES</i>	<i>15901</i>
<i>“161. CIVIL AND CRIMINAL PENALTIES</i>	<i>16101</i>

“PART A—RAIL

“CHAPTER 101—GENERAL PROVISIONS

<i>“Sec.</i>
<i>“10101. Rail transportation policy.</i>
<i>“10102. Definitions.</i>

“§ 10101. Rail transportation policy

“In regulating the railroad industry, it is the policy of the United States Government—

“(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;

“(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

“(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;

“(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

“(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;

“(6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;

“(7) to reduce regulatory barriers to entry into and exit from the industry;

“(8) to operate transportation facilities and equipment without detriment to the public health and safety;

“(9) to encourage honest and efficient management of railroads;

“(10) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability;

“(11) to encourage fair wages and safe and suitable working conditions in the railroad industry;

“(12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;

“(13) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information;

“(14) to encourage and promote energy conservation; and

“(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

“§ 10102. Definitions

“In this part—

“(1) ‘Board’ means the Surface Transportation Board;

“(2) ‘car service’ includes (A) the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, other vehicles, and special types of equipment used in the transportation of property by a rail carrier, and (B) the supply of trains by a rail carrier;

“(3) ‘control’, when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means;

“(4) ‘person’, in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person;

“(5) ‘rail carrier’ means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation;

“(6) ‘railroad’ includes—

“(A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad;

“(B) the road used by a rail carrier and owned by it or operated under an agreement; and

“(C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation;

“(7) ‘rate’ means a rate or charge for transportation;

“(8) ‘State’ means a State of the United States and the District of Columbia;

“(9) ‘transportation’ includes—

“(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

“(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property; and

“(10) ‘United States’ means the States of the United States and the District of Columbia.

“CHAPTER 105—JURISDICTION

“Sec.

“10501. General jurisdiction.

“10502. Authority to exempt rail carrier transportation.

“§ 10501. General jurisdiction

“(a)(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is—

“(A) only by railroad; or

“(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

“(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in—

“(A) a State and a place in the same or another State as part of the interstate rail network;

“(B) a State and a place in a territory or possession of the United States;

“(C) a territory or possession of the United States and a place in another such territory or possession;

“(D) a territory or possession of the United States and another place in the same territory or possession;

“(E) the United States and another place in the United States through a foreign country; or

“(F) the United States and a place in a foreign country.

“(b) The jurisdiction of the Board over—

“(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

“(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

“(c)(1) In this subsection—

“(A) the term ‘local governmental authority’—

“(i) has the same meaning given that term by section 5302(a) of this title; and

“(ii) includes a person or entity that contracts with the local governmental authority to provide transportation services; and

“(B) the term ‘mass transportation’ means transportation services described in section 5302(a) of this title that are provided by rail.

“(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority.

“(3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to—

“(i) safety;

“(ii) the representation of employees for collective bargaining; and

“(iii) employment retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

“(B) The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before the effective date of the ICC Termination Act of 1995. The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.

“§ 10502. Authority to exempt rail carrier transportation

“(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the Board, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part—

“(1) is not necessary to carry out the transportation policy of section 10101 of this title; and

“(2) either—

“(A) the transaction or service is of limited scope; or

“(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

“(b) The Board may, where appropriate, begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party. The Board shall, within 90 days after receipt of any such application, determine whether to begin an appropriate proceeding. If the Board decides not to begin a class exemption proceeding, the reasons for the decision shall be published in the Federal Register. Any proceeding begun as a result of an application under this subsection shall be completed within 9 months after it is begun.

“(c) The Board may specify the period of time during which an exemption granted under this section is effective.

“(d) The Board may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 of this title. The Board shall, within 90 days after receipt of a request for revocation under this subsection, determine whether to begin an appropriate proceeding. If the Board decides not to begin a proceeding to revoke a class exemption, the reasons for the decision shall be published in the Federal Register. Any proceeding begun as a result of a request under this subsection shall be completed within 9 months after it is begun.

“(e) No exemption order issued pursuant to this section shall operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with the provisions of section 11706 of this title. Nothing in this subsection or section 11706 of this title shall prevent rail carriers from offering alternative terms nor give the Board the authority to require any specific level of rates or services based upon the provisions of section 11706 of this title.

“(f) The Board may exercise its authority under this section to exempt transportation that is provided by a rail carrier as part of a continuous intermodal movement.

“(g) The Board may not exercise its authority under this section to relieve a rail carrier of its obligation to protect the interests of employees as required by this part.

“CHAPTER 107—RATES**“SUBCHAPTER I—GENERAL AUTHORITY**

“Sec.

“10701. *Standards for rates, classifications, through routes, rules, and practices.*

“10702. *Authority for rail carriers to establish rates, classifications, rules, and practices.*

“10703. *Authority for rail carriers to establish through routes.*

“10704. *Authority and criteria: rates, classifications, rules, and practices prescribed by Board.*

“10705. *Authority: through routes, joint classifications, rates, and divisions prescribed by Board.*

“10706. *Rate agreements: exemption from antitrust laws.*

“10707. *Determination of market dominance in rail rate proceedings.*

“10708. *Rail cost adjustment factor.*

“10709. *Contracts.*

“SUBCHAPTER II—SPECIAL CIRCUMSTANCES

“10721. *Government traffic.*

“10722. *Car utilization.*

“SUBCHAPTER III—LIMITATIONS

“10741. *Prohibitions against discrimination by rail carriers.*

“10742. *Facilities for interchange of traffic.*

“10743. *Liability for payment of rates.*

“10744. *Continuous carriage of freight.*

“10745. *Transportation services or facilities furnished by shipper.*

“10746. *Demurrage charges.*

“10747. *Designation of certain routes by shippers.*

“SUBCHAPTER I—GENERAL AUTHORITY**“§ 10701. Standards for rates, classifications, through routes, rules, and practices**

“(a) *A through route established by a rail carrier must be reasonable. Divisions of joint rates by rail carriers must be made without unreasonable discrimination against a participating carrier and must be reasonable.*

“(b) *A rail carrier providing transportation subject to the jurisdiction of the Board under this part may not discriminate in its rates against a connecting line of another rail carrier providing transportation subject to the jurisdiction of the Board under this part or unreasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.*

“(c) *Except as provided in subsection (d) of this section and unless a rate is prohibited by a provision of this part, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may establish any rate for transportation or other service provided by the rail carrier.*

“(d)(1) *If the Board determines, under section 10707 of this title, that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable.*

“(2) *In determining whether a rate established by a rail carrier is reasonable for purposes of this section, the Board shall give due consideration to—*

“(A) *the amount of traffic which is transported at revenues which do not contribute to going concern value and the efforts made to minimize such traffic;*

“(B) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

“(C) the carrier’s mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier’s overall revenues,

recognizing the policy of this part that rail carriers shall earn adequate revenues, as established by the Board under section 10704(a)(2) of this title.

“(3) The Board shall, within one year after the effective date of this paragraph, complete the pending Interstate Commerce Commission non-coal rate guidelines proceeding to establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.

“§ 10702. Authority for rail carriers to establish rates, classifications, rules, and practices

“A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable—

“(1) rates, to the extent required by section 10707, divisions of joint rates, and classifications for transportation and service it may provide under this part; and

“(2) rules and practices on matters related to that transportation or service.

“§ 10703. Authority for rail carriers to establish through routes

“Rail carriers providing transportation subject to the jurisdiction of the Board under this part shall establish through routes (including physical connections) with each other and with water carriers providing transportation subject to chapter 137, shall establish rates and classifications applicable to those routes, and shall establish rules for their operation and provide—

“(1) reasonable facilities for operating the through route; and

“(2) reasonable compensation to persons entitled to compensation for services related to the through route.

“§ 10704. Authority and criteria: rates, classifications, rules, and practices prescribed by Board

“(a)(1) When the Board, after a full hearing, decides that a rate charged or collected by a rail carrier for transportation subject to the jurisdiction of the Board under this part, or that a classification, rule, or practice of that carrier, does or will violate this part, the Board may prescribe the maximum rate, classification, rule, or practice to be followed. The Board may order the carrier to stop the violation. When a rate, classification, rule, or practice is prescribed under this subsection, the affected carrier may not publish, charge, or collect a different rate and shall adopt the classification and observe the rule or practice prescribed by the Board.

“(2) The Board shall maintain and revise as necessary standards and procedures for establishing revenue levels for rail carriers providing transportation subject to its jurisdiction under this part that are adequate, under honest, economical, and efficient management, to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business. The Board shall make an adequate and continuing effort to assist those carriers in attaining revenue levels prescribed under this paragraph. Revenue levels established under this paragraph should—

“(A) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation; and

“(B) attract and retain capital in amounts adequate to provide a sound transportation system in the United States.

“(3) On the basis of the standards and procedures described in paragraph (2), the Board shall annually determine which rail carriers are earning adequate revenues.

“(b) The Board may begin a proceeding under this section only on complaint. A complaint under subsection (a) of this section must be made under section 11701 of this title, but the proceeding may also be in extension of a complaint pending before the Board.

“(c) In a proceeding to challenge the reasonableness of a rate, the Board shall make its determination as to the reasonableness of the challenged rate—

“(1) within 9 months after the close of the administrative record if the determination is based upon a stand-alone cost presentation; or

“(2) within 6 months after the close of the administrative record if the determination is based upon the methodology adopted by the Board pursuant to section 10701(d)(3).

“(d) Within 9 months after the effective date of the ICC Termination Act of 1995, the Board shall establish procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates. The procedures shall include appropriate measures for avoiding delay in the discovery and evidentiary phases of such proceedings and exemption or revocation proceedings, including appropriate sanctions for such delay, and for ensuring prompt disposition of motions and interlocutory administrative appeals.

“§ 10705. Authority: through routes, joint classifications, rates, and divisions prescribed by the Board

“(a)(1) The Board may, and shall when it considers it desirable in the public interest, prescribe through routes, joint classifications, joint rates, the division of joint rates, and the conditions under which those routes must be operated, for a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

“(2) The Board may require a rail carrier to include in a through route substantially less than the entire length of its railroad and any intermediate railroad operated with it under common management or control if that intermediate railroad lies between the terminals of the through route only when—

“(A) required under section 10741, 10742, or 11102 of this title;

“(B) inclusion of those lines would make the through route unreasonably long when compared with a practicable alternative through route that could be established; or

“(C) the Board decides that the proposed through route is needed to provide adequate, and more efficient or economic, transportation.

The Board shall give reasonable preference, subject to this subsection, to the rail carrier originating the traffic when prescribing through routes.

“(b) The Board shall prescribe the division of joint rates to be received by a rail carrier providing transportation subject to its jurisdiction under this part when it decides that a division of joint rates established by the participating carriers under section 10703 of this title, or under a decision of the Board under subsection (a) of this section, does or will violate section 10701 of this title.

“(c) If a division of a joint rate prescribed under a decision of the Board is later found to violate section 10701 of this title, the Board may decide what division would have been reasonable and order adjustment to be made retroactive to the date the complaint was filed, the date the order for an investigation was made, or a later date that the Board decides is justified. The Board may make a decision under this subsection effective as part of its original decision.

“§ 10706. Rate agreements: exemption from antitrust laws

“(a)(1) In this subsection—

“(A) the term ‘affiliate’ means a person controlling, controlled by, or under common control or ownership with another person and ‘ownership’ refers to equity holdings in a business entity of at least 5 percent;

“(B) the term ‘single-line rate’ refers to a rate or allowance proposed by a single rail carrier that is applicable only over its line and for which the transportation (exclusive of terminal services by switching, drayage or other terminal carriers or agencies) can be provided by that carrier; and

“(C) the term ‘practicably participates in the movement’ shall have such meaning as the Board shall by regulation prescribe.

“(2)(A) A rail carrier providing transportation subject to the jurisdiction of the Board under this part that is a party to an agreement of at least 2 rail carriers that relates to rates (including charges between rail carriers and compensation paid or received for the use of facilities and equipment), classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, publication, or establishment of them, shall apply to the Board for approval of that agreement under this subsection. The Board shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy of section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of its approval. If the Board approves the agreement, it may be made and carried out under its terms and

under the conditions required by the Board, and the Sherman Act (15 U.S.C. 1, et seq.), the Clayton Act (15 U.S.C. 12, et seq.), the Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a) do not apply to parties and other persons with respect to making or carrying out the agreement. However, the Board may not approve or continue approval of an agreement when the conditions required by it are not met or if it does not receive a verified statement under subparagraph (B) of this paragraph.

“(B) The Board may approve an agreement under subparagraph (A) of this paragraph only when the rail carriers applying for approval file a verified statement with the Board. Each statement must specify for each rail carrier that is a party to the agreement—

“(i) the name of the carrier;

“(ii) the mailing address and telephone number of its head-quarter’s office; and

“(iii) the names of each of its affiliates and the names, addresses, and affiliates of each of its officers and directors and of each person, together with an affiliate, owning or controlling any debt, equity, or security interest in it having a value of at least \$1,000,000.

“(3)(A) An organization established or continued under an agreement approved under this subsection shall make a final disposition of a rule or rate docketed with it by the 120th day after the proposal is docketed. Such an organization may not—

“(i) permit a rail carrier to discuss, to participate in agreements related to, or to vote on single-line rates proposed by another rail carrier, except that for purposes of general rate increases and broad changes in rates, classifications, rules, and practices only, if the Board finds at any time that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part;

“(ii) permit a rail carrier to discuss, to participate in agreements related to, or to vote on rates related to a particular interline movement unless that rail carrier practicably participates in the movement; or

“(iii) if there are interline movements over two or more routes between the same end points, permit a carrier to discuss, to participate in agreements related to, or to vote on rates except with a carrier which forms part of a particular single route. If the Board finds at any time that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.

“(B)(i) In any proceeding in which a party alleges that a rail carrier voted or agreed on a rate or allowance in violation of this subsection, that party has the burden of showing that the vote or agreement occurred. A showing of parallel behavior does not satisfy that burden by itself.

“(ii) In any proceeding in which it is alleged that a carrier was a party to an agreement, conspiracy, or combination in violation of a Federal law cited in subsection (a)(2)(A) of this section or of any similar State law, proof of an agreement, conspiracy, or combination may not be inferred from evidence that two or more rail car-

riers acted together with respect to an interline rate or related matter and that a party to such action took similar action with respect to a rate or related matter on another route or traffic. In any proceeding in which such a violation is alleged, evidence of a discussion or agreement between or among such rail carrier and one or more other rail carriers, or of any rate or other action resulting from such discussion or agreement, shall not be admissible if the discussion or agreement—

“(I) was in accordance with an agreement approved under paragraph (2) of this subsection; or

“(II) concerned an interline movement of the rail carrier, and the discussion or agreement would not, considered by itself, violate the laws referred to in the first sentence of this clause.

In any proceeding before a jury, the court shall determine whether the requirements of subclause (I) or (II) are satisfied before allowing the introduction of any such evidence.

“(C) An organization described in subparagraph (A) of this paragraph shall provide that transcripts or sound recordings be made of all meetings, that records of votes be made, and that such transcripts or recordings and voting records be submitted to the Board and made available to other Federal agencies in connection with their statutory responsibilities over rate bureaus, except that such material shall be kept confidential and shall not be subject to disclosure under section 552 of title 5, United States Code.

“(4) Notwithstanding any other provision of this subsection, one or more rail carriers may enter into an agreement, without obtaining prior Board approval, that provides solely for compilation, publication, and other distribution of rates in effect or to become effective. The Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a) shall not apply to parties and other persons with respect to making or carrying out such agreement. However, the Board may, upon application or on its own initiative, investigate whether the parties to such an agreement have exceeded its scope, and upon a finding that they have, the Board may issue such orders as are necessary, including an order dissolving the agreement, to ensure that actions taken pursuant to the agreement are limited as provided in this paragraph.

“(5)(A) Whenever two or more shippers enter into an agreement to discuss among themselves that relates to the amount of compensation such shippers propose to be paid by rail carriers providing transportation subject to the jurisdiction of the Board under this part, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Board for approval of that agreement under this paragraph. The Board shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy set forth in section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Board approves the agreement, it may be made and carried out under its terms and under the terms required by the Board, and the antitrust laws set forth in paragraph (2) of

this subsection do not apply to parties and other persons with respect to making or carrying out the agreement. The Board shall approve or disapprove an agreement under this paragraph within one year after the date application for approval of such agreement is made.

“(B) If the Board approves an agreement described in subparagraph (A) of this paragraph and the shippers entering into such agreement and the rail carriers proposing to use rolling stock owned or leased by such shippers, under payment by such carriers or under a published allowance, are unable to agree upon the amount of compensation to be paid for the use of such rolling stock, any party directly involved in the negotiations may require that the matter be settled by submitting the issues in dispute to the Board. The Board shall render a binding decision, based upon a standard of reasonableness and after taking into consideration any past precedents on the subject matter of the negotiations, no later than 90 days after the date of the submission of the dispute to the Board.

“(C) Nothing in this paragraph shall be construed to change the law in effect prior to the effective date of the Staggers Rail Act of 1980 with respect to the obligation of rail carriers to utilize rolling stock owned or leased by shippers.

“(b) The Board may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Board may inspect a record maintained under this section.

“(c) The Board may review an agreement approved under subsection (a) of this section and shall change the conditions of approval or terminate it when necessary to comply with the public interest and subsection (a). The Board shall postpone the effective date of a change of an agreement under this subsection for whatever period it determines to be reasonably necessary to avoid unreasonable hardship.

“(d) The Board may begin a proceeding under this section on its own initiative or on application. Action of the Board under this section—

“(1) approving an agreement;

“(2) denying, ending, or changing approval;

“(3) prescribing the conditions on which approval is granted; or

“(4) changing those conditions,

has effect only as related to application of the antitrust laws referred to in subsection (a) of this section.

“(e)(1) The Federal Trade Commission, in consultation with the Antitrust Division of the Department of Justice, shall prepare periodically an assessment of, and shall report to the Board on—

“(A) possible anticompetitive features of—

“(i) agreements approved or submitted for approval under subsection (a) of this section; and

“(ii) an organization operating under those agreements;

and

“(B) possible ways to alleviate or end an anticompetitive feature, effect, or aspect in a manner that will further the goals of this part and of the transportation policy of section 10101 of this title.

“(2) Reports received by the Board under this subsection shall be published and made available to the public under section 552(a) of title 5.

“§ 10707. Determination of market dominance in rail rate proceedings

“(a) In this section, ‘market dominance’ means an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies.

“(b) When a rate for transportation by a rail carrier providing transportation subject to the jurisdiction of the Board under this part is challenged as being unreasonably high, the Board shall determine whether the rail carrier proposing the rate has market dominance over the transportation to which the rate applies. The Board may make that determination on its own initiative or on complaint. A finding by the Board that the rail carrier does not have market dominance is determinative in a proceeding under this part related to that rate or transportation unless changed or set aside by the Board or set aside by a court of competent jurisdiction.

“(c) When the Board finds in any proceeding that a rail carrier proposing or defending a rate for transportation has market dominance over the transportation to which the rate applies, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. However, a finding of market dominance does not establish a presumption that the proposed rate exceeds a reasonable maximum.

“(d)(1)(A) In making a determination under this section, the Board shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applies if such rail carrier proves that the rate charged results in a revenue-variable cost percentage for such transportation that is less than 180 percent.

“(B) For purposes of this section, variable costs for a rail carrier shall be determined only by using such carrier’s unadjusted costs, calculated using the Uniform Rail Costing System cost finding methodology (or an alternative methodology adopted by the Board in lieu thereof) and indexed quarterly to account for current wage and price levels in the region in which the carrier operates, with adjustments specified by the Board. A rail carrier may meet its burden of proof under this subsection by establishing its variable costs in accordance with this paragraph, but a shipper may rebut that showing by evidence of such type, and in accordance with such burden of proof, as the Board shall prescribe.

“(2) A finding by the Board that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 180 percent does not establish a presumption that—

“(A) such rail carrier has or does not have market dominance over such transportation; or

“(B) the proposed rate exceeds or does not exceed a reasonable maximum.

“§ 10708. Rail cost adjustment factor

“(a) The Board shall, as often as practicable, but in no event less often than quarterly, publish a rail cost adjustment factor which shall be a fraction, the numerator of which is the latest published Index of Railroad Costs (which index shall be compiled or verified by the Board, with appropriate adjustments to reflect the change in composition of railroad costs, including the quality and mix of material and labor) and the denominator of which is the same index for the fourth quarter of every fifth year, beginning with the fourth quarter of 1992.

“(b) The rail cost adjustment factor published by the Board under subsection (a) of this section shall take into account changes in railroad productivity. The Board shall also publish a similar index that does not take into account changes in railroad productivity.

“§ 10709. Contracts

“(a) One or more rail carriers providing transportation subject to the jurisdiction of the Board under this part may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions.

“(b) A party to a contract entered into under this section shall have no duty in connection with services provided under such contract other than those duties specified by the terms of the contract.

“(c)(1) A contract that is authorized by this section, and transportation under such contract, shall not be subject to this part, and may not be subsequently challenged before the Board or in any court on the grounds that such contract violates a provision of this part.

“(2) The exclusive remedy for any alleged breach of a contract entered into under this section shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree. This section does not confer original jurisdiction on the district courts of the United States based on section 1331 or 1337 of title 28, United States Code.

“(d)(1) A summary of each contract for the transportation of agricultural products (including grain, as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and products thereof) entered into under this section shall be filed with the Board, containing such nonconfidential information as the Board prescribes. The Board shall publish special rules for such contracts in order to ensure that the essential terms of the contract are available to the general public.

“(2) Documents, papers, and records (and any copies thereof) relating to a contract described in subsection (a) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.

“(e) Any lawful contract between a rail carrier and one or more purchasers of rail service that was in effect on the effective date of the Staggers Rail Act of 1980 shall be considered a contract authorized by this section.

“(f) A rail carrier that enters into a contract as authorized by this section remains subject to the common carrier obligation set forth in section 11101, with respect to rail transportation not provided under such a contract.

“(g)(1) No later than 30 days after the date of filing of a summary of a contract under this section, the Board may, on complaint, begin a proceeding to review such contract on the grounds described in this subsection.

“(2)(A) A complaint may be filed under this subsection—

“(i) by a shipper on the grounds that such shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting rail carrier or carriers to meet their common carrier obligations to the complainant under section 11101 of this title; or

“(ii) by a port only on the grounds that such port individually will be harmed because the proposed contract will result in unreasonable discrimination against such port.

“(B) In addition to the grounds for a complaint described in subparagraph (A) of this paragraph, a complaint may be filed by a shipper of agricultural commodities on the grounds that such shipper individually will be harmed because—

“(i) the rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

“(ii) the proposed contract constitutes a destructive competitive practice under this part.

In making a determination under clause (ii) of this subparagraph, the Board shall consider the difference between contract rates and published single car rates.

“(C) For purposes of this paragraph, the term ‘unreasonable discrimination’ has the same meaning as such term has under section 10741 of this title.

“(3)(A) Within 30 days after the date a proceeding is commenced under paragraph (1) of this subsection, or within such shorter time period after such date as the Board may establish, the Board shall determine whether the contract that is the subject of such proceeding is in violation of this section.

“(B) If the Board determines, on the basis of a complaint filed under paragraph (2)(B)(i) of this subsection, that the grounds for a complaint described in such paragraph have been established with respect to a rail carrier, the Board shall, subject to the provisions of this section, order such rail carrier to provide rates and service substantially similar to the contract at issue with such differentials in terms and conditions as are justified by the evidence.

“(h)(1) Any rail carrier may, in accordance with the terms of this section, enter into contracts for the transportation of agricultural commodities (including forest products, but not including wood pulp, wood chips, pulpwood or paper) involving the utilization of carrier owned or leased equipment not in excess of 40 percent of the capacity of such carrier’s owned or leased equipment by major car type (plain boxcars, covered hopper cars, gondolas and open top hoppers, coal cars, bulkhead flatcars, pulpwood rackcars, and flatbed equipment, including TOFC/COFC).

“(2) The Board may, on request of a rail carrier or other party or on its own initiative, grant such relief from the limitations of paragraph (1) of this subsection as the Board considers appropriate, if it appears that additional equipment may be made available without impairing the rail carrier’s ability to meet its common carrier obligations under section 11101 of this title.

“(3)(A) This subsection shall cease to be effective after September 30, 1998.

“(B) Before October 1, 1997, the National Grain Car Council and the Railroad-Shipper Transportation Advisory Council shall make recommendations to Congress on whether to extend the effectiveness of or otherwise modify this subsection.

“SUBCHAPTER II—SPECIAL CIRCUMSTANCES

“§ 10721. Government traffic

“A rail carrier providing transportation or service for the United States Government may transport property or individuals for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply when transportation for the United States Government can be obtained from a rail carrier lawfully operating in the area where the transportation would be provided.

“§ 10722. Car utilization

“In order to encourage more efficient use of freight cars, notwithstanding any other provision of this part, rail carriers shall be permitted to establish premium charges for special services or special levels of services not otherwise applicable to the movement. The Board shall facilitate development of such charges so as to increase the utilization of equipment.

“SUBCHAPTER III—LIMITATIONS

“§ 10741. Prohibitions against discrimination by rail carriers

“(a)(1) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may not subject a person, place, port, or type of traffic to unreasonable discrimination.

“(2) For purposes of this section, a rail carrier engages in unreasonable discrimination when it charges or receives from a person a different compensation for a service rendered, or to be rendered, in transportation the rail carrier may perform under this part than it charges or receives from another person for performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances.

“(b) This section shall not apply to—

“(1) contracts described in section 10709 of this title;

“(2) rail rates applicable to different routes; or

“(3) discrimination against the traffic of another carrier providing transportation by any mode.

“(c) Differences between rates, classifications, rules, and practices of rail carriers do not constitute a violation of this section if such differences result from different services provided by rail carriers.

“§ 10742. Facilities for interchange of traffic

“A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of passengers and property to and from, its respective line and a connecting line of another rail carrier or of a water carrier providing transportation subject to chapter 137.

“§ 10743. Liability for payment of rates

“(a)(1) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this subsection when the transportation is provided by a rail carrier under this part. When the shipper or consignor instructs the rail carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property—

“(A) of the agency and absence of beneficial title; and

“(B) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

“(2) When the consignee is liable only for rates billed at the time of delivery under paragraph (1) of this subsection, the shipper or consignor, or, if the property is reconsigned or diverted, the beneficial owner, is liable for those additional rates regardless of the bill of lading or contract under which the property was transported. The beneficial owner is liable for all rates when the property is reconsigned or diverted by an agent but is refused or abandoned at its ultimate destination if the agent gave the rail carrier in the reconsignment or diversion order a notice of agency and the name and address of the beneficial owner. A consignee giving the rail carrier, and a reconsignor or diverter giving a rail carrier, erroneous information about the identity of the beneficial owner of the property is liable for the additional rates.

“(b) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor, named in the bill of lading as consignee, is determined under this subsection when the transportation is provided by a rail carrier under this part. When the shipper or consignor gives written notice, before delivery of the property, to the line-haul rail carrier that is to make ultimate delivery—

“(1) to deliver the property to another party identified by the shipper or consignor as the beneficial owner of the property; and

“(2) that delivery is to be made to that party on payment of all applicable transportation rates; that party is liable for the rates billed at the time of delivery and for additional rates that may be found to be due after delivery if that party does not pay the rates required to be paid under paragraph (2) of this subsection on delivery. However, if the party gives written notice to

the delivering rail carrier before delivery that the party is not the beneficial owner of the property and gives the rail carrier the name and address of the beneficial owner, then the party is not liable for those additional rates. A shipper, consignor, or party to whom delivery is made that gives the delivering rail carrier erroneous information about the identity of the beneficial owner, is liable for the additional rates regardless of the bill of lading or contract under which the property was transported. This subsection does not apply to a prepaid shipment of property.

“(c)(1) A rail carrier may bring an action to enforce liability under subsection (a) of this section. That rail carrier must bring the action during the period provided in section 11705(a) of this title or by the end of the 6th month after final judgment against it in an action against the consignee, or the beneficial owner named by the consignee or agent, under that section.

“(2) A rail carrier may bring an action to enforce liability under subsection (b) of this section. That carrier must bring the action during the period provided in section 11705(a) of this title or by the end of the 6th month after final judgment against it in an action against the shipper, consignor, or other party under that section.

“§ 10744. Continuous carriage of freight

“A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may not enter a combination or arrangement to prevent the carriage of freight from being continuous from the place of shipment to the place of destination whether by change of time schedule, carriage in different cars, or by other means. The carriage of freight by those rail carriers is considered to be a continuous carriage from the place of shipment to the place of destination when a break of bulk, stoppage, or interruption is not made in good faith for a necessary purpose, and with the intent of avoiding or unnecessarily interrupting the continuous carriage or of evading this part.

“§ 10745. Transportation services or facilities furnished by shipper

“A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may establish a charge or allowance for transportation or service for property when the owner of the property, directly or indirectly, furnishes a service related to or an instrumentality used in the transportation or service. The Board may prescribe the maximum reasonable charge or allowance a rail carrier subject to its jurisdiction may pay for a service or instrumentality furnished under this section. The Board may begin a proceeding under this section on its own initiative or on application.

“§ 10746. Demurrage charges

“A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall compute demurrage charges, and establish rules related to those charges, in a way that fulfills the national needs related to—

“(1) freight car use and distribution; and

“(2) maintenance of an adequate supply of freight cars to be available for transportation of property.

“§ 10747. Designation of certain routes by shippers

“(a)(1) When a person delivers property to a rail carrier for transportation subject to the jurisdiction of the Board under this part, the person may direct the rail carrier to transport the property over an established through route. When competing rail lines constitute a part of the route, the person shipping the property may designate the lines over which the property will be transported. The designation must be in writing. A rail carrier may be directed to transport property over a particular through route when—

“(A) there are at least 2 through routes over which the property could be transported;

“(B) a through rate has been established for transportation over each of those through routes; and

“(C) the rail carrier is a party to those routes and rates.

“(2) A rail carrier directed to route property transported under paragraph (1) of this subsection must issue a through bill of lading containing the routing instructions and transport the property according to the instructions. When the property is delivered to a connecting rail carrier, that rail carrier must also receive and transport it according to the routing instructions and deliver it to the next succeeding rail carrier or consignee according to the instructions.

“(b) The Board may prescribe exceptions to the authority of a person to direct the movement of traffic under subsection (a) of this section.

“CHAPTER 109—LICENSING

“Sec.

“10901. Authorizing construction and operation of railroad lines.

“10902. Short line purchases by Class II and Class III rail carriers.

“10903. Filing and procedure for application to abandon or discontinue.

“10904. Offers of financial assistance to avoid abandonment and discontinuance.

“10905. Offering abandoned rail properties for sale for public purposes.

“10906. Exception.

“10907. Railroad development.

“§ 10901. Authorizing construction and operation of railroad lines

“(a) A person may—

“(1) construct an extension to any of its railroad lines;

“(2) construct an additional railroad line;

“(3) provide transportation over, or by means of, an extended or additional railroad line; or

“(4) in the case of a person other than a rail carrier, acquire a railroad line or acquire or operate an extended or additional railroad line,

only if the Board issues a certificate authorizing such activity under subsection (c).

“(b) A proceeding to grant authority under subsection (a) of this section begins when an application is filed. On receiving the application, the Board shall give reasonable public notice, including notice to the Governor of any affected State, of the beginning of such proceeding.

“(c) The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with the public convenience and necessity. Such certificate may approve the application as filed, or with modifications, and may require compliance with conditions (other than labor protection conditions) the Board finds necessary in the public interest.

“(d)(1) When a certificate has been issued by the Board under this section authorizing the construction or extension of a railroad line, no other rail carrier may block any construction or extension authorized by such certificate by refusing to permit the carrier to cross its property if—

“(A) the construction does not unreasonably interfere with the operation of the crossed line;

“(B) the operation does not materially interfere with the operation of the crossed line; and

“(C) the owner of the crossing line compensates the owner of the crossed line.

“(2) If the parties are unable to agree on the terms of operation or the amount of payment for purposes of paragraph (1) of this subsection, either party may submit the matters in dispute to the Board for determination. The Board shall make a determination under this paragraph within 120 days after the dispute is submitted for determination.

“§ 10902. Short line purchases by Class II and Class III rail carriers

“(a) A Class II or Class III rail carrier providing transportation subject to the jurisdiction of the Board under this part may acquire or operate an extended or additional rail line under this section only if the Board issues a certificate authorizing such activity under subsection (c).

“(b) A proceeding to grant authority under subsection (a) of this section begins when an application is filed. On receiving the application, the Board shall give reasonable public notice of the beginning of such proceeding.

“(c) The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with the public convenience and necessity. Such certificate may approve the application as filed, or with modifications, and may require compliance with conditions (other than labor protection conditions) the Board finds necessary in the public interest.

“(d) The Board shall require any Class II rail carrier which receives a certificate under subsection (c) of this section to provide a fair and equitable arrangement for the protection of the interests of employees who may be affected thereby. The arrangement shall consist exclusively of one year of severance pay, which shall not exceed the amount of earnings from railroad employment of the employee during the 12-month period immediately preceding the date on which the application for such certificate is filed with the Board. The amount of such severance pay shall be reduced by the amount of earnings from railroad employment of the employee with the acquiring carrier during the 12-month period immediately following

the effective date of the transaction to which the certificate applies. The parties may agree to terms other than as provided in this subsection. The Board shall not require such an arrangement from a Class III rail carrier which receives a certificate under subsection (c) of this section.

“§ 10903. Filing and procedure for application to abandon or discontinue

“(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Board under this part who intends to—

“(A) abandon any part of its railroad lines; or

“(B) discontinue the operation of all rail transportation over any part of its railroad lines,

must file an application relating thereto with the Board. An abandonment or discontinuance may be carried out only as authorized under this chapter.

“(2) When a rail carrier providing transportation subject to the jurisdiction of the Board under this part files an application, the application shall include—

“(A) an accurate and understandable summary of the rail carrier’s reasons for the proposed abandonment or discontinuance;

“(B) a statement indicating that each interested person is entitled to make recommendations to the Board on the future of the rail line; and

“(C)(i) a statement that the line is available for subsidy or sale in accordance with section 10904 of this title, (ii) a statement that the rail carrier will promptly provide to each interested party an estimate of the annual subsidy and minimum purchase price, calculated in accordance with section 10904 of this title, and (iii) the name and business address of the person who is authorized to discuss the subsidy or sale terms for the rail carrier.

“(3) The rail carrier shall—

“(A) send by certified mail notice of the application to the chief executive officer of each State that would be directly affected by the proposed abandonment or discontinuance;

“(B) post a copy of the notice in each terminal and station on each portion of a railroad line proposed to be abandoned or over which all transportation is to be discontinued;

“(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each such portion is located;

“(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Board) of the railroad line during the 12 months preceding the filing of the application; and

“(E) attach to the application filed with the Board an affidavit certifying the manner in which subparagraphs (A) through (D) of this paragraph have been satisfied, and certifying that subparagraphs (A) through (D) have been satisfied within the most recent 30 days prior to the date the application is filed.

“(b)(1) Except as provided in subsection (d), abandonment and discontinuance may occur as provided in section 10904.

“(2) The Board shall require as a condition of any abandonment or discontinuance under this section provisions to protect the interests of employees. The provisions shall be at least as beneficial to those interests as the provisions established under sections 11326(a) and 24706(c) of this title.

“(c)(1) In this subsection, the term ‘potentially subject to abandonment’ has the meaning given the term in regulations of the Board. The regulations may include standards that vary by region of the United States and by railroad or group of railroads.

“(2) Each rail carrier shall maintain a complete diagram of the transportation system operated, directly or indirectly, by the rail carrier. The rail carrier shall submit to the Board and publish amendments to its diagram that are necessary to maintain the accuracy of the diagram. The diagram shall—

“(A) include a detailed description of each of its railroad lines potentially subject to abandonment; and

“(B) identify each railroad line for which the rail carrier plans to file an application to abandon or discontinue under subsection (a) of this section.

“(d) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may—

“(1) abandon any part of its railroad lines; or

“(2) discontinue the operation of all rail transportation over any part of its railroad lines;

only if the Board finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. In making the finding, the Board shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.

“(e) Subject to this section and sections 10904 and 10905 of this title, if the Board—

“(1) finds public convenience and necessity, it shall—

“(A) approve the application as filed; or

“(B) approve the application with modifications and require compliance with conditions that the Board finds are required by public convenience and necessity; or

“(2) fails to find public convenience and necessity, it shall deny the application.

“§ 10904. Offers of financial assistance to avoid abandonment and discontinuance

“(a) In this section—

“(1) the term ‘avoidable cost’ means all expenses that would be incurred by a rail carrier in providing transportation that would not be incurred if the railroad line over which the transportation was provided were abandoned or if the transportation were discontinued. Expenses include cash inflows foregone and cash outflows incurred by the rail carrier as a result of not abandoning or discontinuing the transportation. Cash inflows foregone and cash outflows incurred include—

“(A) working capital and required capital expenditure;

“(B) expenditures to eliminate deferred maintenance;

“(C) the current cost of freight cars, locomotives, and other equipment; and

“(D) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes; and

“(2) the term ‘reasonable return’ means—

“(A) if a rail carrier is not in reorganization, the cost of capital to the rail carrier, as determined by the Board; and

“(B) if a rail carrier is in reorganization, the mean cost of capital of rail carriers not in reorganization, as determined by the Board.

“(b) Any rail carrier which has filed an application for abandonment or discontinuance shall provide promptly to a party considering an offer of financial assistance and shall provide concurrently to the Board—

“(1) an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

“(2) its most recent reports on the physical condition of that part of the railroad line involved in the proposed abandonment or discontinuance;

“(3) traffic, revenue, and other data necessary to determine the amount of annual financial assistance which would be required to continue rail transportation over that part of the railroad line; and

“(4) any other information that the Board considers necessary to allow a potential offeror to calculate an adequate subsidy or purchase offer.

“(c) Within 4 months after an application is filed under section 10903, any person may offer to subsidize or purchase the railroad line that is the subject of such application. Such offer shall be filed concurrently with the Board. If the offer to subsidize or purchase is less than the carrier’s estimate stated pursuant to subsection (b)(1), the offer shall explain the basis of the disparity, and the manner in which the offer is calculated.

“(d)(1) Unless the Board, within 15 days after the expiration of the 4-month period described in subsection (c), finds that one or more financially responsible persons (including a governmental authority) have offered financial assistance regarding that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued, abandonment or discontinuance may be carried out in accordance with section 10903.

“(2) If the Board finds that such an offer or offers of financial assistance has been made within such period, abandonment or discontinuance shall be postponed until—

“(A) the carrier and a financially responsible person have reached agreement on a transaction for subsidy or sale of the line; or

“(B) the conditions and amount of compensation are established under subsection (f).

“(e) Except as provided in subsection (f)(3), if the rail carrier and a financially responsible person (including a governmental authority) fail to agree on the amount or terms of the subsidy or pur-

chase, either party may, within 30 days after the offer is made, request that the Board establish the conditions and amount of compensation.

“(f)(1) Whenever the Board is requested to establish the conditions and amount of compensation under this section—

“(A) the Board shall render its decision within 30 days;

“(B) for proposed sales, the Board shall determine the price and other terms of sale, except that in no case shall the Board set a price which is below the fair market value of the line (including, unless otherwise mutually agreed, all facilities on the line or portion necessary to provide effective transportation services); and

“(C) for proposed subsidies, the Board shall establish the compensation as the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line.

“(2) The decision of the Board shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw his offer within 10 days of the Board’s decision. In such a case, the abandonment or discontinuance may be carried out immediately, unless other offers are being considered pursuant to paragraph (3) of this subsection.

“(3) If a rail carrier receives more than one offer to subsidize or purchase, it shall select the offeror with whom it wishes to transact business, and complete the subsidy or sale agreement, or request that the Board establish the conditions and amount of compensation before the 40th day after the expiration of the 4-month period described in subsection (c). If no agreement on subsidy or sale is reached within such 40-day period and the Board has not been requested to establish the conditions and amount of compensation, any other offeror whose offer was made within the 4-month period described in subsection (c) may request that the Board establish the conditions and amount of compensation. If the Board has established the conditions and amount of compensation, and the original offer has been withdrawn, any other offeror whose offer was made within the 4-month period described in subsection (c) may accept the Board’s decision within 20 days after such decision, and the Board shall require the carrier to enter into a subsidy or sale agreement with such offeror, if such subsidy or sale agreement incorporates the Board’s decision.

“(4)(A) No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.

“(B) No subsidy arrangement approved under this section shall remain in effect for more than one year, unless otherwise mutually agreed by the parties.

“(g) Upon abandonment of a railroad line under this chapter, the obligation of the rail carrier abandoning the line to provide transportation on that line, as required by section 11101(a), is extinguished.

“§ 10905. Offering abandoned rail properties for sale for public purposes

“When the Board approves an application to abandon or discontinue under section 10903, the Board shall find whether the rail properties that are involved in the proposed abandonment or discontinuance are appropriate for use for public purposes, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Board finds that the rail properties proposed to be abandoned are appropriate for public purposes and not required for continued rail operations, the properties may be sold, leased, exchanged, or otherwise disposed of only under conditions provided in the order of the Board. The conditions may include a prohibition on any such disposal for a period of not more than 180 days after the effective date of the order, unless the properties have first been offered, on reasonable terms, for sale for public purposes.

“§ 10906. Exception

“Notwithstanding section 10901 and subchapter II of chapter 113 of this title, and without the approval of the Board, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks. The Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.

“§ 10907. Railroad development

“(a) In this section, the term ‘financially responsible person’ means a person who—

“(1) is capable of paying the constitutional minimum value of the railroad line proposed to be acquired; and

“(2) is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years. Such term includes a governmental authority but does not include a Class I or Class II rail carrier.

“(b)(1) When the Board finds that—

“(A)(i) the public convenience and necessity require or permit the sale of a particular railroad line under this section; or

“(ii) a railroad line is on a system diagram map as required under section 10903 of this title, but the rail carrier owning such line has not filed an application to abandon such line under section 10903 of this title before an application to purchase such line, or any required preliminary filing with respect to such application, is filed under this section; and

“(B) an application to purchase such line has been filed by a financially responsible person,

the Board shall require the rail carrier owning the railroad line to sell such line to such financially responsible person at a price not less than the constitutional minimum value.

“(2) For purposes of this subsection, the constitutional minimum value of a particular railroad line shall be presumed to be not less than the net liquidation value of such line or the going concern value of such line, whichever is greater.

“(c)(1) For purposes of this section, the Board may determine that the public convenience and necessity require or permit the sale of a railroad line if the Board determines, after a hearing on the record, that—

“(A) the rail carrier operating such line refuses within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over such line;

“(B) the transportation over such line is inadequate for the majority of shippers who transport traffic over such line;

“(C) the sale of such line will not have a significantly adverse financial effect on the rail carrier operating such line;

“(D) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier operating such line; and

“(E) the sale of such line will be likely to result in improved railroad transportation for shippers that transport traffic over such line.

“(2) In a proceeding under this subsection, the burden of proving that the public convenience and necessity require or permit the sale of a particular railroad line is on the person filing the application to acquire such line. If the Board finds under this subsection that the public convenience and necessity require or permit the sale of a particular railroad line, the Board shall concurrently notify the parties of such finding and publish such finding in the Federal Register.

“(d) In the case of any railroad line subject to sale under subsection (a) of this section, the Board shall, upon the request of the acquiring carrier, require the selling carrier to provide to the acquiring carrier trackage rights to allow a reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the acquiring carrier. The Board shall require the acquiring carrier to provide the selling carrier reasonable compensation for any such trackage rights.

“(e) The Board shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to a sale under this section.

“(f) In the case of a railroad line which carried less than 3,000,000 gross ton miles of traffic per mile in the preceding calendar year, whenever a purchasing carrier under this section petitions the Board for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practicably participate, the Board shall, within 30 days after the date such petition is filed and pursuant to section 10705(a) of this title, require the establishment of reasonable joint rates and divisions over such route.

“(g)(1) Any person operating a railroad line acquired under this section may elect to be exempt from any of the provisions of this part, except that such a person may not be exempt from the provisions of chapter 107 of this title with respect to transportation under a joint rate.

“(2) The provisions of paragraph (1) of this subsection shall apply to any line of railroad which was abandoned during the 18-

month period immediately prior to October 1, 1980, and was subsequently purchased by a financially responsible person.

“(h) If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased railroad line, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.

“(i) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.

“CHAPTER 111—OPERATIONS

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“SUBCHAPTER I—GENERAL REQUIREMENTS

“§ 11101. Common carrier transportation, service, and rates

“(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request. A rail carrier shall not be found to have violated this section because it fulfills its reasonable commitments under contracts authorized under section 10709 of this title before responding to reasonable requests for service. Commitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.

“(b) A rail carrier shall also provide to any person, on request, the carrier’s rates and other service terms. The response by a rail carrier to a request for the carrier’s rates and other service terms shall be—

“(1) in writing and forwarded to the requesting person promptly after receipt of the request; or

“(2) promptly made available in electronic form.

“(c) A rail carrier may not increase any common carrier rates or change any common carrier service terms unless 20 days have expired after written or electronic notice is provided to any person who, within the previous 12 months—

“(1) has requested such rates or terms under subsection (b);

or

“(2) has made arrangements with the carrier for a shipment that would be subject to such increased rates or changed terms.

“(d) With respect to transportation of agricultural products, in addition to the requirements of subsections (a), (b), and (c), a rail carrier shall publish, make available, and retain for public inspection its common carrier rates, schedules of rates, and other service terms, and any proposed and actual changes to such rates and service terms. For purposes of this subsection, agricultural products shall include grain as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and all products thereof, and fertilizer.

“(e) A rail carrier shall provide transportation or service in accordance with the rates and service terms, and any changes thereto, as published or otherwise made available under subsection (b), (c), or (d).

“(f) The Board shall, by regulation, establish rules to implement this section. The regulations shall provide for immediate disclosure and dissemination of rates and service terms, including classifications, rules, and practices, and their effective dates. Final regulations shall be adopted by the Board not later than 180 days after the effective date of the ICC Termination Act of 1995.

“§ 11102. Use of terminal facilities

“(a) The Board may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Board under this part, to be used by another rail carrier if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business. The rail carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the rail carriers cannot agree, the Board may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings. The compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another rail carrier under this section.

“(b) A rail carrier whose terminal facilities are required to be used by another rail carrier under this section is entitled to recover damages from the other rail carrier for injuries sustained as the result of compliance with the requirement or for compensation for the use, or both as appropriate, in a civil action, if it is not satisfied with the conditions for use of the facilities or if the amount of the compensation is not paid promptly.

“(c)(1) The Board may require rail carriers to enter into reciprocal switching agreements, where it finds such agreements to be practicable and in the public interest, or where such agreements are necessary to provide competitive rail service. The rail carriers entering into such an agreement shall establish the conditions and compensation applicable to such agreement, but, if the rail carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Board may establish such conditions and compensation.

“(2) The Board may require reciprocal switching agreements entered into by rail carriers pursuant to this subsection to contain provisions for the protection of the interests of employees affected thereby.

“(d) The Board shall complete any proceeding under subsection (a) or (b) within 180 days after the filing of the request for relief.

“§ 11103. Switch connections and tracks

“(a) On application of the owner of a lateral branch line of railroad, or of a shipper tendering interstate traffic for transportation, a rail carrier providing transportation subject to the jurisdiction of the Board under this part shall construct, maintain, and operate, on reasonable conditions, a switch connection to connect that branch line or private side track with its railroad and shall furnish cars to move that traffic to the best of its ability without discrimination in favor of or against the shipper when the connection—

“(1) is reasonably practicable;

“(2) can be made safely; and

“(3) will furnish sufficient business to justify its construction and maintenance.

“(b) If a rail carrier fails to install and operate a switch connection after application is made under subsection (a) of this section, the owner of the lateral branch line of railroad or the shipper may file a complaint with the Board under section 11701 of this title. The Board shall investigate the complaint and decide the safety, practicability, justification, and compensation to be paid for the connection. The Board may direct the rail carrier to comply with subsection (a) of this section only after a full hearing.

“SUBCHAPTER II—CAR SERVICE

“§ 11121. Criteria

“(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service. The Board may require a rail carrier to provide facilities and equipment that are reasonably necessary to furnish safe and adequate car service if the Board decides that the rail carrier has materially failed to furnish that service. The Board may begin a proceeding under this paragraph when an interested person files an application with it. The Board may act only after a hearing on the record and an affirmative finding, based on the evidence presented, that—

“(A) providing the facilities or equipment will not materially and adversely affect the ability of the rail carrier to provide safe and adequate transportation;

“(B) the amount spent for the facilities or equipment, including a return equal to the rail carrier’s current cost of capital, will be recovered; and

“(C) providing the facilities or equipment will not impair the ability of the rail carrier to attract adequate capital.

“(2) The Board may require a rail carrier to file its car service rules with the Board.

“(b) The Board may designate and appoint agents and agencies to make and carry out its directions related to car service and matters under sections 11123 and 11124(a)(1) of this title.

“(c) The Board shall consult, as it considers necessary, with the National Grain Car Council on matters within the charter of that body.

“§ 11122. Compensation and practice

“(a) The regulations of the Board on car service shall encourage the purchase, acquisition, and efficient use of freight cars. The regulations may include—

“(1) the compensation to be paid for the use of a locomotive, freight car, or other vehicle;

“(2) the other terms of any arrangement for the use by a rail carrier of a locomotive, freight car, or other vehicle not owned by the rail carrier using the locomotive, freight car, or other vehicle, whether or not owned by another carrier, shipper, or third person; and

“(3) sanctions for nonobservance.

“(b) The rate of compensation to be paid for each type of freight car shall be determined by the expense of owning and maintaining that type of freight car, including a fair return on its cost giving consideration to current costs of capital, repairs, materials, parts, and labor. In determining the rate of compensation, the Board shall consider the transportation use of each type of freight car, the national level of ownership of each type of freight car, and other factors that affect the adequacy of the national freight car supply.

“§ 11123. Situations requiring immediate action to serve the public

“(a) When the Board determines that shortage of equipment, congestion of traffic, unauthorized cessation of operations, or other failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States, or that a rail carrier providing transportation subject to the jurisdiction of the Board under this part cannot transport the traffic offered to it in a manner that properly serves the public, the Board may, to promote commerce and service to the public, for a period not to exceed 30 days—

“(1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines;

“(2) require joint or common use of railroad facilities;

“(3) prescribe temporary through routes; or

“(4) give directions for—

“(A) preference or priority in transportation;

“(B) embargoes; or

“(C) movement of traffic under permits.

“(b)(1) Except with respect to proceedings under paragraph (2) of this subsection, the Board may act under this section on its own initiative or on application without regard to subchapter II of chapter 5 of title 5.

“(2) Rail carriers may establish between themselves the terms of compensation for operations, and use of facilities and equipment, required under this section. When rail carriers do not agree on the terms of compensation under this section, the Board may establish the terms for them. The Board may act under subsection (a) before conducting a proceeding under this paragraph.

“(3) When a rail carrier is directed under this section to operate the lines of another rail carrier due to that carrier's cessation of operations, compensation for the directed operations shall derive only from revenues generated by the directed operations.

“(c)(1) The Board may extend any action taken under subsection (a) of this section beyond 30 days if the Board finds that a transportation emergency described in subsection (a) continues to exist. Action by the Board under subsection (a) of this section may not remain in effect for more than 240 days beyond the initial 30-day period.

“(2) The Board may not take action under this section that would—

“(A) cause a rail carrier to operate in violation of this part;
or

“(B) impair substantially the ability of a rail carrier to serve its own customers adequately, or to fulfill its common carrier obligations.

“(3) A rail carrier directed by the Board to take action under this section is not responsible, as a result of that action, for debts of any other rail carrier.

“(d) In carrying out this section, the Board shall require, to the maximum extent practicable, the use of employees who would normally have performed work in connection with the traffic subject to the action of the Board.

“§ 11124. War emergencies; embargoes imposed by carriers

“(a)(1) When the President, during time of war or threatened war, notifies the Board that it is essential to the defense and security of the United States to give preference or priority to the movement of certain traffic, the Board shall direct that preference or priority be given to that traffic.

“(2) When the President, during time of war or threatened war, demands that preference and precedence be given to the transportation of troops and material of war over all other traffic, all rail carriers providing transportation subject to the jurisdiction of the Board under this part shall adopt every means within their control to facilitate and expedite the military traffic.

“(b) An embargo imposed by any such rail carrier does not apply to shipments consigned to agents of the United States Govern-

ment for its use. The rail carrier shall deliver those shipments as promptly as possible.

“SUBCHAPTER III—REPORTS AND RECORDS

“§ 11141. Definitions

“In this subchapter—

“(1) the terms ‘rail carrier’ and ‘lessor’ include a receiver or trustee of a rail carrier and lessor, respectively;

“(2) the term ‘lessor’ means a person owning a railroad that is leased to and operated by a carrier providing transportation subject to the jurisdiction of the Board under this part; and

“(3) the term ‘association’ means an organization maintained by or in the interest of a group of rail carriers providing transportation or service subject to the jurisdiction of the Board under this part that performs a service, or engages in activities, related to transportation under this part.

“§ 11142. Uniform accounting system

“The Board may prescribe a uniform accounting system for classes of rail carriers providing transportation subject to the jurisdiction of the Board under this part. To the maximum extent practicable, the Board shall conform such system to generally accepted accounting principles, and shall administer this subchapter in accordance with such principles.

“§ 11143. Depreciation charges

“The Board shall, for a class of rail carriers providing transportation subject to its jurisdiction under this part, prescribe, and change when necessary, those classes of property for which depreciation charges may be included under operating expenses and a rate of depreciation that may be charged to a class of property. The Board may classify those rail carriers for purposes of this section. A rail carrier for whom depreciation charges and rates of depreciation are in effect under this section for any class of property may not—

“(1) charge to operating expenses a depreciation charge on a class of property other than that prescribed by the Board;

“(2) charge another rate of depreciation; or

“(3) include other depreciation charges in operating expenses.

“§ 11144. Records: form; inspection; preservation

“(a) The Board may prescribe the form of records required to be prepared or compiled under this subchapter—

“(1) by rail carriers and lessors, including records related to movement of traffic and receipts and expenditures of money; and

“(2) by persons furnishing cars to or for a rail carrier providing transportation subject to the jurisdiction of the Board under this part to the extent related to those cars or that service.

“(b) The Board, or an employee designated by the Board, may on demand and display of proper credentials—

“(1) inspect and examine the lands, buildings, and equipment of a rail carrier or lessor; and

“(2) inspect and copy any record of—

“(A) a rail carrier, lessor, or association;

“(B) a person controlling, controlled by, or under common control with a rail carrier if the Board considers inspection relevant to that person’s relation to, or transaction with, that rail carrier; and

“(C) a person furnishing cars to or for a rail carrier if the Board prescribed the form of that record.

“(c) The Board may prescribe the time period during which operating, accounting, and financial records must be preserved by rail carriers, lessors, and persons furnishing cars.

“§ 11145. Reports by rail carriers, lessors, and associations

“(a) The Board may require—

“(1) rail carriers, lessors, and associations, or classes of them as the Board may prescribe, to file annual, periodic, and special reports with the Board containing answers to questions asked by it; and

“(2) a person furnishing cars to a rail carrier to file reports with the Board containing answers to questions about those cars.

“(b)(1) An annual report shall contain an account, in as much detail as the Board may require, of the affairs of the rail carrier, lessor, or association for the 12-month period ending on December 31 of each year.

“(2) An annual report shall be filed with the Board by the end of the third month after the end of the year for which the report is made unless the Board extends the filing date or changes the period covered by the report. The annual report and, if the Board requires, any other report made under this section, shall be made under oath.

“SUBCHAPTER IV—RAILROAD COST ACCOUNTING

“§ 11161. Implementation of cost accounting principles

“The Board shall periodically review its cost accounting rules and shall make such changes in those rules as are required to achieve the regulatory purposes of this part. The Board shall insure that the rules promulgated under this section are the most efficient and least burdensome means by which the required information may be developed for regulatory purposes. To the maximum extent practicable, the Board shall conform such rules to generally accepted accounting principles.

“§ 11162. Rail carrier cost accounting system

“(a) Each rail carrier shall have and maintain a cost accounting system that is in compliance with the rules promulgated by the Board under section 11161 of this title. A rail carrier may, after notifying the Board, make modifications in such system unless, within 60 days after the date of notification, the Board finds such modifications to be inconsistent with the rules promulgated by the Board under section 11161 of this title.

“(b) For purposes of determining whether the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Board, the Board shall have the right to examine and make copies of any documents, papers, or records of such rail carrier relating to compliance with such rules. Such documents, papers, and records (and any copies thereof) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.

“§ 11163. Cost availability

“As required by the rules of the Board governing discovery in Board proceedings, rail carriers shall make relevant cost data available to shippers, States, ports, communities, and other interested parties that are a party to a Board proceeding in which such data are required.

“§ 11164. Accounting and cost reporting

“To obtain expense and revenue information for regulatory purposes, the Board may promulgate reasonable rules for rail carriers providing transportation subject to the jurisdiction of the Board under this part, prescribing expense and revenue accounting and reporting requirements consistent with generally accepted accounting principles uniformly applied to such carriers. Such requirements shall be cost effective and compatible with and not duplicative of the managerial and responsibility accounting requirements of those carriers.

“CHAPTER 113—FINANCE

“SUBCHAPTER I—EQUIPMENT TRUSTS AND SECURITY INTERESTS

“Sec.

“11301. Equipment trusts: recordation; evidence of indebtedness.

“SUBCHAPTER II—COMBINATIONS

“11321. Scope of authority.

“11322. Limitation on pooling and division of transportation or earnings.

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“11324. Consolidation, merger, and acquisition of control: conditions of approval.

“11325. Consolidation, merger, and acquisition of control: procedure.

“11326. Employee protective arrangements in transactions involving rail carriers.

“11327. Supplemental orders.

“11328. Restrictions on officers and directors.

“SUBCHAPTER I—EQUIPMENT TRUSTS AND SECURITY INTERESTS

“§ 11301. Equipment trusts: recordation; evidence of indebtedness

“(a) A mortgage (other than a mortgage under chapter 313 of title 46), lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of or security interest in vessels, railroad cars, locomotives, or other rolling stock, or accessories used on such railroad cars, locomotives, or other rolling stock (including superstructures and racks), intended for a use related to interstate commerce shall be filed with the Board in order to perfect the security interest that is the subject of such instrument. An assignment of a right or interest under one of those instruments and an amendment

to that instrument or assignment including a release, discharge, or satisfaction of any part of it shall also be filed with the Board. The instrument, assignment, or amendment must be in writing, executed by the parties to it, and acknowledged or verified under Board regulations. When filed under this section, that document is notice to, and enforceable against, all persons. A document filed under this section does not have to be filed, deposited, registered, or recorded under another law of the United States, a State (or its political subdivisions), or territory or possession of the United States, related to filing, deposit, registration, or recordation of those documents. This section does not change chapter 313 of title 46.

“(b) The Board shall maintain a system for recording each document filed under subsection (a) of this section and mark each of them with a consecutive number and the date and hour of their recordation. The Board shall maintain and keep open for public inspection an index of documents filed under that subsection. That index shall include the name and address of the principal debtors, trustees, guarantors, and other parties to those documents and may include other facts that will assist in determining the rights of the parties to those transactions.

“(c) The Board may to the greatest extent practicable perform its functions under this section through contracts with private sector entities.

“(d) A mortgage, lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of or security interest in vessels, railroad cars, locomotives, or other rolling stock, or accessories used on such railroad cars, locomotives, or other rolling stock (including superstructures and racks), or any assignment thereof, which—

“(1) is duly constituted under the laws of a country other than the United States; and

“(2) relates to property that bears the reporting marks and identification numbers of any person domiciled in or corporation organized under the laws of such country,

shall be recognized with the same effect as having been filed under this section.

“(e) Interests with respect to which documents are filed or recognized under this section are deemed perfected in all jurisdictions, and shall be governed by applicable State or foreign law in all matters not specifically governed by this section.

“(f) The Board shall collect, maintain, and keep open for public inspection a railway equipment register consistent with the manner and format maintained by the Interstate Commerce Commission as of the effective date of the ICC Termination Act of 1995.

“SUBCHAPTER II—COMBINATIONS

“§ 11321. Scope of authority

“(a) The authority of the Board under this subchapter is exclusive. A rail carrier or corporation participating in or resulting from a transaction approved by or exempted by the Board under this subchapter may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A rail carrier, corpora-

tion, or person participating in that approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that rail carrier, corporation, or person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction. However, if a purchase and sale, a lease, or a corporate consolidation or merger is involved in the transaction, the carrier or corporation may carry out the transaction only with the assent of a majority, or the number required under applicable State law, of the votes of the holders of the capital stock of that corporation entitled to vote. The vote must occur at a regular meeting, or special meeting called for that purpose, of those stockholders and the notice of the meeting must indicate its purpose.

“(b) A power granted under this subchapter to a carrier or corporation is in addition to and changes its powers under its corporate charter and under State law. Action under this subchapter does not establish or provide for establishing a corporation under the laws of the United States.

“§ 11322. Limitation on pooling and division of transportation or earnings

“(a) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may not agree or combine with another of those rail carriers to pool or divide traffic or services or any part of their earnings without the approval of the Board under this section or section 11123 of this title. The Board may approve and authorize the agreement or combination if the rail carriers involved assent to the pooling or division and the Board finds that a pooling or division of traffic, services, or earnings—

“(1) will be in the interest of better service to the public or of economy of operation; and

“(2) will not unreasonably restrain competition.

“(b) The Board may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the rail carriers.

“(c) The Board may begin a proceeding under this section on its own initiative or on application.

“§ 11323. Consolidation, merger, and acquisition of control

“(a) The following transactions involving rail carriers providing transportation subject to the jurisdiction of the Board under this part may be carried out only with the approval and authorization of the Board:

“(1) Consolidation or merger of the properties or franchises of at least 2 rail carriers into one corporation for the ownership, management, and operation of the previously separately owned properties.

“(2) A purchase, lease, or contract to operate property of another rail carrier by any number of rail carriers.

“(3) Acquisition of control of a rail carrier by any number of rail carriers.

“(4) Acquisition of control of at least 2 rail carriers by a person that is not a rail carrier.

“(5) Acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers.

“(6) Acquisition by a rail carrier of trackage rights over, or joint ownership in or joint use of, a railroad line (and terminals incidental to it) owned or operated by another rail carrier.

“(b) A person may carry out a transaction referred to in subsection (a) of this section or participate in achieving the control or management, including the power to exercise control or management, in a common interest of more than one of those rail carriers, regardless of how that result is reached, only with the approval and authorization of the Board under this subchapter. In addition to other transactions, each of the following transactions are considered achievements of control or management:

“(1) A transaction by a rail carrier that has the effect of putting that rail carrier and person affiliated with it, taken together, in control of another rail carrier.

“(2) A transaction by a person affiliated with a rail carrier that has the effect of putting that rail carrier and persons affiliated with it, taken together, in control of another rail carrier.

“(3) A transaction by at least 2 persons acting together (one of whom is a rail carrier or is affiliated with a rail carrier) that has the effect of putting those persons and rail carriers and persons affiliated with any of them, or with any of those affiliated rail carriers, taken together, in control of another rail carrier.

“(c) A person is affiliated with a rail carrier under this subchapter if, because of the relationship between that person and a rail carrier, it is reasonable to believe that the affairs of another rail carrier, control of which may be acquired by that person, will be managed in the interest of the other rail carrier.

“§ 11324. Consolidation, merger, and acquisition of control: conditions of approval

“(a) The Board may begin a proceeding to approve and authorize a transaction referred to in section 11323 of this title on application of the person seeking that authority. When an application is filed with the Board, the Board shall notify the chief executive officer of each State in which property of the rail carriers involved in the proposed transaction is located and shall notify those rail carriers. The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.

“(b) In a proceeding under this section which involves the merger or control of at least two Class I railroads, as defined by the Board, the Board shall consider at least—

“(1) the effect of the proposed transaction on the adequacy of transportation to the public;

“(2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;

“(3) the total fixed charges that result from the proposed transaction;

“(4) the interest of rail carrier employees affected by the proposed transaction; and

“(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

“(c) The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. Any track-age rights and related conditions imposed to alleviate anticompetitive effects of the transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated. When the transaction contemplates a guaranty or assumption of payment of dividends or of fixed charges or will result in an increase of total fixed charges, the Board may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest. The Board may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Board finds their inclusion to be consistent with the public interest.

“(d) In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that—

“(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

“(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In making such findings, the Board shall, with respect to any application that is part of a plan or proposal developed under section 333(a)–(d) of this title, accord substantial weight to any recommendations of the Attorney General.

“(e) No transaction described in section 11326(b) may have the effect of avoiding a collective bargaining agreement or shifting work from a rail carrier with a collective bargaining agreement to a rail carrier without a collective bargaining agreement.

“(f)(1) To the extent provided in this subsection, a proceeding under this subchapter relating to a transaction involving at least one Class I rail carrier shall not be considered an adjudication required by statute to be determined on the record after opportunity for an agency hearing, for the purposes of subchapter II of chapter 5 of title 5, United States Code.

“(2) Ex parte communications, as defined in section 551(14) of title 5, United States Code, shall be permitted in proceedings described in paragraph (1) of this subsection, subject to the requirements of paragraph (3) of this subsection.

“(3)(A) Any member or employee of the Board who makes or receives a written ex parte communication concerning the merits of a proceeding described in paragraph (1) shall promptly place the communication in the public docket of the proceeding.

“(B) Any member or employee of the Board who makes or receives an oral ex parte communication concerning the merits of a proceeding described in paragraph (1) shall promptly place a writ-

ten summary of the oral communication in the public docket of the proceeding.

“(4) Nothing in this subsection shall be construed to require the Board or any of its members or employees to engage in any ex parte communication with any person. Nothing in this subsection or any other law shall be construed to limit the authority of the members or employees of the Board, in their discretion, to note in the docket or otherwise publicly the occurrence and substance of an ex parte communication.

“§ 11325. Consolidation, merger, and acquisition of control: procedure

“(a) The Board shall publish notice of the application under section 11324 in the Federal Register by the end of the 30th day after the application is filed with the Board. However, if the application is incomplete, the Board shall reject it by the end of that period. The order of rejection is a final action of the Board. The published notice shall indicate whether the application involves—

“(1) the merger or control of at least two Class I railroads, as defined by the Board, to be decided within the time limits specified in subsection (b) of this section;

“(2) transactions of regional or national transportation significance, to be decided within the time limits specified in subsection (c) of this section; or

“(3) any other transaction covered by this section, to be decided within the time limits specified in subsection (d) of this section.

“(b) If the application involves the merger or control of two or more Class I railroads, as defined by the Board, the following conditions apply:

“(1) Written comments about an application may be filed with the Board within 45 days after notice of the application is published under subsection (a) of this section. Copies of such comments shall be served on the Attorney General and the Secretary of Transportation, who may decide to intervene as a party to the proceeding. That decision must be made by the 15th day after the date of receipt of the written comments, and if the decision is to intervene, preliminary comments about the application must be sent to the Board by the end of the 15th day after the date of receipt of the written comments.

“(2) The Board shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it by the 90th day after publication of notice under that subsection.

“(3) The Board must conclude evidentiary proceedings by the end of 1 year after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 90th day after the date on which it concludes the evidentiary proceedings.

“(c) If the application involves a transaction other than the merger or control of at least two Class I railroads, as defined by the Board, which the Board has determined to be of regional or national transportation significance, the following conditions apply:

“(1) Written comments about an application, including comments of the Attorney General and the Secretary of Transportation, may be filed with the Board within 30 days after notice of the application is published under subsection (a) of this section.

“(2) The Board shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it by the 60th day after publication of notice under that subsection.

“(3) The Board must conclude any evidentiary proceedings by the 180th day after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 90th day after the date on which it concludes the evidentiary proceedings.

“(d) For all applications under this section other than those specified in subsections (b) and (c) of this section, the following conditions apply:

“(1) Written comments about an application, including comments of the Attorney General and the Secretary of Transportation, may be filed with the Board within 30 days after notice of the application is published under subsection (a) of this section.

“(2) The Board must conclude any evidentiary proceedings by the 105th day after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 45th day after the date on which it concludes the evidentiary proceedings.

“§ 11326. Employee protective arrangements in transactions involving rail carriers

“(a) Except as otherwise provided in this section, when approval is sought for a transaction under sections 11324 and 11325 of this title, the Board shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees who are affected by the transaction as the terms imposed under section 5(2)(f) of the Interstate Commerce Act before February 5, 1976, and the terms established under section 24706(c) of this title. Notwithstanding this part, the arrangement may be made by the rail carrier and the authorized representative of its employees. The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Board (or if an employee was employed for a lesser period of time by the rail carrier before the action became effective, for that lesser period).

“(b) When approval is sought under sections 11324 and 11325 for a transaction involving one Class II and one or more Class III rail carriers, there shall be an arrangement as required under subsection (a) of this section, unless the applicant elects to provide the alternative arrangement specified in this subsection. Such alternative arrangement shall be limited to one year of severance pay, which shall not exceed the amount of earnings from the railroad employment of that employee during the 12-month period imme-

diately preceding the date on which the application for approval of such transaction is filed with the Board. The amount of such severance pay shall be reduced by the amount of earnings from railroad employment of that employee with the acquiring carrier during the 12-month period immediately following the effective date of the transaction. The parties may agree to terms other than as provided in this subsection.

“(c) When approval is sought under sections 11324 and 11325 for a transaction involving only Class III rail carriers, this section shall not apply.

“§ 11327. Supplemental orders

“When cause exists, the Board may make appropriate orders supplemental to an order made in a proceeding under sections 11322 through 11326 of this title.

“§ 11328. Restrictions on officers and directors

“(a) A person may hold the position of officer or director of more than one rail carrier only when authorized by the Board. The Board may authorize a person to hold the position of officer or director of more than one of those carriers when public or private interests will not be adversely affected.

“(b) This section shall not apply to an individual holding the position of officer or director only of Class III rail carriers.

“CHAPTER 115—FEDERAL-STATE RELATIONS

“Sec.

“11501. Tax discrimination against rail transportation property.

“11502. Withholding State and local income tax by rail carriers.

“§ 11501. Tax discrimination against rail transportation property

“(a) In this section—

“(1) the term ‘assessment’ means valuation for a property tax levied by a taxing district;

“(2) the term ‘assessment jurisdiction’ means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

“(3) the term ‘rail transportation property’ means property, as defined by the Board, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Board under this part; and

“(4) the term ‘commercial and industrial property’ means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

“(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

“(1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other

commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

“(2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.

“(3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

“(4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

“(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

“(1) an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and

“(2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district.

“§ 11502. Withholding State and local income tax by rail carriers

“(a) No part of the compensation paid by a rail carrier providing transportation subject to the jurisdiction of the Board under this part to an employee who performs regularly assigned duties as such an employee on a railroad in more than one State shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee’s residence.

“(b) A rail carrier withholding pay from an employee under subsection (a) of this section shall file income tax information returns and other reports only with the State and subdivision of residence of the employee.

**“CHAPTER 117—ENFORCEMENT: INVESTIGATIONS,
RIGHTS, AND REMEDIES**

“Sec.

“11701. *General authority.*

“11702. *Enforcement by the Board.*

“11703. *Enforcement by the Attorney General.*

“11704. *Rights and remedies of persons injured by rail carriers.*

“11705. *Limitation on actions by and against rail carriers.*

“11706. *Liability of rail carriers under receipts and bills of lading.*

“11707. *Liability when property is delivered in violation of routing instructions.*

“§ 11701. General authority

“(a) *Except as otherwise provided in this part, the Board may begin an investigation under this part only on complaint. If the Board finds that a rail carrier is violating this part, the Board shall take appropriate action to compel compliance with this part.*

“(b) *A person, including a governmental authority, may file with the Board a complaint about a violation of this part by a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part. The complaint must state the facts that are the subject of the violation. The Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Board may not dismiss a complaint made against a rail carrier providing transportation subject to the jurisdiction of the Board under this part because of the absence of direct damage to the complainant.*

“(c) *A formal investigative proceeding begun by the Board under subsection (a) of this section is dismissed automatically unless it is concluded by the Board with administrative finality by the end of the third year after the date on which it was begun.*

“§ 11702. Enforcement by the Board

“The Board may bring a civil action—

“(1) *to enjoin a rail carrier from violating sections 10901 through 10906 of this title, or a regulation prescribed or order or certificate issued under any of those sections;*

“(2) *to enforce subchapter II of chapter 113 of this title and to compel compliance with an order of the Board under that subchapter; and*

“(3) *to enforce an order of the Board, except a civil action to enforce an order for the payment of money, when it is violated by a rail carrier providing transportation subject to the jurisdiction of the Board under this part.*

“§ 11703. Enforcement by the Attorney General

“(a) *The Attorney General may, and on request of the Board shall, bring court proceedings to enforce this part, or a regulation or order of the Board or certificate issued under this part, and to prosecute a person violating this part or a regulation or order of the Board or certificate issued under this part.*

“(b) *The United States Government may bring a civil action on behalf of a person to compel a rail carrier providing transportation subject to the jurisdiction of the Board under this part to provide that transportation to that person in compliance with this part at the same rate charged, or on conditions as favorable as those given*

by the rail carrier, for like traffic under similar conditions to another person.

“§ 11704. Rights and remedies of persons injured by rail carriers

“(a) A person injured because a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part does not obey an order of the Board, except an order for the payment of money, may bring a civil action in a United States District Court to enforce that order under this subsection.

“(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part. A rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable to a person for amounts charged that exceed the applicable rate for the transportation.

“(c)(1) A person may file a complaint with the Board under section 11701(b) of this title or bring a civil action under subsection (b) of this section to enforce liability against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

“(2) When the Board makes an award under subsection (b) of this section, the Board shall order the rail carrier to pay the amount awarded by a specific date. The Board may order a rail carrier providing transportation subject to the jurisdiction of the Board under this part to pay damages only when the proceeding is on complaint. The person for whose benefit an order of the Board requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the rail carrier does not pay the amount awarded by the date payment was ordered to be made.

“(d)(1) When a person begins a civil action under subsection (b) of this section to enforce an order of the Board requiring the payment of damages by a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the text of the order of the Board must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district—

“(A) in which the plaintiff resides;

“(B) in which the principal operating office of the rail carrier is located; or

“(C) through which the railroad line of that carrier runs.

In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

“(2) All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the rail carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of

the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

“(3) The district court shall award a reasonable attorney’s fee as a part of the damages for which a rail carrier is found liable under this subsection. The district court shall tax and collect that fee as a part of the costs of the action.

“§ 11705. Limitation on actions by and against rail carriers

“(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part must begin a civil action to recover charges for transportation or service provided by the carrier within 3 years after the claim accrues.

“(b) A person must begin a civil action to recover overcharges under section 11704(b) of this title within 3 years after the claim accrues, whether or not a complaint is filed under section 11704(c)(1).

“(c) A person must file a complaint with the Board to recover damages under section 11704(b) of this title within 2 years after the claim accrues.

“(d) The limitation period under subsection (b) of this section is extended for 6 months from the time written notice is given to the claimant by the rail carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the rail carrier within that limitation period. The limitation periods under subsections (b) and (c) of this section are extended for 90 days from the time the rail carrier begins a civil action under subsection (a) of this section to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

“(e) A person must begin a civil action to enforce an order of the Board against a rail carrier for the payment of money within one year after the date the order required the money to be paid.

“(f) This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the date of—

“(1) payment of the rate for the transportation or service involved;

“(2) subsequent refund for overpayment of that rate; or

“(3) deduction made under section 3726 of title 31, whichever is later.

“(g) A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the rail carrier.

“§ 11706. Liability of rail carriers under receipts and bills of lading

“(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall issue a receipt or bill of lading for property it receives for transportation under this part. That rail carrier and any other carrier that delivers the property and is providing transportation or service subject to the juris-

diction of the Board under this part are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this subsection is for the actual loss or injury to the property caused by—

- “(1) the receiving rail carrier;
- “(2) the delivering rail carrier; or
- “(3) another rail carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading.

Failure to issue a receipt or bill of lading does not affect the liability of a rail carrier. A delivering rail carrier is deemed to be the rail carrier performing the line-haul transportation nearest the destination but does not include a rail carrier providing only a switching service at the destination.

“(b) The rail carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the rail carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

“(c)(1) A rail carrier may not limit or be exempt from liability imposed under subsection (a) of this section except as provided in this subsection. A limitation of liability or of the amount of recovery or representation or agreement in a receipt, bill of lading, contract, or rule in violation of this section is void.

“(2) A rail carrier of passengers may limit its liability under its passenger rate for loss or injury of baggage carried on trains carrying passengers.

“(3) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may establish rates for transportation of property under which—

“(A) the liability of the rail carrier for such property is limited to a value established by written declaration of the shipper or by a written agreement between the shipper and the carrier; or

“(B) specified amounts are deducted, pursuant to a written agreement between the shipper and the carrier, from any claim against the carrier with respect to the transportation of such property.

“(d)(1) A civil action under this section may be brought in a district court of the United States or in a State court.

“(2)(A) A civil action under this section may only be brought—

“(i) against the originating rail carrier, in the judicial district in which the point of origin is located;

“(ii) against the delivering rail carrier, in the judicial district in which the principal place of business of the person bringing the action is located if the delivering carrier operates a railroad or a route through such judicial district, or in the judicial district in which the point of destination is located; and

“(iii) against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

“(B) In this section, ‘judicial district’ means (i) in the case of a United States district court, a judicial district of the United States, and (ii) in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

“(e) A rail carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice. For the purposes of this subsection—

“(1) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

“(2) communications received from a carrier’s insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reasons for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

“§ 11707. Liability when property is delivered in violation of routing instructions

“(a)(1) When a rail carrier providing transportation subject to the jurisdiction of the Board under this part diverts or delivers property to another rail carrier in violation of routing instructions in the bill of lading, both of those rail carriers are jointly and severally liable to the rail carrier that was deprived of its right to participate in hauling that property for the total amount of the rate it would have received if it participated in hauling the property.

“(2) A rail carrier is not liable under paragraph (1) of this subsection when it diverts or delivers property in compliance with an order or regulation of the Board.

“(3) A rail carrier to whom property is transported is not liable under this subsection if it shows that it had no notice of the routing instructions before transporting the property. The burden of proving lack of notice is on that rail carrier.

“(b) The court shall award a reasonable attorney’s fee to the plaintiff in a judgment against the defendant rail carrier under subsection (a) of this section. The court shall tax and collect that fee as a part of the costs of the action.

“CHAPTER 119—CIVIL AND CRIMINAL PENALTIES

“Sec.

“11901. General civil penalties.

“11902. Interference with railroad car supply.

“11903. Record keeping and reporting violations.

“11904. Unlawful disclosure of information.

“11905. Disobedience to subpoenas.

“11906. General criminal penalty when specific penalty not provided.

*"11907. Punishment of corporation for violations committed by certain individuals.
 "11908. Relation to other Federal criminal penalties.*

"§ 11901. General civil penalties

"(a) Except as otherwise provided in this section, a rail carrier providing transportation subject to the jurisdiction of the Board under this part, an officer or agent of that rail carrier, or a receiver, trustee, lessee, or agent of one of them, knowingly violating this part or an order of the Board under this part is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation. Liability under this subsection is incurred for each distinct violation. A separate violation occurs for each day the violation continues.

"(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part, or a receiver or trustee of that rail carrier, violating a regulation or order of the Board under section 11124(a)(2) or (b) of this title is liable to the United States Government for a civil penalty of \$500 for each violation and for \$25 for each day the violation continues.

"(c) A person knowingly authorizing, consenting to, or permitting a violation of sections 10901 through 10906 of this title or of a requirement or a regulation under any of those sections, is liable to the United States Government for a civil penalty of not more than \$5,000.

"(d) A rail carrier, receiver, or operating trustee violating an order or direction of the Board under section 11123 or 11124(a)(1) of this title is liable to the United States Government for a civil penalty of at least \$100 but not more than \$500 for each violation and for \$50 for each day the violation continues.

"(e)(1) A person required under subchapter III of chapter 111 of this title to make, prepare, preserve, or submit to the Board a record concerning transportation subject to the jurisdiction of the Board under this part that does not make, prepare, preserve, or submit that record as required under that subchapter, is liable to the United States Government for a civil penalty of \$500 for each violation.

"(2) A rail carrier providing transportation subject to the jurisdiction of the Board under this part, and a lessor, receiver, or trustee of that rail carrier, violating section 11144(b)(1) of this title, is liable to the United States Government for a civil penalty of \$100 for each violation.

"(3) A rail carrier providing transportation subject to the jurisdiction of the Board under this part, a lessor, receiver, or trustee of that rail carrier, a person furnishing cars, and an officer, agent, or employee of one of them, required to make a report to the Board or answer a question that does not make the report or does not specifically, completely, and truthfully answer the question, is liable to the United States Government for a civil penalty of \$100 for each violation.

"(4) A separate violation occurs for each day a violation under this subsection continues.

"(f) Trial in a civil action under subsections (a) through (e) of this section is in the judicial district in which the rail carrier has its principal operating office or in a district through which the railroad of the rail carrier runs.

“§ 11902. Interference with railroad car supply

“(a) A person that offers or gives anything of value to another person acting for or employed by a rail carrier providing transportation subject to the jurisdiction of the Board under this part intending to influence an action of that other person related to supply, distribution, or movement of cars, vehicles, or vessels used in the transportation of property, or because of the action of that other person, shall be fined not more than \$1,000, imprisoned for not more than 2 years, or both.

“(b) A person acting for or employed by a rail carrier providing transportation subject to the jurisdiction of the Board under this part that solicits, accepts, or receives anything of value—

“(1) intending to be influenced by it in an action of that person related to supply, distribution, or movement of cars, vehicles, or vessels used in the transportation of property; or

“(2) because of the action of that person,

shall be fined not more than \$1,000, imprisoned for not more than 2 years, or both.

“§ 11903. Record keeping and reporting violations

“A person required to make a report to the Board, or make, prepare, or preserve a record, under subchapter III of chapter 111 of this title about transportation subject to the jurisdiction of the Board under this part that knowingly and willfully—

“(1) makes a false entry in the report or record;

“(2) destroys, mutilates, changes, or by another means falsifies the record;

“(3) does not enter business related facts and transactions in the record;

“(4) makes, prepares, or preserves the record in violation of a regulation or order of the Board; or

“(5) files a false report or record with the Board,

shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

“§ 11904. Unlawful disclosure of information

“(a) A—

“(1) rail carrier providing transportation subject to the jurisdiction of the Board under this part, or an officer, agent, or employee of that rail carrier, or another person authorized to receive information from that rail carrier, that knowingly discloses to another person, except the shipper or consignee; or

“(2) a person who solicits or knowingly receives,

information described in subsection (b) without the consent of the shipper or consignee shall be fined not more than \$1,000.

“(b) The information referred to in subsection (a) is information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that rail carrier for transportation provided under this part, or information about the contents of a contract authorized under section 10709 of this title, that may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor, the business transactions of the shipper or consignee.

“(c) This part does not prevent a rail carrier providing transportation subject to the jurisdiction of the Board under this part from giving information—

“(1) in response to legal process issued under authority of a court of the United States or a State;

“(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

“(3) to another rail carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

“(d) An employee of the Board delegated to make an inspection or examination under section 11144 of this title who knowingly discloses information acquired during that inspection or examination, except as directed by the Board, a court, or a judge of that court, shall be fined not more than \$500, imprisoned for not more than 6 months, or both.

“(e) A person that knowingly discloses confidential data made available to such person under section 11163 of this title by a rail carrier providing transportation subject to the jurisdiction of the Board under this part shall be fined not more than \$50,000.

“§ 11905. Disobedience to subpoenas

“A person not obeying a subpoena or requirement of the Board to appear and testify or produce records shall be fined at least \$100 but not more than \$5,000, imprisoned for not more than one year, or both.

“§ 11906. General criminal penalty when specific penalty not provided

“When another criminal penalty is not provided under this chapter, a rail carrier providing transportation subject to the jurisdiction of the Board under this part, and when that rail carrier is a corporation, a director or officer of the corporation, or a receiver, trustee, lessee, or person acting for or employed by the corporation that, alone or with another person, willfully violates this part or an order prescribed under this part, shall be fined not more than \$5,000. The person may be imprisoned for not more than 2 years in addition to being fined under this section. A separate violation occurs each day a violation of this title continues.

“§ 11907. Punishment of corporation for violations committed by certain individuals

“An act or omission that would be a violation of this part if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that rail carrier are considered to be the actions and omissions of that rail carrier as well as that individual.

“§ 11908. Relation to other Federal criminal penalties

“Notwithstanding section 3571 of title 18, United States Code, the criminal penalties provided for in this chapter are the exclusive criminal penalties for violations of this part.”

(b) CONFORMING AMENDMENT.—The item relating to subtitle IV in the table of subtitles of title 49, United States Code, is amended by striking “Commerce” and inserting in lieu thereof “Transportation”.

SEC. 103. MOTOR CARRIER, WATER CARRIER, AND FREIGHT FORWARDER PROVISIONS.

Subtitle IV of title 49, United States Code, is further amended by adding at the end the following:

*“PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS,
AND FREIGHT FORWARDERS*

“CHAPTER 131—GENERAL PROVISIONS

“Sec.

“13101. Transportation policy.

“13102. Definitions.

“13103. Remedies as cumulative.

“§ 13101. Transportation policy

“(a) IN GENERAL.—To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and—

“(1) in overseeing those modes—

“(A) to recognize and preserve the inherent advantage of each mode of transportation;

“(B) to promote safe, adequate, economical, and efficient transportation;

“(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

“(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

“(E) to cooperate with each State and the officials of each State on transportation matters; and

“(F) to encourage fair wages and working conditions in the transportation industry;

“(2) in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to—

“(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property;

“(B) promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;

“(C) meet the needs of shippers, receivers, passengers, and consumers;

“(D) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;

“(E) allow the most productive use of equipment and energy resources;

“(F) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;

“(G) provide and maintain service to small communities and small shippers and intrastate bus services;

“(H) provide and maintain commuter bus operations;

“(I) improve and maintain a sound, safe, and competitive privately owned motor carrier system;

“(J) promote greater participation by minorities in the motor carrier system;

“(K) promote intermodal transportation;

“(3) in overseeing transportation by motor carrier of passengers—

“(A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objectives of this part;

“(B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this part; and

“(C) to ensure that Federal reform initiatives enacted by section 31138 and the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions; and

“(4) in overseeing transportation by water carrier, to encourage and promote service and price competition in the non-contiguous domestic trade.

“(b) ADMINISTRATION TO CARRY OUT POLICY.—This part shall be administered and enforced to carry out the policy of this section and to promote the public interest.

“§ 13102. Definitions

“In this part, the following definitions shall apply:

“(1) BOARD.—The term ‘Board’ means the Surface Transportation Board.

“(2) BROKER.—The term ‘broker’ means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

“(3) CARRIER.—The term ‘carrier’ means a motor carrier, a water carrier, and a freight forwarder.

“(4) CONTRACT CARRIAGE.—The term ‘contract carriage’ means—

“(A) for transportation provided before the effective date of this section, service provided pursuant to a permit

issued under section 10923, as in effect on the day before the effective date of this section; and

“(B) for transportation provided on or after such date, service provided under an agreement entered into under section 14101(b).

“(5) *CONTROL*.—The term ‘control’, when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by—

“(A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or

“(B) any other means.

“(6) *FOREIGN MOTOR CARRIER*.—The term ‘foreign motor carrier’ means a person (including a motor carrier of property but excluding a motor private carrier)—

“(A)(i) that is domiciled in a contiguous foreign country; or

“(ii) that is owned or controlled by persons of a contiguous foreign country; and

“(B) in the case of a person that is not a motor carrier of property, that provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a motor carrier of property (other than a motor private carrier or a motor carrier of property described in subparagraph (A)).

“(7) *FOREIGN MOTOR PRIVATE CARRIER*.—The term ‘foreign motor private carrier’ means a person (including a motor private carrier but excluding a motor carrier of property)—

“(A)(i) that is domiciled in a contiguous foreign country; or

“(ii) that is owned or controlled by persons of a contiguous foreign country; and

“(B) in the case of a person that is not a motor private carrier, that provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a person (other than a motor carrier of property or a motor private carrier described in subparagraph (A)).

“(8) *FREIGHT FORWARDER*.—The term ‘freight forwarder’ means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

“(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

“(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

“(C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.

The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.

“(9) *HIGHWAY*.—The term ‘highway’ means a road, highway, street, and way in a State.

“(10) *HOUSEHOLD GOODS*.—The term ‘household goods’, as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—

“(A) arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling, or

“(B) arranged and paid for by another party.

“(11) *HOUSEHOLD GOODS FREIGHT FORWARDER*.—The term ‘household goods freight forwarder’ means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.

“(12) *MOTOR CARRIER*.—The term ‘motor carrier’ means a person providing motor vehicle transportation for compensation.

“(13) *MOTOR PRIVATE CARRIER*.—The term ‘motor private carrier’ means a person, other than a motor carrier, transporting property by motor vehicle when—

“(A) the transportation is as provided in section 13501 of this title;

“(B) the person is the owner, lessee, or bailee of the property being transported; and

“(C) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

“(14) *MOTOR VEHICLE*.—The term ‘motor vehicle’ means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

“(15) *NONCONTIGUOUS DOMESTIC TRADE*.—The term ‘noncontiguous domestic trade’ means transportation subject to jurisdiction under chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

“(16) *PERSON*.—The term ‘person’, in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

“(17) *SECRETARY*.—The term ‘Secretary’ means the Secretary of Transportation.

“(18) *STATE*.—The term ‘State’ means the 50 States of the United States and the District of Columbia.

“(19) *TRANSPORTATION*.—The term ‘transportation’ includes—

“(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

“(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit,

refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

“(20) UNITED STATES.—The term ‘United States’ means the States of the United States and the District of Columbia.

“(21) VESSEL.—The term ‘vessel’ means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

“(22) WATER CARRIER.—The term ‘water carrier’ means a person providing water transportation for compensation.

“§ 13103. Remedies as cumulative

“Except as otherwise provided in this part, the remedies provided under this part are in addition to remedies existing under another law or common law.

“CHAPTER 133—ADMINISTRATIVE PROVISIONS

“Sec.

“13301. Powers.

“13302. Intervention.

“13303. Service of notice in proceedings.

“13304. Service of process in court proceedings.

“§ 13301. Powers

“(a) GENERAL POWERS OF SECRETARY.—Except as otherwise specified, the Secretary shall carry out this part. Enumeration of a power of the Secretary in this part does not exclude another power the Secretary may have in carrying out this part. The Secretary may prescribe regulations in carrying out this part.

“(b) OBTAINING INFORMATION.—The Secretary may obtain from carriers providing, and brokers for, transportation and service subject to this part, and from persons controlling, controlled by, or under common control with those carriers or brokers to the extent that the business of that person is related to the management of the business of that carrier or broker, information the Secretary decides is necessary to carry out this part.

“(c) SUBPOENA POWER.—

“(1) BY SECRETARY.—The Secretary may subpoena witnesses and records related to a proceeding under this part from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Secretary, or a party to a proceeding under this part, may petition a court of the United States to enforce that subpoena.

“(2) ENFORCEMENT.—The district courts of the United States have jurisdiction to enforce a subpoena issued under this section. Trial is in the district in which the proceeding is conducted. The court may punish a refusal to obey a subpoena as a contempt of court.

“(d) TESTIMONY OF WITNESSES.—

“(1) PROCEDURE FOR TAKING TESTIMONY.—In a proceeding under this part, the Secretary may take the testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding pending under this part may take the testimony of a witness by deposition and may require

the witness to produce records at any time after a proceeding is at issue on petition and answer.

“(2) SUBPOENA.—If a witness fails to be deposed or to produce records under paragraph (1) of this subsection, the Secretary may subpoena the witness to take a deposition, produce the records, or both.

“(3) DEPOSITIONS.—A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

“(4) NOTICE OF DEPOSITION.—Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

“(5) TRANSCRIPT.—The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

“(6) FOREIGN COUNTRY.—The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Secretary or agreed on by the parties by written stipulation filed with the Secretary. A deposition shall be filed with the Secretary promptly.

“(e) WITNESS FEES.—Each witness summoned before the Secretary or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

“(f) POWERS OF BOARD.—For those provisions of this part that are specified to be carried out by the Board, the Board shall have the same powers as the Secretary has under this section.

“§ 13302. Intervention

“Under regulations of the Secretary, reasonable notice of, and an opportunity to intervene and participate in, a proceeding under this part related to transportation subject to jurisdiction under subchapter I of chapter 135 shall be given to interested persons.

“§ 13303. Service of notice in proceedings

“(a) AGENTS FOR SERVICE OF PROCESS.—A carrier, a broker, or a freight forwarder providing transportation or service subject to jurisdiction under chapter 135 shall designate, in writing, an agent by name and post office address on whom service of notices in a proceeding before, and of actions of, the Secretary may be made.

“(b) FILING WITH STATE.—A motor carrier providing transportation under this part shall also file the designation with the appropriate authority of each State in which it operates. The designation may be changed at any time in the same manner as originally made.

“(c) NOTICE.—A notice to a motor carrier, freight forwarder, or broker shall be served personally or by mail on the motor carrier, freight forwarder, or broker or on its designated agent. Service by mail on the designated agent shall be made at the address filed for the agent. When notice is given by mail, the date of mailing is considered to be the time when the notice is served. If a motor carrier, freight forwarder, or broker does not have a designated agent, service may be made by posting a copy of the notice at the headquarters of the Department of Transportation.

“§ 13304. Service of process in court proceedings

“(a) DESIGNATION OF AGENT.—A motor carrier or broker providing transportation subject to jurisdiction under chapter 135, including a motor carrier or broker operating within the United States while providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, shall designate an agent in each State in which it operates by name and post office address on whom process issued by a court with subject matter jurisdiction may be served in an action brought against that carrier or broker. The designation shall be in writing and filed with the Department of Transportation and each State in which the carrier operates may require that an additional designation be filed with it. If a designation under this subsection is not made, service may be made on any agent of the carrier or broker within that State.

“(b) CHANGE.—A designation under this section may be changed at any time in the same manner as originally made.

“CHAPTER 135—JURISDICTION

“SUBCHAPTER I—MOTOR CARRIER TRANSPORTATION

“Sec.

“13501. General jurisdiction.

“13502. Exempt transportation between Alaska and other States.

“13503. Exempt motor vehicle transportation in terminal areas.

“13504. Exempt motor carrier transportation entirely in one State.

“13505. Transportation furthering a primary business.

“13506. Miscellaneous motor carrier transportation exemptions.

“13507. Mixed loads of regulated and unregulated property.

“13508. Limited authority over cooperative associations.

“SUBCHAPTER II—WATER CARRIER TRANSPORTATION

“13521. General jurisdiction.

“SUBCHAPTER III—FREIGHT FORWARDER SERVICE

“13531. General jurisdiction.

“SUBCHAPTER IV—AUTHORITY TO EXEMPT

“13541. Authority to exempt transportation or services.

“SUBCHAPTER I—MOTOR CARRIER TRANSPORTATION

“§ 13501. General jurisdiction

“The Secretary and the Board have jurisdiction, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier—

“(1) between a place in—

“(A) a State and a place in another State;

“(B) a State and another place in the same State through another State;

“(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

“(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

“(E) the United States and a place in a foreign country to the extent the transportation is in the United States; and

“(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

“§ 13502. Exempt transportation between Alaska and other States

“To the extent that transportation by a motor carrier between a place in Alaska and a place in another State under section 13501 is provided in a foreign country—

“(1) neither the Secretary nor the Board has jurisdiction to impose a requirement over conduct of the motor carrier in the foreign country conflicting with a requirement of that country; but

“(2) the motor carrier, as a condition of providing transportation in the United States, shall comply, with respect to all transportation provided between Alaska and the other State, with the requirements of this part related to rates and practices applicable to the transportation.

“§ 13503. Exempt motor vehicle transportation in terminal areas

“(a) TRANSPORTATION BY CARRIERS.—

“(1) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this subchapter over transportation by motor vehicle provided in a terminal area when the transportation—

“(A) is a transfer, collection, or delivery;

“(B) is provided by—

“(i) a rail carrier subject to jurisdiction under chapter 105;

“(ii) a water carrier subject to jurisdiction under subchapter II of this chapter; or

“(iii) a freight forwarder subject to jurisdiction under subchapter III of this chapter; and

“(C) is incidental to transportation or service provided by the carrier or freight forwarder that is subject to jurisdiction under chapter 105 of this title or under subchapter II or III of this chapter.

“(2) APPLICABILITY OF OTHER PROVISIONS.—Transportation exempt from jurisdiction under paragraph (1) of this subsection is subject to jurisdiction under chapter 105 when provided by such a rail carrier, under subchapter II of this chapter when provided by such a water carrier, and under subchapter III of this chapter when provided by such a freight forwarder.

“(b) TRANSPORTATION BY AGENT.—

“(1) IN GENERAL.—Except to the extent provided by paragraph (2) of this subsection, neither the Secretary nor the Board has jurisdiction under this subchapter over transportation by motor vehicle provided in a terminal area when the transportation—

“(A) is a transfer, collection, or delivery; and

“(B) is provided by a person as an agent or under other arrangement for—

“(i) a rail carrier subject to jurisdiction under chapter 105 of this title;

“(ii) a motor carrier subject to jurisdiction under this subchapter;

“(iii) a water carrier subject to jurisdiction under subchapter II of this chapter; or

“(iv) a freight forwarder subject to jurisdiction under subchapter III of this chapter.

“(2) TREATMENT OF TRANSPORTATION BY PRINCIPAL.—Transportation exempt from jurisdiction under paragraph (1) of this subsection is considered transportation provided by the carrier or service provided by the freight forwarder for whom the transportation was provided and is subject to jurisdiction under chapter 105 of this title when provided for such a rail carrier, under this subchapter when provided for such a motor carrier, under subchapter II of this chapter when provided for such a water carrier, and under subchapter III of this chapter when provided for such a freight forwarder.

“§ 13504. Exempt motor carrier transportation entirely in one State

“Neither the Secretary nor the Board has jurisdiction under this subchapter over transportation, except transportation of household goods, by a motor carrier operating solely within the State of Hawaii. The State of Hawaii may regulate transportation exempt from jurisdiction under this section and, to the extent provided by a motor carrier operating solely within the State of Hawaii, transportation exempt under section 13503 of this title.

“§ 13505. Transportation furthering a primary business

“(a) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this part over the transportation of property by motor vehicle when—

“(1) the property is transported by a person engaged in a business other than transportation; and

“(2) the transportation is within the scope of, and furthers a primary business (other than transportation) of the person.

“(b) CORPORATE FAMILIES.—

“(1) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this part over transportation of property by motor vehicle for compensation provided by a person who is a member of a corporate family for other members of such corporate family.

“(2) DEFINITION.—In this section, ‘corporate family’ means a group of corporations consisting of a parent corporation and

all subsidiaries in which the parent corporation owns directly or indirectly a 100 percent interest.

“§ 13506. Miscellaneous motor carrier transportation exemptions

“(a) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this part over—

“(1) a motor vehicle transporting only school children and teachers to or from school;

“(2) a motor vehicle providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places;

“(3) a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier;

“(4) a motor vehicle controlled and operated by a farmer and transporting—

“(A) the farmer’s agricultural or horticultural commodities and products; or

“(B) supplies to the farm of the farmer;

“(5) a motor vehicle controlled and operated by a cooperative association (as defined by section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) or by a federation of cooperative associations if the federation has no greater power or purposes than a cooperative association, except that if the cooperative association or federation provides transportation for compensation between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State—

“(A) for a nonmember that is not a farmer, cooperative association, federation, or the United States Government, the transportation (except for transportation otherwise exempt under this subchapter)—

“(i) shall be limited to transportation incidental to the primary transportation operation of the cooperative association or federation and necessary for its effective performance; and

“(ii) may not exceed in each fiscal year 25 percent of the total transportation of the cooperative association or federation between those places, measured by tonnage; and

“(B) the transportation for all nonmembers may not exceed in each fiscal year, measured by tonnage, the total transportation between those places for the cooperative association or federation and its members during that fiscal year;

“(6) transportation by motor vehicle of—

“(A) ordinary livestock;

“(B) agricultural or horticultural commodities (other than manufactured products thereof);

“(C) commodities listed as exempt in the Commodity List incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, other than frozen fruits, frozen berries, frozen vegeta-

bles, cocoa beans, coffee beans, tea, bananas, or hemp, or wool imported from a foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted);

“(D) cooked or uncooked fish, whether breaded or not, or frozen or fresh shellfish, or byproducts thereof not intended for human consumption, other than fish or shellfish that have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products; and

“(E) livestock and poultry feed and agricultural seeds and plants, if such products (excluding products otherwise exempt under this paragraph) are transported to a site of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production;

“(7) a motor vehicle used only to distribute newspapers;

“(8)(A) transportation of passengers by motor vehicle incidental to transportation by aircraft;

“(B) transportation of property (including baggage) by motor vehicle as part of a continuous movement which, prior or subsequent to such part of the continuous movement, has been or will be transported by an air carrier or (to the extent so agreed by the United States and approved by the Secretary) by a foreign air carrier; or

“(C) transportation of property by motor vehicle in lieu of transportation by aircraft because of adverse weather conditions or mechanical failure of the aircraft or other causes due to circumstances beyond the control of the carrier or shipper;

“(9) the operation of a motor vehicle in a national park or national monument;

“(10) a motor vehicle carrying not more than 15 individuals in a single, daily roundtrip to commute to and from work;

“(11) transportation of used pallets and used empty shipping containers (including intermodal cargo containers), and other used shipping devices (other than containers or devices used in the transportation of motor vehicles or parts of motor vehicles);

“(12) transportation of natural, crushed, vesicular rock to be used for decorative purposes;

“(13) transportation of wood chips;

“(14) brokers for motor carriers of passengers, except as provided in section 13904(d); or

“(15) transportation of broken, crushed, or powdered glass.

“(b) EXEMPT UNLESS OTHERWISE NECESSARY.—Except to the extent the Secretary or Board, as applicable, finds it necessary to exercise jurisdiction to carry out the transportation policy of section 13101, neither the Secretary nor the Board has jurisdiction under this part over—

“(1) transportation provided entirely in a municipality, in contiguous municipalities, or in a zone that is adjacent to, and commercially a part of, the municipality or municipalities, except—

“(A) when the transportation is under common control, management, or arrangement for a continuous carriage or

shipment to or from a place outside the municipality, municipalities, or zone; or

“(B) that in transporting passengers over a route between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State, the transportation is exempt from jurisdiction under this part only if the motor carrier operating the motor vehicle also is lawfully providing intrastate transportation of passengers over the entire route under the laws of each State through which the route runs;

“(2) transportation by motor vehicle provided casually, occasionally, or reciprocally but not as a regular occupation or business, except when a broker or other person sells or offers for sale passenger transportation provided by a person authorized to transport passengers by motor vehicle under an application pending, or registration issued, under this part; or

“(3) the emergency towing of an accidentally wrecked or disabled motor vehicle.

“§ 13507. Mixed loads of regulated and unregulated property

“A motor carrier of property providing transportation exempt from jurisdiction under paragraph (6), (8), (11), (12), or (13) of section 13506(a) may transport property under such paragraph in the same vehicle and at the same time as property which the carrier is authorized to transport under a registration issued under section 13902(a). Such transportation shall not affect the unregulated status of such exempt property or the regulated status of the property which the carrier is authorized to transport under such registration.

“§ 13508. Limited authority over cooperative associations

“(a) *IN GENERAL.*—Notwithstanding section 13506(a)(5), any cooperative association (as defined by section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a))) or a federation of cooperative associations shall prepare and maintain such records relating to transportation provided by such association or federation, in such form as the Secretary or the Board may require by regulation to carry out the provisions of such section 13506(a)(5). The Secretary or the Board, or an employee designated by the Secretary or the Board, may on demand and display of proper credentials—

“(1) inspect and examine the lands, buildings, and equipment of such association or federation; and

“(2) inspect and copy any record of such association or federation.

“(b) *REPORTS.*—Notwithstanding section 13506(a)(5), the Secretary or the Board may require a cooperative association or federation of cooperative associations described in subsection (a) of this section to file reports with the Secretary or the Board containing answers to questions about transportation provided by such association or federation.

“(c) *ENFORCEMENT.*—The Secretary or the Board may bring a civil action to enforce subsections (a) and (b) of this section or a regulation or order of the Secretary or the Board issued under this section, when violated by a cooperative association or federation of cooperative associations described in subsection (a).

“(d) REPORTING PENALTIES.—

“(1) IN GENERAL.—A person required to make a report to the Secretary or the Board, answer a question, or maintain a record under this section, or an officer, agent, or employee of that person, that—

“(A) does not make the report;

“(B) does not specifically, completely, and truthfully answer the question; or

“(C) does not maintain the record in the form and manner prescribed under this section;

is liable to the United States for a civil penalty of not more than \$500 for each violation and for not more than \$250 for each additional day the violation continues.

“(2) VENUE.—Trial in a civil action under paragraph (1) shall be in the judicial district in which—

“(A) the cooperative association or federation of cooperative associations has its principal office;

“(B) the violation occurred; or

“(C) the offender is found.

Process in the action may be served in the judicial district of which the offender is an inhabitant or in which the offender may be found.

“(e) EVASION PENALTIES.—A person, or an officer, employee, or agent of that person, that by any means knowingly and willfully tries to evade compliance with the provisions of this section shall be fined at least \$200 but not more than \$500 for the first violation and at least \$250 but not more than \$2,000 for a subsequent violation.

“(f) RECORDKEEPING PENALTIES.—A person required to make a report, answer a question, or maintain a record under this section, or an officer, agent, or employee of that person, that—

“(1) willfully does not make that report;

“(2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date that the question is required to be answered;

“(3) willfully does not maintain that record in the form and manner prescribed;

“(4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record;

“(5) knowingly and willfully files a false report or record under this section;

“(6) knowingly and willfully makes a false or incomplete entry in that record about a business-related fact or transaction; or

“(7) knowingly and willfully maintains a record in violation of a regulation or order issued under this section;

shall be fined not more than \$5,000.

“SUBCHAPTER II—WATER CARRIER TRANSPORTATION

“§ 13521. General jurisdiction

“(a) GENERAL RULES.—The Secretary and the Board have jurisdiction over transportation insofar as water carriers are concerned—

“(1) by water carrier between a place in a State and a place in another State, even if part of the transportation is outside the United States;

“(2) by water carrier and motor carrier from a place in a State to a place in another State; except that if part of the transportation is outside the United States, the Secretary only has jurisdiction over that part of the transportation provided—

“(A) by motor carrier that is in the United States; and

“(B) by water carrier that is from a place in the United States to another place in the United States; and

“(3) by water carrier or by water carrier and motor carrier between a place in the United States and a place outside the United States, to the extent that—

“(A) when the transportation is by motor carrier, the transportation is provided in the United States;

“(B) when the transportation is by water carrier to a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States before transshipment from a place in the United States to a place outside the United States; and

“(C) when the transportation is by water carrier from a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States after transshipment to a place in the United States from a place outside the United States.

“(b) *DEFINITIONS.*—In this section, the terms ‘State’ and ‘United States’ include the territories and possessions of the United States.

“SUBCHAPTER III—FREIGHT FORWARDER SERVICE

“§ 13531. *General jurisdiction*

“(a) *IN GENERAL.*—The Secretary and the Board have jurisdiction, as specified in this part, over service that a freight forwarder undertakes to provide, or is authorized or required under this part to provide, to the extent transportation is provided in the United States and is between—

“(1) a place in a State and a place in another State, even if part of the transportation is outside the United States;

“(2) a place in a State and another place in the same State through a place outside the State; or

“(3) a place in the United States and a place outside the United States.

“(b) *EXEMPTION OF CERTAIN AIR CARRIER SERVICE.*—Neither the Secretary nor the Board has jurisdiction under subsection (a) of this section over service undertaken by a freight forwarder using transportation of an air carrier subject to part A of subtitle VII of this title.

“SUBCHAPTER IV—AUTHORITY TO EXEMPT

“§ 13541. Authority to exempt transportation or services

“(a) *IN GENERAL.*—In any matter subject to jurisdiction under this part, the Secretary or the Board, as applicable, shall exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of this part, or use this exemption authority to modify the application of a provision of this part as it applies to such person, class, transaction, or service, when the Secretary or Board finds that the application of that provision—

“(1) is not necessary to carry out the transportation policy of section 13101;

“(2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and

“(3) is in the public interest.

“(b) *INITIATION OF PROCEEDING.*—The Secretary or Board, as applicable, may, where appropriate, begin a proceeding under this section on the Secretary’s or Board’s own initiative or on application by an interested party.

“(c) *PERIOD OF EXEMPTION.*—The Secretary or Board, as applicable, may specify the period of time during which an exemption granted under this section is effective.

“(d) *REVOCATION.*—The Secretary or Board, as applicable, may revoke an exemption, to the extent specified, on finding that application of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 13101.

“(e) *LIMITATIONS.*—

“(1) *IN GENERAL.*—The exemption authority under this section may not be used to relieve a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage, insurance, safety fitness, or activities approved under section 13703 or 14302 or not terminated under section 13907(d)(2).

“(2) *WATER CARRIERS.*—The Secretary or Board, as applicable, may not exempt a water carrier from the application of, or compliance with, section 13701 or 13702 for transportation in the non-contiguous domestic trade.

“(f) *CONTINUATION OF CERTAIN EXISTING EXEMPTIONS FOR WATER CARRIERS.*—The Secretary or Board, as applicable, shall not regulate or exercise jurisdiction under this part over the transportation by water carrier in the non-contiguous domestic trade of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission or Interstate Commerce Commission under Federal law in effect on November 1, 1995.

“CHAPTER 137—RATES AND THROUGH ROUTES

“Sec.

“13701. Requirements for reasonable rates, classifications, through routes, rules, and practices for certain transportation.

“13702. Tariff requirement for certain transportation.

“13703. Certain collective activities; exemption from antitrust laws.

“13704. Household goods rates—estimates; guarantees of service.

- "13705. Requirements for through routes among motor carriers of passengers.
 "13706. Liability for payment of rates.
 "13707. Payment of rates.
 "13708. Billing and collecting practices.
 "13709. Procedures for resolving claims involving unfiled, negotiated transportation rates.
 "13710. Additional billing and collecting practices.
 "13711. Alternative procedure for resolving undercharge disputes.
 "13712. Government traffic.
 "13713. Food and grocery transportation.

"§ 13701. Requirements for reasonable rates, classifications, through routes, rules, and practices for certain transportation

"(a) REASONABLENESS.—

"(1) CERTAIN HOUSEHOLD GOODS TRANSPORTATION; JOINT RATES INVOLVING WATER TRANSPORTATION.—A rate, classification, rule, or practice related to transportation or service provided by a carrier subject to jurisdiction under chapter 135 for transportation or service involving—

"(A) a movement of household goods,

"(B) a rate for a movement by or with a water carrier in noncontiguous domestic trade, or

"(C) rates, rules, and classifications made collectively by motor carriers under agreements approved pursuant to section 13703,

must be reasonable.

"(2) THROUGH ROUTES AND DIVISIONS OF JOINT RATES.—Through routes and divisions of joint rates for such transportation or service must be reasonable.

"(b) PRESCRIPTION BY BOARD FOR VIOLATIONS.—When the Board finds it necessary to stop or prevent a violation of subsection (a), the Board shall prescribe the rate, classification, rule, practice, through route, or division of joint rates to be applied for such transportation or service.

"(c) FILING OF COMPLAINT.—A complaint that a rate, classification, rule, or practice in noncontiguous domestic trade violates subsection (a) may be filed with the Board.

"(d) ZONE OF REASONABLENESS.—

"(1) IN GENERAL.—For purposes of this section, a rate or division of a motor carrier for service in noncontiguous domestic trade or water carrier for port-to-port service in that trade is reasonable if the aggregate of increases and decreases in any such rate or division is not more than 7.5 percent above, or more than 10 percent below, the rate or division in effect 1 year before the effective date of the proposed rate or division.

"(2) ADJUSTMENTS TO THE ZONE.—The percentage specified in paragraph (1) shall be increased or decreased, as the case may be, by the percentage change in the Producers Price Index, as published by the Department of Labor, that has occurred during the most recent 1-year period before the date the rate or division in question first took effect.

"(3) DETERMINATIONS AFTER COMPLAINT.—The Board shall determine whether any rate or division of a carrier or service in noncontiguous domestic trade which is not within the range

described in paragraph (1) is reasonable if a complaint is filed under subsection (c) or section 13702(b)(6).

“(4) REPARATIONS.—Upon a finding of violation of subsection (a), the Board shall award reparations to the complaining shipper or shippers in an amount equal to all sums assessed and collected that exceed the determined reasonable rate, division, rate structure, or tariff. Upon complaint from any governmental agency or authority and upon a finding or violation of subsection (a), the Board shall make such orders as are just and shall require the carrier to return, to the extent practicable, to shippers all amounts plus interest, which the Board finds to have been assessed and collected in violation of subsection (a).

“§ 13702. Tariff requirement for certain transportation

“(a) IN GENERAL.—Except when providing transportation for charitable purposes without charge, a carrier subject to jurisdiction under chapter 135 may provide transportation or service that is—

“(1) in noncontiguous domestic trade, except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste; or

“(2) for movement of household goods;

only if the rate for such transportation or service is contained in a tariff that is in effect under this section. The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device. A rate contained in a tariff shall be stated in money of the United States.

“(b) TARIFF REQUIREMENTS FOR NONCONTIGUOUS DOMESTIC TRADE.—

“(1) FILING.—A carrier providing transportation or service described in subsection (a)(1) shall publish and file with the Board tariffs containing the rates established for such transportation or service. The carriers shall keep such tariffs available for public inspection. The Board shall prescribe the form and manner of publishing, filing, and keeping tariffs available for public inspection under this subsection.

“(2) CONTENTS.—The Board may prescribe any specific information and charges to be identified in a tariff, but at a minimum tariffs must identify plainly—

“(A) the carriers that are parties to it;

“(B) the places between which property will be transported;

“(C) terminal charges if a carrier provides transportation or service subject to jurisdiction under subchapter III of chapter 135;

“(D) privileges given and facilities allowed; and

“(E) any rules that change, affect, or determine any part of the published rate.

“(3) INLAND DIVISIONS.—A carrier providing transportation or service described in subsection (a)(1) under a joint rate for a through movement shall not be required to state separately or

otherwise reveal in tariff filings the inland divisions of that through rate.

“(4) *TIME-VOLUME RATES.*—Rates in tariffs filed under this subsection may vary with the volume of cargo offered over a specified period of time.

“(5) *CHANGES.*—The Board may permit carriers to change rates, classifications, rules, and practices without filing complete tariffs under this subsection that cover matter that is not being changed when the Board finds that action to be consistent with the public interest. Those carriers may either—

“(A) publish new tariffs that incorporate changes, or

“(B) plainly indicate the proposed changes in the tariffs then in effect and make the tariffs as changed available for public inspection.

“(6) *COMPLAINTS.*—A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

“(c) *TARIFF REQUIREMENTS FOR HOUSEHOLD GOODS CARRIERS.*—

“(1) *IN GENERAL.*—A carrier providing transportation described in subsection (a)(2) shall maintain rates and related rules and practices in a published tariff. The tariff must be available for inspection by the Board and be made available for inspection by shippers upon reasonable request.

“(2) *NOTICE OF AVAILABILITY.*—A carrier that maintains a tariff under this subsection may not enforce the provisions of the tariff unless the carrier has given notice that the tariff is available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to the tariff.

“(3) *REQUIREMENTS.*—A carrier that maintains a tariff under this subsection is bound by the tariff except as otherwise provided in this part. A tariff that does not comply with this subsection may not be enforced against any individual shipper.

“(4) *INCORPORATION BY REFERENCE.*—A carrier may incorporate by reference the rates, terms, and other conditions of a tariff in agreements covering the transportation of household goods.

“(5) *COMPLAINTS.*—A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

“(d) *INVALIDATION.*—The Board may invalidate a tariff prepared by a carrier or carriers under this section if that tariff violates this section or a regulation of the Board carrying out this section.

“§ 13703. Certain collective activities; exemption from anti-trust laws

“(a) *AGREEMENTS.*—

“(1) *AUTHORITY TO ENTER.*—A motor carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into an agreement with one or more such carriers to establish—

“(A) through routes and joint rates;

“(B) rates for the transportation of household goods;

“(C) classifications;

“(D) mileage guides;

“(E) rules;

“(F) divisions;

“(G) rate adjustments of general application based on industry average carrier costs (so long as there is no discussion of individual markets or particular single-line rates); or

“(H) procedures for joint consideration, initiation, or establishment of matters described in subparagraphs (A) through (G).

“(2) SUBMISSION OF AGREEMENT TO BOARD; APPROVAL.—An agreement entered into under subsection (a) may be submitted by any carrier or carriers that are parties to such agreement to the Board for approval and may be approved by the Board only if it finds that such agreement is in the public interest.

“(3) CONDITIONS.—The Board may require compliance with reasonable conditions consistent with this part to assure that the agreement furthers the transportation policy set forth in section 13101.

“(4) INDEPENDENTLY ESTABLISHED RATES.—Any carrier which is a party to an agreement under paragraph (1) is not, and may not be, precluded from independently establishing its own rates, classification, and mileages or from adopting and using a noncollectively made classification or mileage guide.

“(5) INVESTIGATIONS.—

“(A) REASONABLENESS.—The Board may suspend and investigate the reasonableness of any rate, rule, classification, or rate adjustment of general application made pursuant to an agreement under this section.

“(B) ACTIONS NOT IN THE PUBLIC INTEREST.—The Board may investigate any action taken pursuant to an agreement approved under this section. If the Board finds that the action is not in the public interest, the Board may take such measures as may be necessary to protect the public interest with regard to the action, including issuing an order directing the parties to cease and desist or modify the action.

“(6) EFFECT OF APPROVAL.—If the Board approves the agreement or renews approval of the agreement, it may be made and carried out under its terms and under the conditions required by the Board, and the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), do not apply to parties and other persons with respect to making or carrying out the agreement.

“(b) RECORDS.—The Board may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Board, or its delegate, may inspect a record maintained under this section, or monitor any organization’s compliance with this section.

“(c) REVIEW.—The Board may review an agreement approved under this section, on its own initiative or on request, and shall change the conditions of approval or terminate it when necessary to protect the public interest. Action of the Board under this section—

- “(1) approving an agreement,
- “(2) denying, ending, or changing approval,
- “(3) prescribing the conditions on which approval is granted, or
- “(4) changing those conditions,

has effect only as related to application of the antitrust laws referred to in subsection (a).

“(d) EXPIRATION OF APPROVALS; RENEWALS.—Subject to subsection (c), approval of an agreement under subsection (a) shall expire 3 years after the date of approval unless renewed under this subsection. The approval may be renewed upon request of the parties to the agreement if such parties resubmit the agreement to the Board, the agreement is unchanged, and the Board approves such renewal. The Board shall approve the renewal unless it finds that the renewal is not in the public interest. Parties to the agreement may continue to undertake activities pursuant to the previously approved agreement while the renewal request is pending.

“(e) EXISTING AGREEMENTS.—Agreements approved under former section 10706(b) and in effect on the day before the effective date of this section shall be treated for purposes of this section as approved by the Board under this section beginning on such effective date.

“(f) LIMITATIONS ON STATUTORY CONSTRUCTION.—

“(1) UNDERCHARGE CLAIMS.—Nothing in this section shall serve as a basis for any undercharge claim.

“(2) OBLIGATION OF SHIPPER.—Nothing in this title, the ICC Termination Act of 1995, or any amendments or repeals made by such Act shall be construed as creating any obligation for a shipper based solely on a classification that was on file with the Interstate Commerce Commission or elsewhere on the day before the effective date of this section.

“(g) INDUSTRY STANDARD GUIDES.—

“(1) IN GENERAL.—

“(A) PUBLIC AVAILABILITY.—Routes, rates, classifications, mileage guides, and rules established under agreements approved under this section shall be published and made available for public inspection upon request.

“(B) PARTICIPATION OF CARRIERS.—

“(i) IN GENERAL.—A motor carrier of property whose routes, rates, classifications, mileage guides, rules, or packaging are determined or governed by publications established under agreements approved under this section must participate in the determining or governing publication for such provisions to apply.

“(ii) POWER OF ATTORNEY.—The motor carrier of property shall issue a power of attorney to the publishing agent and, upon its acceptance, the agent shall issue a written certification to the motor carrier affirming its participation in the governing publication, and the certification shall be made available for public inspection.

“(2) MILEAGE LIMITATION.—No carrier subject to jurisdiction under subchapter I or III of chapter 135 may enforce collection of its mileage rates unless such carrier—

“(A) is a participant in a publication of mileages formulated under an agreement approved under this section; or

“(B) uses a publication of mileage (other than a publication described in subparagraph (A)) that can be examined by any interested person upon reasonable request.

“(h) *SINGLE LINE RATE DEFINED.*—In this section, the term ‘single line rate’ means a rate, charge, or allowance proposed by a single motor carrier that is applicable only over its line and for which the transportation can be provided by that carrier.

“§ 13704. Household goods rates—estimates; guarantees of service

“(a) *IN GENERAL.*—

“(1) *AUTHORITY.*—Subject to the provisions of paragraph (2) of this subsection, a motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 may establish a rate for the transportation of household goods which is based on the carrier’s written, binding estimate of charges for providing such transportation.

“(2) *NONPREFERENTIAL; NONPREDATORY.*—Any rate established under this subsection must be available on a nonpreferential basis to shippers and must not result in charges to shippers which are predatory.

“(b) *RATES FOR GUARANTEED SERVICE.*—

“(1) *AUTHORITY.*—Subject to the provisions of paragraph (2) of this subsection, a motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 may establish rates for the transportation of household goods which guarantee that the carrier will pick up and deliver such household goods at the times specified in the contract for such services and provide a penalty or per diem payment in the event the carrier fails to pick up or deliver such household goods at the specified time. The charges, if any, for such guarantee and penalty provision may vary to reflect one or more options available to meet a particular shipper’s needs.

“(2) *AUTHORITY OF SECRETARY TO REQUIRE NONGUARANTEED SERVICE RATES.*—Before a carrier may establish a rate for any service under paragraph (1) of this subsection, the Secretary may require such carrier to have in effect and keep in effect, during any period such rate is in effect under paragraph (1), a rate for such service which does not guarantee the pick up and delivery of household goods at the times specified in the contract for such services and which does not provide a penalty or per diem payment in the event the carrier fails to pick up or deliver household goods at the specified time.

“§ 13705. Requirements for through routes among motor carriers of passengers

“(a) *ESTABLISHMENT; REASONABLENESS.*—A motor carrier providing transportation of passengers subject to jurisdiction under subchapter I of chapter 135 shall establish through routes with other carriers of the same type and shall establish individual and

joint rates applicable to them. Such through route must be reasonable.

“(b) *PRESCRIBED BY BOARD.*—When the Board finds it necessary to enforce the requirements of this section, the Board may prescribe through routes and the conditions under which those routes must be operated for motor carriers providing transportation of passengers subject to jurisdiction under subchapter I of chapter 135.

“§ 13706. Liability for payment of rates

“(a) *LIABILITY OF CONSIGNEE.*—Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this section when the transportation is provided by motor carrier under this part. When the shipper or consignor instructs the carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property—

“(1) of the agency and absence of beneficial title; and

“(2) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

“(b) *LIABILITY OF BENEFICIAL OWNER.*—When the consignee is liable only for rates billed at the time of delivery under subsection (a), the shipper or consignor, or, if the property is reconsigned or diverted, the beneficial owner is liable for those additional rates regardless of the bill of the lading or contract under which the property was transported. The beneficial owner is liable for all rates when the property is reconsigned or diverted by an agent but is refused or abandoned at its ultimate destination if the agent gave the carrier in the reconsignment or diversion order a notice of agency and the name and address of the beneficial owner. A consignee giving the carrier erroneous information about the identity of the beneficial owner of the property is liable for the additional rates.

“§ 13707. Payment of rates

“(a) *TRANSFER OF POSSESSION UPON PAYMENT.*—Except as provided in subsection (b), a carrier providing transportation or service subject to jurisdiction under this part shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made.

“(b) *EXCEPTIONS.*—

“(1) *REGULATIONS.*—Under regulations of the Secretary governing the payment for transportation and service and preventing discrimination, those carriers may give up possession at destination of property transported by them before payment for the transportation or service. The regulations of the Secretary may provide for weekly or monthly payment for transportation provided by motor carriers and for periodic payment for transportation provided by water carriers.

“(2) *EXTENSIONS OF CREDIT TO GOVERNMENTAL ENTITIES.*—Such a carrier (including a motor carrier being used by a household goods freight forwarder) may extend credit for transporting property for the United States Government, a State, a territory or possession of the United States, or a political subdivision of any of them.

“§ 13708. Billing and collecting practices

“(a) *DISCLOSURE.*—A motor carrier subject to jurisdiction under subchapter I of chapter 135 shall disclose, when a document is presented or electronically transmitted for payment to the person responsible directly to the motor carrier for payment or agent of such responsible person, the actual rates, charges, or allowances for any transportation service and shall also disclose, at such time, whether and to whom any allowance or reduction in charges is made.

“(b) *FALSE OR MISLEADING INFORMATION.*—No person may cause a motor carrier to present false or misleading information on a document about the actual rate, charge, or allowance to any party to the transaction.

“(c) *ALLOWANCES FOR SERVICES.*—When the actual rate, charge, or allowance is dependent upon the performance of a service by a party to the transportation arrangement, such as tendering a volume of freight over a stated period of time, the motor carrier shall indicate in any document presented for payment to the person responsible directly to the motor carrier that a reduction, allowance, or other adjustment may apply.

“§ 13709. Procedures for resolving claims involving unfiled, negotiated transportation rates

“(a) *TRANSPORTATION PROVIDED AT RATES OTHER THAN LEGAL TARIFF RATES.*—

“(1) *IN GENERAL.*—When a claim is made by a motor carrier of property (other than a household goods carrier) providing transportation subject to jurisdiction under subchapter II of chapter 105 (as in effect on the day before the effective date of this section) or subchapter I of chapter 135, by a freight forwarder (other than a household goods freight forwarder), or by a party representing such a carrier or freight forwarder regarding the collection of rates or charges for such transportation in addition to those originally billed and collected by the carrier or freight forwarder for such transportation, the person against whom the claim is made may elect to satisfy the claim under the provisions of subsection (b), (c), or (d), upon showing that—

“(A) the carrier or freight forwarder is no longer transporting property or is transporting property for the purpose of avoiding the application of this section; and

“(B) with respect to the claim—

“(i) the person was offered a transportation rate by the carrier or freight forwarder other than that legally on file at the time with the Board or with the Interstate Commerce Commission, as required, for the transportation service;

“(ii) the person tendered freight to the carrier or freight forwarder in reasonable reliance upon the offered transportation rate;

“(iii) the carrier or freight forwarder did not properly or timely file with the Board or with the Interstate Commerce Commission, as required, a tariff providing for such transportation rate or failed to enter into an agreement for contract carriage;

“(iv) such transportation rate was billed and collected by the carrier or freight forwarder; and

“(v) the carrier or freight forwarder demands additional payment of a higher rate filed in a tariff.

“(2) FORUM.—If there is a dispute as to the showing under paragraph (1)(A), such dispute shall be resolved by the court in which the claim is brought. If there is a dispute as to the showing under paragraph (1)(B), such dispute shall be resolved by the Board. Pending the resolution of any such dispute, the person shall not have to pay any additional compensation to the carrier or freight forwarder.

“(3) EFFECT OF SATISFACTION OF CLAIMS.—Satisfaction of the claim under subsection (b), (c), or (d) shall be binding on the parties, and the parties shall not be subject to chapter 119 of this title, as such chapter was in effect on the day before the effective date of this section, or chapter 149.

“(b) CLAIMS INVOLVING SHIPMENTS WEIGHING 10,000 POUNDS OR LESS.—A person from whom the additional legally applicable and effective tariff rate or charges are sought may elect to satisfy the claim if the shipments each weighed 10,000 pounds or less, by payment of 20 percent of the difference between the carrier's applicable and effective tariff rate and the rate originally billed and paid. In the event that a dispute arises as to the rate that was legally applicable to the shipment, such dispute shall be resolved by the Board.

“(c) CLAIMS INVOLVING SHIPMENTS WEIGHING MORE THAN 10,000 POUNDS.—A person from whom the additional legally applicable and effective tariff rate or charges are sought may elect to satisfy the claim if the shipments each weighed more than 10,000 pounds, by payment of 15 percent of the difference between the carrier's applicable and effective tariff rate and the rate originally billed and paid. In the event that a dispute arises as to the rate that was legally applicable to the shipment, such dispute shall be resolved by the Board.

“(d) CLAIMS INVOLVING PUBLIC WAREHOUSEMEN.—Notwithstanding subsections (b) and (c), a person from whom the additional legally applicable and effective tariff rate or charges are sought may elect to satisfy the claim by payment of 5 percent of the difference between the carrier's applicable and effective tariff rate and the rate originally billed and paid if such person is a public warehouseman. In the event that a dispute arises as to the rate that was legally applicable to the shipment, such dispute shall be resolved by the Board.

“(e) EFFECTS OF ELECTION.—When a person from whom additional legally applicable freight rates or charges are sought does not elect to use the provisions of subsection (b), (c) or (d), the person

may pursue all rights and remedies existing under this part or, for transportation provided before the effective date of this section, all rights and remedies that existed under this title on the day before such effective date.

“(f) STAY OF ADDITIONAL COMPENSATION.—When a person proceeds under this section to challenge the reasonableness of the legally applicable freight rate or charges being claimed by a carrier or freight forwarder in addition to those already billed and collected, the person shall not have to pay any additional compensation to the carrier or freight forwarder until the Board has made a determination as to the reasonableness of the challenged rate as applied to the freight of the person against whom the claim is made.

“(g) NOTIFICATION OF ELECTION.—

“(1) GENERAL RULE.—A person must notify the carrier or freight forwarder as to its election to proceed under subsection (b), (c), or (d). Except as provided in paragraphs (2), (3), and (4), such election may be made at any time.

“(2) DEMANDS FOR PAYMENT INITIALLY MADE AFTER DECEMBER 3, 1993.—If the carrier or freight forwarder or party representing such carrier or freight forwarder initially demands the payment of additional freight charges after December 3, 1993, and notifies the person from whom additional freight charges are sought of the provisions of subsections (a) through (f) at the time of the making of such initial demand, the election must be made not later than the later of—

“(A) the 60th day following the filing of an answer to a suit for the collection of such additional legally applicable freight rate or charges, or

“(B) March 5, 1994.

“(3) PENDING SUITS FOR COLLECTION MADE BEFORE DECEMBER 4, 1993.—If the carrier or freight forwarder or party representing such carrier or freight forwarder has filed, before December 4, 1993, a suit for the collection of additional freight charges and notifies the person from whom additional freight charges are sought of the provisions of subsections (a) through (f), the election must be made not later than the 90th day following the date on which such notification is received.

“(4) DEMANDS FOR PAYMENT MADE BEFORE DECEMBER 4, 1993.—If the carrier or freight forwarder or party representing such carrier or freight forwarder has demanded the payment of additional freight charges, and has not filed a suit for the collection of such additional freight charges, before December 4, 1993, and notifies the person from whom additional freight charges are sought of the provisions of subsections (a) through (f), the election must be made not later than the later of—

“(A) the 60th day following the filing of an answer to a suit for the collection of such additional legally applicable freight rate or charges, or

“(B) March 5, 1994.

“(h) CLAIMS INVOLVING SMALL-BUSINESS CONCERNS, CHARITABLE ORGANIZATIONS, AND RECYCLABLE MATERIALS.—

“(1) IN GENERAL.—Notwithstanding subsections (b), (c), and (d), a person from whom the additional legally applicable and effective tariff rate or charges are sought shall not be liable for

the difference between the carrier's applicable and effective tariff rate and the rate originally billed and paid—

“(A) if such person qualifies as a small-business concern under the Small Business Act (15 U.S.C. 631 et seq.),

“(B) if such person is an organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, or

“(C) if the cargo involved in the claim is recyclable materials.

“(2) *RECYCLABLE MATERIALS DEFINED.*—In this subsection, the term ‘recyclable materials’ means waste products for recycling or reuse in the furtherance of recognized pollution control programs.

“§ 13710. Additional billing and collecting practices

“(a) *MISCELLANEOUS PROVISIONS.*—

“(1) *INFORMATION RELATING TO BASIS OF RATE.*—A motor carrier of property (other than a motor carrier providing transportation in noncontiguous domestic trade) shall provide to the shipper, on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices, upon which any rate applicable to its shipment or agreed to between the shipper and carrier is based.

“(2) *REASONABLENESS OF RATES; COLLECTING ADDITIONAL CHARGES.*—When the applicability or reasonableness of the rates and related provisions billed by a motor carrier is challenged by the person paying the freight charges, the Board shall determine whether such rates and provisions are reasonable under section 13701 or applicable based on the record before it.

“(3) *BILLING DISPUTES.*—

“(A) *INITIATED BY MOTOR CARRIERS.*—In those cases where a motor carrier (other than a motor carrier providing transportation of household goods or in noncontiguous domestic trade) seeks to collect charges in addition to those billed and collected which are contested by the payor, the carrier may request that the Board determine whether any additional charges over those billed and collected must be paid. A carrier must issue any bill for charges in addition to those originally billed within 180 days of the receipt of the original bill in order to have the right to collect such charges.

“(B) *INITIATED BY SHIPPERS.*—If a shipper seeks to contest the charges originally billed or additional charges subsequently billed, the shipper may request that the Board determine whether the charges billed must be paid. A shipper must contest the original bill or subsequent bill within 180 days of receipt of the bill in order to have the right to contest such charges.

“(4) *VOIDING OF CERTAIN TARIFFS.*—Any tariff on file with the Interstate Commerce Commission on August 26, 1994, and not required to be filed after that date is null and void beginning on that date. Any tariff on file with the Interstate Commerce Commission on the effective date of this section and not

required to be filed after that date is null and void beginning on that date.

“(b) RESOLUTION OF DISPUTES OVER STATUS OF COMMON CARRIER OR CONTRACT CARRIER.—If a motor carrier (other than a motor carrier providing transportation of household goods) that was subject to jurisdiction under subchapter II of chapter 105, as in effect on the day before the effective date of this section, and that had authority to provide transportation as both a motor common carrier and a motor contract carrier and a dispute arises as to whether certain transportation that was provided prior to the effective date of this section was provided in its common carrier or contract carrier capacity and the parties are not able to resolve the dispute consensually, the Board shall resolve the dispute.

“§13711. Alternative procedure for resolving undercharge disputes

“(a) GENERAL RULE.—It shall be an unreasonable practice for a motor carrier of property (other than a household goods carrier) providing transportation subject to jurisdiction under subchapter I of chapter 135 or, before the effective date of this section, to have provided transportation that was subject to jurisdiction under subchapter II of chapter 105, as in effect on the day before the effective date of this section, a freight forwarder (other than a household goods freight forwarder), or a party representing such a carrier or freight forwarder to attempt to charge or to charge for a transportation service the difference between (1) the applicable rate that was lawfully in effect pursuant to a tariff that was filed in accordance with this chapter or, with respect to transportation provided before the effective date of this section, in accordance with chapter 107, as in effect on the date the transportation was provided, by the carrier or freight forwarder applicable to such transportation service, and (2) the negotiated rate for such transportation service if the carrier or freight forwarder is no longer transporting property between places described in section 13501(1) or is transporting property between places described in section 13501(1) for the purpose of avoiding application of this section.

“(b) JURISDICTION OF BOARD.—

“(1) DETERMINATION.—The Board shall have jurisdiction to make a determination of whether or not attempting to charge or the charging of a rate by a motor carrier or freight forwarder or party representing a motor carrier or freight forwarder is an unreasonable practice under subsection (a). If the Board determines that attempting to charge or the charging of the rate is an unreasonable practice under subsection (a), the carrier, freight forwarder, or party may not collect the difference described in subsection (a) between the applicable rate and the negotiated rate for the transportation service.

“(2) FACTORS TO CONSIDER.—In making a determination under paragraph (1), the Board shall consider—

“(A) whether the person was offered a transportation rate by the carrier or freight forwarder or party other than that legally on file with the Interstate Commerce Commission or the Board, as required, at the time of the movement for the transportation service;

“(B) whether the person tendered freight to the carrier or freight forwarder in reasonable reliance upon the offered transportation rate;

“(C) whether the carrier or freight forwarder did not properly or timely file with the Interstate Commerce Commission or the Board, as required, a tariff providing for such transportation rate or failed to enter into an agreement for contract carriage;

“(D) whether the transportation rate was billed and collected by the carrier or freight forwarder; and

“(E) whether the carrier or freight forwarder or party demands additional payment of a higher rate filed in a tariff.

“(c) STAY OF ADDITIONAL COMPENSATION.—When a person proceeds under this section to challenge the reasonableness of the practice of a motor carrier, freight forwarder, or party described in subsection (a) to attempt to charge or to charge the difference described in subsection (a) between the applicable rate and the negotiated rate for the transportation service in addition to those charges already billed and collected for the transportation service, the person shall not have to pay any additional compensation to the carrier, freight forwarder, or party until the Board has made a determination as to the reasonableness of the practice as applied to the freight of the person against whom the claim is made.

“(d) TREATMENT.—Subsection (a) is an exception to the requirements of section 13702 and, for transportation provided before the effective date of this section, to the requirements of sections 10761(a) and 10762, as in effect on the day before such effective date, as such sections relate to a filed tariff rate and other general tariff requirements.

“(e) NONAPPLICABILITY OF NEGOTIATED RATE DISPUTE RESOLUTION PROCEDURE.—If a person elects to seek enforcement of subsection (a) with respect to a rate for a transportation or service, section 13709 shall not apply to such rate.

“(f) DEFINITIONS.—In this section, the term “negotiated rate” means a rate, charge, classification, or rule agreed upon by a motor carrier or freight forwarder and a shipper through negotiations pursuant to which no tariff was lawfully and timely filed and for which there is written evidence of such agreement.

“(g) APPLICABILITY TO PENDING CASES.—This section shall apply to all cases and proceedings pending on the effective date of this section.

“§ 13712. Government traffic

“A carrier providing transportation or service for the United States Government may transport property or individuals for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply when transportation for the United States Government can be obtained from a carrier lawfully operating in the area where the transportation would be provided.

“§ 13713. Food and grocery transportation

“(a) CERTAIN COMPENSATION PROHIBITED.—Notwithstanding any other provision of law, it shall not be unlawful for a seller of food and grocery products using a uniform zone delivered pricing system to compensate a customer who picks up purchased food and grocery products at the shipping point of the seller if such compensation is available to all customers of the seller on a nondiscriminatory basis and does not exceed the actual cost to the seller of delivery to such customer.

“(b) SENSE OF CONGRESS.—It is the sense of the Congress that any savings accruing to a customer by reason of compensation permitted by subsection (a) of this section should be passed on to the ultimate consumer.

“CHAPTER 139—REGISTRATION

“Sec.

“13901. Requirement for registration.

“13902. Registration of motor carriers.

“13903. Registration of freight forwarders.

“13904. Registration of brokers.

“13905. Effective periods of registration.

“13906. Security of motor carriers, brokers, and freight forwarders.

“13907. Household goods agents.

“13908. Registration and other reforms.

“§ 13901. Requirement for registration

“A person may provide transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or be a broker for transportation subject to jurisdiction under subchapter I of that chapter, only if the person is registered under this chapter to provide the transportation or service.

“§ 13902. Registration of motor carriers

“(a) MOTOR CARRIER GENERALLY.—

“(1) IN GENERAL.—Except as provided in this section, the Secretary shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this title as a motor carrier if the Secretary finds that the person is willing and able to comply with—

“(A) this part and the applicable regulations of the Secretary and the Board;

“(B) any safety regulations imposed by the Secretary and the safety fitness requirements established by the Secretary under section 31144; and

“(C) the minimum financial responsibility requirements established by the Secretary pursuant to sections 13906 and 31138.

“(2) CONSIDERATION OF EVIDENCE; FINDINGS.—The Secretary shall consider and, to the extent applicable, make findings on, any evidence demonstrating that the registrant is unable to comply with the requirements of subparagraph (A), (B), or (C) of paragraph (1).

“(3) *WITHHOLDING.*—If the Secretary determines that any registrant under this section does not meet the requirements of paragraph (1), the Secretary shall withhold registration.

“(4) *LIMITATION ON COMPLAINTS.*—The Secretary may hear a complaint from any person concerning a registration under this subsection only on the ground that the registrant fails or will fail to comply with this part, the applicable regulations of the Secretary and the Board, the safety regulations of the Secretary, or the safety fitness or minimum financial responsibility requirements of paragraph (1) of this subsection.

“(b) *MOTOR CARRIERS OF PASSENGERS.*—

“(1) *REGISTRATION OF PRIVATE RECIPIENTS OF GOVERNMENTAL ASSISTANCE.*—The Secretary shall register under subsection (a)(1) a private recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

“(2) *REGISTRATION OF PUBLIC RECIPIENTS OF GOVERNMENTAL ASSISTANCE.*—

“(A) *CHARTER TRANSPORTATION.*—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that—

“(i) the recipient meets the requirements of subsection (a)(1); and

“(ii)(I) no motor carrier of passengers (other than a motor carrier of passengers which is a public recipient of governmental assistance) is providing, or is willing to provide, the transportation; or

“(II) the transportation is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

“(B) *REGULAR-ROUTE TRANSPORTATION.*—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide regular-route transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

“(C) *TREATMENT OF CERTAIN PUBLIC RECIPIENTS.*—Any public recipient of governmental assistance which is providing or seeking to provide transportation of passengers subject to jurisdiction under subchapter I of chapter 135 shall, for purposes of this part, be treated as a person which is

providing or seeking to provide transportation of passengers subject to such jurisdiction.

“(3) INTRASTATE TRANSPORTATION BY INTERSTATE CARRIERS.—A motor carrier of passengers that is registered by the Secretary under subsection (a) is authorized to provide regular-route transportation entirely in one State as a motor carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

“(4) PREEMPTION OF STATE REGULATION REGARDING CERTAIN SERVICE.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to the provision of pickup and delivery of express packages, newspapers, or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement by bus in intrastate commerce and, if a city within the commercial zone, is served by a motor carrier of passengers providing regular-route transportation of passengers subject to jurisdiction under subchapter I of chapter 135.

“(5) JURISDICTION OVER CERTAIN INTRASTATE TRANSPORTATION.—Any intrastate transportation authorized by this subsection shall be treated as transportation subject to jurisdiction under subchapter I of chapter 135 until such time as the carrier takes such action as is necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation, but in no case later than the 30th day following the date on which the motor carrier of passengers first begins providing transportation entirely in one State under this paragraph.

“(6) SPECIAL OPERATIONS.—This subsection shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

“(7) SUSPENSION OR REVOCATION.—Intrastate transportation authorized under this subsection may be suspended or revoked by the Secretary under section 13905 of this title at any time.

“(8) DEFINITIONS.—In this subsection, the following definitions apply:

“(A) PUBLIC RECIPIENT OF GOVERNMENTAL ASSISTANCE.—The term ‘public recipient of governmental assistance’ means—

“(i) any State,

“(ii) any municipality or other political subdivision of a State,

“(iii) any public agency or instrumentality of one or more States and municipalities and political subdivisions of a State,

“(iv) any Indian tribe,

“(v) any corporation, board, or other person owned or controlled by any entity described in clause (i), (ii), (iii), or (iv), and

which before, on, or after the effective date of this subsection received governmental assistance for the purchase or operation of any bus.

“(B) PRIVATE RECIPIENT OF GOVERNMENT ASSISTANCE.—The term ‘private recipient of government assistance’ means any person (other than a person described in subparagraph (A)) who before, on, or after the effective date of this paragraph received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus.

“(c) RESTRICTIONS ON MOTOR CARRIERS DOMICILED IN OR OWNED OR CONTROLLED BY NATIONALS OF A CONTIGUOUS FOREIGN COUNTRY.—

“(1) PREVENTION OF DISCRIMINATORY PRACTICES.—If the President, or the delegate thereof, determines that an act, policy, or practice of a foreign country contiguous to the United States, or any political subdivision or any instrumentality of any such country is unreasonable or discriminatory and burdens or restricts United States transportation companies providing, or seeking to provide, motor carrier transportation to, from, or within such foreign country, the President or such delegate may—

“(A) seek elimination of such practices through consultations; or

“(B) notwithstanding any other provision of law, suspend, modify, amend, condition, or restrict operations, including geographical restriction of operations, in the United States by motor carriers of property or passengers domiciled in such foreign country or owned or controlled by persons of such foreign country.

“(2) EQUALIZATION OF TREATMENT.—Any action taken under paragraph (1)(A) to eliminate an act, policy, or practice shall be so devised so as to equal to the extent possible the burdens or restrictions imposed by such foreign country on United States transportation companies.

“(3) REMOVAL OR MODIFICATION.—The President, or the delegate thereof, may remove or modify in whole or in part any action taken under paragraph (1)(A) if the President or such delegate determines that such removal or modification is consistent with the obligations of the United States under a trade agreement or with United States transportation policy.

“(4) PROTECTION OF EXISTING OPERATIONS.—Unless and until the President, or the delegate thereof, makes a determination under paragraph (1) or (3), nothing in this subsection shall affect—

“(A) operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country permitted in the commercial zones along the United States-Mexico border as such zones were defined on the day before the effective date of this section; or

“(B) any existing restrictions on operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of

any contiguous foreign country or any modifications thereof pursuant to section 6 of the Bus Regulatory Reform Act of 1982.

“(5) PUBLICATION; COMMENT.—Unless the President, or the delegate thereof, determines that expeditious action is required, the President shall publish in the Federal Register any determination under paragraph (1) or (3), together with a description of the facts on which such a determination is based and any proposed action to be taken pursuant to paragraph (1)(B) or (3), and provide an opportunity for public comment.

“(6) DELEGATION TO SECRETARY.—The President may delegate any or all authority under this subsection to the Secretary, who shall consult with other agencies as appropriate. In accordance with the directions of the President, the Secretary may issue regulations to enforce this subsection.

“(7) CIVIL ACTIONS.—Either the Secretary or the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

“(8) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection shall not be construed as affecting the requirement for all foreign motor carriers and foreign motor private carriers operating in the United States to comply with all applicable laws and regulations pertaining to fitness, safety of operations, financial responsibility, and taxes imposed by section 4481 of the Internal Revenue Code of 1986.

“(d) TRANSITION RULE.—

“(1) IN GENERAL.—Pending the implementation of the rule-making required by section 13908, the Secretary may register a person under this section—

“(A) as a motor common carrier if such person would have been issued a certificate to provide transportation as a motor common carrier under this subtitle on the day before the effective date of this section; and

“(B) as a motor contract carrier if such person would have been issued a permit to provide transportation as a motor contract carrier under this subtitle on such day.

“(2) DEFINITIONS.—In this subsection, the terms ‘motor common carrier’ and ‘motor contract carrier’ have the meaning such terms had under section 10102 as such section was in effect on the day before the effective date of this section.

“(e) MOTOR CARRIER DEFINED.—In this section and sections 13905 and 13906, the term ‘motor carrier’ includes foreign motor private carriers.

“§ 13903. Registration of freight forwarders

“(a) IN GENERAL.—The Secretary shall register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a freight forwarder if the Secretary finds that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary and the Board.

“(b) REGISTRATION AS CARRIER REQUIRED.—The freight forwarder may provide transportation as the carrier itself only if the

freight forwarder also has registered to provide transportation as a carrier under this chapter.

“§ 13904. Registration of brokers

“(a) *IN GENERAL.*—The Secretary shall register, subject to section 13906(b), a person to be a broker for transportation of property subject to jurisdiction under subchapter I of chapter 135, if the Secretary finds that the person is fit, willing, and able to be a broker for transportation and to comply with this part and applicable regulations of the Secretary.

“(b) *REGISTRATION AS CARRIER REQUIRED.*—

“(1) *IN GENERAL.*—The broker may provide the transportation itself only if the broker also has been registered to provide the transportation as a motor carrier under this chapter.

“(2) *LIMITATION.*—This subsection does not apply to a motor carrier registered under this chapter or to an employee or agent of the motor carrier to the extent the transportation is to be provided entirely by the motor carrier, with other registered motor carriers, or with rail or water carriers.

“(c) *REGULATIONS TO PROTECT SHIPPERS.*—Regulations of the Secretary applicable to brokers registered under this section shall provide for the protection of shippers by motor vehicle.

“(d) *BOND AND INSURANCE.*—The Secretary may impose on brokers for motor carriers of passengers such requirements for bonds or insurance or both as the Secretary determines are needed to protect passengers and carriers dealing with such brokers.

“§ 13905. Effective periods of registration

“(a) *PERSON HOLDING ICC AUTHORITY.*—Any person having authority to provide transportation or service as a motor carrier, freight forwarder, or broker under this title, as in effect on the day before the effective date of this section, shall be deemed, for purposes of this part, to be registered to provide such transportation or service under this part.

“(b) *IN GENERAL.*—Except as otherwise provided in this part, each registration issued under section 13902, 13903, or 13904 shall be effective from the date specified by the Secretary and shall remain in effect for such period as the Secretary determines appropriate by regulation.

“(c) *SUSPENSION, AMENDMENTS, AND REVOCATIONS.*—On application of the registrant, the Secretary may amend or revoke a registration. On complaint or on the Secretary’s own initiative and after notice and an opportunity for a proceeding, the Secretary may suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with this part, an applicable regulation or order of the Secretary or of the Board, or a condition of its registration.

“(d) *PROCEDURE.*—Except on application of the registrant, the Secretary may revoke a registration of a motor carrier, freight forwarder, or broker, only after—

“(1) the Secretary has issued an order to the registrant under section 14701 requiring compliance with this part, a regulation of the Secretary, or a condition of the registration; and

“(2) the registrant willfully does not comply with the order for a period of 30 days.

“(e) *EXPEDITED PROCEDURE.*—

“(1) *PROTECTION OF SAFETY.*—Without regard to subchapter II of chapter 5 of title 5, the Secretary may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with safety requirements of the Secretary or the safety fitness requirements pursuant to section 13904(c), 13906, or 31144, of this title, or an order or regulation of the Secretary prescribed under those sections.

“(2) *IMMINENT HAZARD TO PUBLIC HEALTH.*—Without regard to subchapter II of chapter 5 of title 5, the Secretary may suspend a registration of a motor carrier of passengers if the Secretary finds that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property.

“(3) *NOTICE; PERIOD OF SUSPENSION.*—The Secretary may suspend under this subsection the registration only after giving notice of the suspension to the registrant. The suspension remains in effect until the registrant complies with those applicable sections or, in the case of a suspension under paragraph (2), until the Secretary revokes such suspension.

“§ 13906. Security of motor carriers, brokers, and freight forwarders

“(a) *MOTOR CARRIER REQUIREMENTS.*—

“(1) *LIABILITY INSURANCE REQUIREMENT.*—The Secretary may register a motor carrier under section 13902 only if the registrant files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than such amount as the Secretary prescribes pursuant to, or as is required by, sections 31138 and 31139, and the laws of the State or States in which the registrant is operating, to the extent applicable. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the registrant for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property (except property referred to in paragraph (3) of this subsection), or both. A registration remains in effect only as long as the registrant continues to satisfy the security requirements of this paragraph.

“(2) *AGENCY REQUIREMENT.*—A motor carrier shall comply with the requirements of sections 13303 and 13304. To protect the public, the Secretary may require any such motor carrier to file the type of security that a motor carrier is required to file under paragraph (1) of this subsection. This paragraph only applies to a foreign motor private carrier and foreign motor carrier operating in the United States to the extent that such carrier is providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country.

“(3) *TRANSPORTATION INSURANCE.*—The Secretary may require a registered motor carrier to file with the Secretary a type

of security sufficient to pay a shipper or consignee for damage to property of the shipper or consignee placed in the possession of the motor carrier as the result of transportation provided under this part. A carrier required by law to pay a shipper or consignee for loss, damage, or default for which a connecting motor carrier is responsible is subrogated, to the extent of the amount paid, to the rights of the shipper or consignee under any such security.

“(b) BROKER REQUIREMENTS.—The Secretary may register a person as a broker under section 13904 only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary to ensure that the transportation for which a broker arranges is provided. The registration remains in effect only as long as the broker continues to satisfy the security requirements of this subsection.

“(c) FREIGHT FORWARDER REQUIREMENTS.—

“(1) LIABILITY INSURANCE.—The Secretary may register a person as a freight forwarder under section 13903 of this title only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the freight forwarder for bodily injury to, or death of, an individual, or loss of, or damage to, property (other than property referred to in paragraph (2) of this subsection), resulting from the negligent operation, maintenance, or use of motor vehicles by or under the direction and control of the freight forwarder when providing transfer, collection, or delivery service under this part.

“(2) FREIGHT FORWARDER INSURANCE.—The Secretary may require a registered freight forwarder to file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary sufficient to pay, not more than the amount of the security, for loss of, or damage to, property for which the freight forwarder provides service.

“(3) EFFECTIVE PERIOD.—The freight forwarder’s registration remains in effect only as long as the freight forwarder continues to satisfy the security requirements of this subsection.

“(d) TYPE OF INSURANCE.—The Secretary may determine the type and amount of security filed under this section. A motor carrier may submit proof of qualifications as a self-insurer to satisfy the security requirements of this section. The Secretary shall adopt regulations governing the standards for approval as a self-insurer. Motor carriers which have been granted authority to self-insure as of the effective date of this section shall retain that authority unless, for good cause shown and after notice and an opportunity for a hearing, the Secretary finds that the authority must be revoked.

“(e) NOTICE OF CANCELLATION OF INSURANCE.—The Secretary shall issue regulations requiring the submission to the Secretary of notices of insurance cancellation sufficiently in advance of actual cancellation so as to enable the Secretary to promptly revoke the registration of any carrier or broker after the effective date of the cancellation.

“(f) FORM OF ENDORSEMENT.—The Secretary shall also prescribe the appropriate form of endorsement to be appended to poli-

cies of insurance and surety bonds which will subject the insurance policy or surety bond to the full security limits of the coverage required under this section.

“§ 13907. Household goods agents

“(a) *CARRIERS RESPONSIBLE FOR AGENTS.*—Each motor carrier providing transportation of household goods shall be responsible for all acts or omissions of any of its agents which relate to the performance of household goods transportation services (including accessorial or terminal services) and which are within the actual or apparent authority of the agent from the carrier or which are ratified by the carrier.

“(b) *STANDARD FOR SELECTING AGENTS.*—Each motor carrier providing transportation of household goods shall use due diligence and reasonable care in selecting and maintaining agents who are sufficiently knowledgeable, fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services) and to fulfill the obligations imposed upon them by this part and by such carrier.

“(c) *ENFORCEMENT.*—

“(1) *COMPLAINT.*—Whenever the Secretary has reason to believe from a complaint or investigation that an agent providing household goods transportation services (including accessorial and terminal services) under the authority of a motor carrier providing transportation of household goods has violated section 14901(e) or 14912 or is consistently not fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services), the Secretary may issue to such agent a complaint stating the charges and containing notice of the time and place of a hearing which shall be held no later than 60 days after service of the complaint to such agent.

“(2) *RIGHT TO DEFEND.*—The agent shall have the right to appear at such hearing and rebut the charges contained in the complaint.

“(3) *ORDER.*—If the agent does not appear at the hearing or if the Secretary finds that the agent has violated section 14901(e) or 14912 or is consistently not fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services), the Secretary may issue an order to compel compliance with the requirement that the agent be fit, willing, and able. Thereafter, the Secretary may issue an order to limit, condition, or prohibit such agent from any involvement in the transportation or provision of services incidental to the transportation of household goods if, after notice and an opportunity for a hearing, the Secretary finds that such agent, within a reasonable time after the date of issuance of a compliance order under this section, but in no event less than 30 days after such date of issuance, has willfully failed to comply with such order.

“(4) *HEARING.*—Upon filing of a petition with the Secretary by an agent who is the subject of an order issued pursuant to the second sentence of paragraph (3) of this subsection and after notice, a hearing shall be held with an opportunity to be heard.

At such hearing, a determination shall be made whether the order issued pursuant to paragraph (3) of this subsection should be rescinded.

“(5) COURT REVIEW.—Any agent adversely affected or aggrieved by an order of the Secretary issued under this subsection may seek relief in the appropriate United States court of appeals as provided by and in the manner prescribed in chapter 158 of title 28, United States Code.

“(d) LIMITATION ON APPLICABILITY OF ANTITRUST LAWS.—

“(1) IN GENERAL.—The antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), do not apply to discussions or agreements between a motor carrier providing transportation of household goods and its agents (whether or not an agent is also a carrier) related solely to—

“(A) rates for the transportation of household goods under the authority of the principal carrier;

“(B) accessorial, terminal, storage, or other charges for services incidental to the transportation of household goods transported under the authority of the principal carrier;

“(C) allowances relating to transportation of household goods under the authority of the principal carrier; and

“(D) ownership of a motor carrier providing transportation of household goods by an agent or membership on the board of directors of any such motor carrier by an agent.

“(2) BOARD REVIEW.—The Board, upon its own initiative or request, shall review any activities undertaken under paragraph (1) and shall modify or terminate the activity if necessary to protect the public interest.

“(e) DEFINITIONS.—In this section, the following definitions apply:

“(1) HOUSEHOLD GOODS.—The term ‘household goods’ has the meaning such term had under section 10102(11) of this title, as in effect on the day before the effective date of this section.

“(2) TRANSPORTATION.—The term ‘transportation’ means transportation that would be subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title, as in effect on the day before such effective date, if such subchapter were still in effect.

“§ 13908. Registration and other reforms

“(a) REGULATIONS REPLACING CERTAIN PROGRAMS.—The Secretary, in cooperation with the States, and after notice and opportunity for public comment, shall issue regulations to replace the current Department of Transportation identification number system, the single State registration system under section 14504, the registration system contained in this chapter, and the financial responsibility information system under section 13906 with a single, on-line, Federal system. The new system shall serve as a clearinghouse and depository of information on and identification of all foreign and domestic motor carriers, brokers, and freight forwarders, and others required to register with the Department as well as information on safety fitness and compliance with required levels of finan-

cial responsibility. In issuing the regulations, the Secretary shall consider whether or not to integrate the requirements of section 13304 into the new system and may integrate such requirements into the new system.

“(b) *FACTORS TO BE CONSIDERED.*—In conducting the rulemaking under subsection (a), the Secretary shall, at a minimum, consider the following factors:

“(1) Funding for State enforcement of motor carrier safety regulations.

“(2) Whether the existing single State registration system is duplicative and burdensome.

“(3) The justification and need for collecting the statutory fee for such system under section 14504(c)(2)(B)(iv).

“(4) The public safety.

“(5) The efficient delivery of transportation services.

“(6) How, and under what conditions, to extend the registration system to motor private carriers and to carriers exempt under sections 13502, 13503, and 13506.

“(c) *FEE SYSTEM.*—The Secretary may establish, under section 9701 of title 31, a fee system for registration and filing evidence of financial responsibility under the new system under subsection (a). Fees collected under the fee system shall cover the costs of operating and upgrading the registration system, including all personnel costs associated with the system. Fees collected under this subsection may be credited to the Department of Transportation appropriations account for purposes for which such fees are collected, and shall be available for expenditure until expended.

“(d) *STATE REGISTRATION PROGRAMS.*—If the Secretary determines that no State should require insurance filings or collect fees for such filings (including filings and fees authorized under section 14504), the Secretary may prevent any State or political subdivision thereof, or any political authority of 2 or more States, from imposing any insurance filing requirements or fees that are for the same purposes as filings or fees the Secretary requires under the new system under subsection (a). The Secretary may not take any action pursuant to this subsection unless—

“(1) fees that will be collected by the Secretary under subsection (c) and distributed in each fiscal year to the States will provide each State with at least as much revenue as that State received in fiscal year 1995 under section 11506, as in effect on the day before the effective date of this section; and

“(2) all States will receive from the distribution of such fees a minimum apportionment.

“(e) *DEADLINE FOR CONCLUSION; MODIFICATIONS.*—Not later than 24 months after the effective date of this section, the Secretary—

“(1) shall conclude the rulemaking under this section;

“(2) may implement such changes under this section as the Secretary considers appropriate and in the public interest; and

“(3) shall transmit to Congress a report on any findings of the rulemaking and the changes being implemented under this section, together with such recommendations for legislative language necessary to conform this part to such changes.

“CHAPTER 141—OPERATIONS OF CARRIERS**“SUBCHAPTER I—GENERAL REQUIREMENTS**

“Sec.

“14101. *Providing transportation and service.*

“14102. *Leased motor vehicles.*

“14103. *Loading and unloading motor vehicles.*

“14104. *Household goods carrier operations.*

“SUBCHAPTER II—REPORTS AND RECORDS

“14121. *Definitions.*

“14122. *Records: form; inspection; preservation.*

“14123. *Financial reporting.*

“SUBCHAPTER I—GENERAL REQUIREMENTS**“§ 14101. Providing transportation and service**

“(a) *ON REASONABLE REQUEST.*—A carrier providing transportation or service subject to jurisdiction under chapter 135 shall provide the transportation or service on reasonable request. In addition, a motor carrier shall provide safe and adequate service, equipment, and facilities.

“(b) *CONTRACTS WITH SHIPPERS.*—

“(1) *IN GENERAL.*—A carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into a contract with a shipper, other than for the movement of household goods described in section 13102(10)(A), to provide specified services under specified rates and conditions. If the shipper and carrier, in writing, expressly waive any or all rights and remedies under this part for the transportation covered by the contract, the transportation provided under the contract shall not be subject to the waived rights and remedies and may not be subsequently challenged on the ground that it violates the waived rights and remedies. The parties may not waive the provisions governing registration, insurance, or safety fitness.

“(2) *REMEDY FOR BREACH OF CONTRACT.*—The exclusive remedy for any alleged breach of a contract entered into under this subsection shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

“§ 14102. Leased motor vehicles

“(a) *GENERAL AUTHORITY OF SECRETARY.*—The Secretary may require a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 that uses motor vehicles not owned by it to transport property under an arrangement with another party to—

“(1) *make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;*

“(2) *carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;*

“(3) *inspect the motor vehicles and obtain liability and cargo insurance on them; and*

“(4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.

“(b) *RESPONSIBLE PARTY FOR LOADING AND UNLOADING.*—The Secretary shall require, by regulation, that any arrangement, between a motor carrier of property providing transportation subject to jurisdiction under subchapter I of chapter 135 and any other person, under which such other person is to provide any portion of such transportation by a motor vehicle not owned by the carrier shall specify, in writing, who is responsible for loading and unloading the property onto and from the motor vehicle.

“§ 14103. Loading and unloading motor vehicles

“(a) *SHIPPER RESPONSIBLE FOR ASSISTING.*—Whenever a shipper or receiver of property requires that any person who owns or operates a motor vehicle transporting property in interstate commerce (whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135) be assisted in the loading or unloading of such vehicle, the shipper or receiver shall be responsible for providing such assistance or shall compensate the owner or operator for all costs associated with securing and compensating the person or persons providing such assistance.

“(b) *COERCION PROHIBITED.*—It shall be unlawful to coerce or attempt to coerce any person providing transportation of property by motor vehicle for compensation in interstate commerce (whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135) to load or unload any part of such property onto or from such vehicle or to employ or pay one or more persons to load or unload any part of such property onto or from such vehicle; except that this subsection shall not be construed as making unlawful any activity which is not unlawful under the National Labor Relations Act or the Act of March 23, 1932 (47 Stat. 70; 29 U.S.C. 101 et seq.), commonly known as the Norris-LaGuardia Act.

“§ 14104. Household goods carrier operations

“(a) *GENERAL REGULATORY AUTHORITY.*—

“(1) *PAPERWORK MINIMIZATION.*—The Secretary may issue regulations, including regulations protecting individual shippers, in order to carry out this part with respect to the transportation of household goods by motor carriers subject to jurisdiction under subchapter I of chapter 135. The regulations and paperwork required of motor carriers providing transportation of household goods shall be minimized to the maximum extent feasible consistent with the protection of individual shippers.

“(2) *PERFORMANCE STANDARDS.*—

“(A) *IN GENERAL.*—Regulations of the Secretary protecting individual shippers shall include, where appropriate, reasonable performance standards for the transportation of household goods subject to jurisdiction under subchapter I of chapter 135.

“(B) FACTORS TO CONSIDER.—In establishing performance standards under this paragraph, the Secretary shall take into account at least the following—

“(i) the level of performance that can be achieved by a well-managed motor carrier transporting household goods;

“(ii) the degree of harm to individual shippers which could result from a violation of the regulation;

“(iii) the need to set the level of performance at a level sufficient to deter abuses which result in harm to consumers and violations of regulations;

“(iv) service requirements of the carriers;

“(v) the cost of compliance in relation to the consumer benefits to be achieved from such compliance; and

“(vi) the need to set the level of performance at a level designed to encourage carriers to offer service responsive to shipper needs.

“(3) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to limit the Secretary’s authority to require reports from motor carriers providing transportation of household goods or to require such carriers to provide specified information to consumers concerning their past performance.

“(b) ESTIMATES.—

“(1) AUTHORITY TO PROVIDE WITHOUT COMPENSATION.—Every motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135, upon request of a prospective shipper, may provide the shipper with an estimate of charges for transportation of household goods and for the proposed services. The Secretary shall not prohibit any such carrier from charging a prospective shipper for providing a written, binding estimate for the transportation and proposed services.

“(2) APPLICABILITY OF ANTITRUST LAWS.—Any charge for an estimate of charges provided by a motor carrier to a shipper for transportation of household goods subject to jurisdiction under subchapter I of chapter 135 shall be subject to the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12).

“(c) FLEXIBILITY IN WEIGHING SHIPMENTS.—The Secretary shall issue regulations that provide motor carriers providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 with the maximum possible flexibility in weighing shipments, consistent with assurance to the shipper of accurate weighing practices. The Secretary shall not prohibit such carriers from backweighing shipments or from basing their charges on the reweigh weights if the shipper observes both the tare and gross weighings (or, prior to such weighings, waives in writing the opportunity to observe such weighings) and such weighings are performed on the same scale.

"SUBCHAPTER II—REPORTS AND RECORDS

"§ 14121. Definitions

"In this subchapter, the following definitions apply:

"(1) CARRIER AND BROKER.—The terms 'carrier' and 'broker' include a receiver or trustee of a carrier and broker, respectively.

"(2) ASSOCIATION.—The term 'association' means an organization maintained by or in the interest of a group of carriers or brokers providing transportation or service subject to jurisdiction under chapter 135 that performs a service, or engages in activities, related to transportation under this part.

"§ 14122. Records: form; inspection; preservation

"(a) FORM OF RECORDS.—The Secretary or the Board, as applicable, may prescribe the form of records required to be prepared or compiled under this subchapter by carriers and brokers, including records related to movement of traffic and receipts and expenditures of money.

"(b) RIGHT OF INSPECTION.—The Secretary or Board, or an employee designated by the Secretary or Board, may on demand and display of proper credentials—

"(1) inspect and examine the lands, buildings, and equipment of a carrier or broker; and

"(2) inspect and copy any record of—

"(A) a carrier, broker, or association; and

"(B) a person controlling, controlled by, or under common control with a carrier if the Secretary or Board, as applicable, considers inspection relevant to that person's relation to, or transaction with, that carrier.

"(c) PERIOD FOR PRESERVATION OF RECORDS.—The Secretary or Board, as applicable, may prescribe the time period during which operating, accounting, and financial records must be preserved by carriers and brokers.

"§ 14123. Financial reporting

"(a) REPORTS.—

"(1) ANNUAL REPORTS.—The Secretary shall require Class I and Class II motor carriers to file with the Secretary annual financial and safety reports, the form and substance of which shall be prescribed by the Secretary; except that, at a minimum, such reports shall include balance sheets and income statements.

"(2) OTHER REPORTS.—The Secretary may require motor carriers, freight forwarders, brokers, lessors, and associations, or classes of them as the Secretary may prescribe, to file quarterly, periodic, or special reports with the Secretary and to respond to surveys concerning their operations.

"(b) MATTERS TO BE COVERED.—In determining the matters to be covered by any reports to be filed under subsection (a), the Secretary shall consider—

"(1) safety needs;

"(2) the need to preserve confidential business information and trade secrets and prevent competitive harm;

“(3) private sector, academic, and public use of information in the reports; and

“(4) the public interest.

“(c) EXEMPTIONS.—

“(1) FROM FILING.—The Secretary may exempt upon good cause shown any party from the financial reporting requirements of subsection (a). Any request for such exemption must demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available.

“(2) FROM PUBLIC RELEASE.—

“(A) IN GENERAL.—The Secretary shall allow, upon request, a filer of a report under subsection (a) that is not a publicly held corporation or that is not subject to financial reporting requirements of the Securities and Exchange Commission, an exemption from the public release of such report.

“(B) PROCEDURE.—After a request under subparagraph (A) and notice and opportunity for comment but no event later than 90 days after the date of such request, the Secretary shall approve such request if the Secretary finds that the exemption requested is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as a trade secret or privileged or confidential information under section 552(b)(4) of title 5.

“(C) USE OF DATA FOR INTERNAL DOT PURPOSES.—If an exemption is granted under this paragraph, nothing shall prevent the Secretary from using data from reports filed under this subsection for internal purposes of the Department of Transportation or including such data in aggregate industry statistics released for publication if such inclusion would not render the filer’s data readily identifiable.

“(D) PENDING REQUESTS.—The Secretary shall not release publicly the report of a carrier making a request under subparagraph (A) while such request is pending.

“(3) PERIOD OF EXEMPTIONS.—Exemptions granted under this subsection shall be for 3-year periods.

“(d) STREAMLINING AND SIMPLIFICATION.—The Secretary shall streamline and simplify, to the maximum extent practicable, any reporting requirements the Secretary imposes under this section.

“CHAPTER 143—FINANCE

“Sec.

“14301. Security interests in certain motor vehicles.

“14302. Pooling and division of transportation or earnings.

“14303. Consolidation, merger, and acquisition of control of motor carriers of passengers.

“§ 14301. Security interests in certain motor vehicles

“(a) DEFINITIONS.—In this section, the following definitions apply:

“(1) MOTOR VEHICLE.—The term ‘motor vehicle’ means a truck of rated capacity (gross vehicle weight) of at least 10,000 pounds, a highway tractor of rated capacity (gross combination

weight) of at least 10,000 pounds, a property-carrying trailer or semitrailer with at least one load-carrying axle of at least 10,000 pounds, or a motor bus with a seating capacity of at least 10 individuals.

“(2) *LIEN CREDITOR*.—The term ‘lien creditor’ means a creditor having a lien on a motor vehicle and includes an assignee for benefit of creditors from the date of assignment, a trustee in a case under title 11 from the date of filing of the petition in that case, and a receiver in equity from the date of appointment of the receiver.

“(3) *SECURITY INTEREST*.—The term ‘security interest’ means an interest (including an interest established by a conditional sales contract, mortgage, equipment trust, or other lien or title retention contract, or lease) in a motor vehicle when the interest secures payment or performance of an obligation.

“(4) *PERFECTION*.—The term ‘perfection’, as related to a security interest, means taking action (including public filing, recording, notation on a certificate of title, and possession of collateral by the secured party), or the existence of facts, required under law to make a security interest enforceable against general creditors and subsequent lien creditors of a debtor, but does not include compliance with requirements related only to the establishment of a valid security interest between the debtor and the secured party.

“(b) *REQUIREMENTS FOR PERFECTION OF SECURITY INTEREST*.—A security interest in a motor vehicle owned by, or in the possession and use of, a carrier registered under section 13902 of this title and owing payment or performance of an obligation secured by that security interest is perfected in all jurisdictions against all general, and subsequent lien, creditors of, and all persons taking a motor vehicle by sale (or taking or retaining a security interest in a motor vehicle) from, that carrier when—

“(1) a certificate of title is issued for a motor vehicle under a law of a jurisdiction that requires or permits indication, on a certificate or title, of a security interest in the motor vehicle if the security interest is indicated on the certificate;

“(2) a certificate of title has not been issued and the law of the State where the principal place of business of that carrier is located requires or permits public filing or recording of, or in relation to, that security interest if there has been such a public filing or recording; and

“(3) a certificate of title has not been issued and the security interest cannot be perfected under paragraph (2) of this subsection, if the security interest has been perfected under the law (including the conflict of laws rules) of the State where the principal place of business of that carrier is located.

“§14302. Pooling and division of transportation or earnings

“(a) *APPROVAL REQUIRED*.—A carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 may not agree or combine with another such carrier to pool or divide traffic or services or any part of their earnings without the approval of the Board under this section.

“(b) STANDARDS FOR APPROVAL.—The Board may approve and authorize an agreement or combination between or among motor carriers of passengers, or between a motor carrier of passengers and a rail carrier of passengers if the carriers involved assent to the pooling or division and the Board finds that a pooling or division of traffic, services, or earnings—

“(1) will be in the interest of better service to the public or of economy of operation; and

“(2) will not unreasonably restrain competition.

“(c) PROCEDURE.—

“(1) APPLICATION.—Any motor carrier of property may apply to the Board for approval of an agreement or combination with another such carrier to pool or divide traffic or any services or any part of their earnings by filing such agreement or combination with the Board not less than 50 days before its effective date.

“(2) DETERMINATION OF IMPORTANCE AND RESTRAINT ON COMPETITION.—Prior to the effective date of the agreement or combination, the Board shall determine whether the agreement or combination is of major transportation importance and whether there is substantial likelihood that the agreement or combination will unduly restrain competition. If the Board determines that neither of these 2 factors exists, it shall, prior to such effective date and without a hearing, approve and authorize the agreement or combination, under such rules and regulations as the Board may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Board to be just and reasonable.

“(3) HEARING.—If the Board determines either that the agreement or combination is of major transportation importance or that there is substantial likelihood that the agreement or combination will unduly restrain competition, the Board shall hold a hearing concerning whether the agreement or combination will be in the interest of better service to the public or of economy in operation and whether it will unduly restrain competition and shall suspend operation of such agreement or combination pending such hearing and final decision thereon. After such hearing, the Board shall indicate to what extent it finds that the agreement or combination will be in the interest of better service to the public or of economy in operation and will not unduly restrain competition and if assented to by all the carriers involved, shall to that extent, approve and authorize the agreement or combination, under such rules and regulations as the Board may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Board to be just and reasonable.

“(4) SPECIAL RULES FOR HOUSEHOLD GOODS CARRIERS.—In the case of an application for Board approval of an agreement or combination between a motor carrier providing transportation of household goods and its agents to pool or divide traffic or services or any part of their earnings, such agreement or combination shall be presumed to be in the interest of better service to the public and of economy in operation and not to restrain competition unduly if the practices proposed to be carried

out under such agreement or combination are the same as or similar to practices carried out under agreements and combinations between motor carriers providing transportation of household goods to pool or divide traffic or service of any part of their earnings approved by the Interstate Commerce Commission before the effective date of this section.

“(5) *STREAMLINING AND SIMPLIFYING.*—The Board shall streamline, simplify, and expedite, to the maximum extent practicable, the process (including any paperwork) for submission and approval of applications under this section for agreements and combinations between motor carriers providing transportation of household goods and their agents.

“(d) *CONDITIONS.*—The Board may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the carriers.

“(e) *INITIATION OF PROCEEDING.*—The Board may begin a proceeding under this section on its own initiative or on application.

“(f) *EFFECT OF APPROVAL.*—A carrier may participate in an arrangement approved by or exempted by the Board under this section without the approval of any other Federal, State, or municipal body. A carrier participating in an approved or exempted arrangement is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the arrangement.

“(g) *CONTINUATION OF EXISTING AGREEMENTS.*—Any agreements in operation under the provisions of this title on the effective date of this section that are succeeded by this section shall remain in effect until further order of the Board.

“(h) *DEFINITIONS.*—In this section, the following definitions apply:

“(1) *HOUSEHOLD GOODS.*—The term ‘household goods’ has the meaning such term had under section 10102(11) of this title, as in effect on the day before the effective date of this section.

“(2) *TRANSPORTATION.*—The term ‘transportation’ means transportation that would be subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title, as in effect on the day before such effective date, if such subchapter were still in effect.

“§ 14303. Consolidation, merger, and acquisition of control of motor carriers of passengers

“(a) *APPROVAL REQUIRED.*—The following transactions involving motor carriers of passengers subject to jurisdiction under subchapter I of chapter 135 may be carried out only with the approval of the Board:

“(1) Consolidation or merger of the properties or franchises of at least 2 carriers into one operation for the ownership, management, and operation of the previously separately owned properties.

“(2) A purchase, lease, or contract to operate property of another carrier by any number of carriers.

“(3) Acquisition of control of a carrier by any number of carriers.

“(4) Acquisition of control of at least 2 carriers by a person that is not a carrier.

“(5) Acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers.

“(b) STANDARD FOR APPROVAL.—The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board shall consider at least the following:

“(1) The effect of the proposed transaction on the adequacy of transportation to the public.

“(2) The total fixed charges that result from the proposed transaction.

“(3) The interest of carrier employees affected by the proposed transaction.

The Board may impose conditions governing the transaction.

“(c) DETERMINATION OF COMPLETENESS OF APPLICATION.—Within 30 days after the date on which an application is filed under this section, the Board shall either publish a notice of the application in the Federal Register or reject the application if it is incomplete.

“(d) COMMENTS.—Written comments about an application may be filed with the Board within 45 days after the date on which notice of the application is published under subsection (c).

“(e) DEADLINES.—The Board shall conclude evidentiary proceedings by the 240th day after the date on which notice of the application is published under subsection (c). The Board shall issue a final decision by the 180th day after the conclusion of the evidentiary proceedings. The Board may extend a time period under this subsection; except that the total of all such extensions with respect to any application shall not exceed 90 days.

“(f) EFFECT OF APPROVAL.—A carrier or corporation participating in or resulting from a transaction approved by the Board under this section, or exempted by the Board from the application of this section pursuant to section 13541, may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A carrier, corporation, or person participating in the approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction.

“(g) LIMITATION ON APPLICABILITY.—This section shall not apply to transactions involving carriers whose aggregate gross operating revenues were not more than \$2,000,000 during a period of 12 consecutive months ending not more than 6 months before the date of the agreement of the parties.

“(h) APPLICABILITY OF CERTAIN PROVISIONS.—When the Board approves and authorizes a transaction under this section in which a person not a carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 acquires control of at least 1 carrier subject to such jurisdiction, the person is subject, as a carrier, to the following provisions of this title that apply to the carrier

being acquired by that person, to the extent specified by the Board: sections 504(f), 14121-14123, 14901(a), and 14907.

“(j) *INTERIM APPROVAL.*—Pending determination of an application filed under this section, the Board may approve, for a period of not more than 180 days, the operation of the properties sought to be acquired by the person proposing in the application to acquire those properties, when it appears that failure to do so may result in destruction of or injury to those properties or substantially interfere with their future usefulness in providing adequate and continuous service to the public. Transportation provided by a motor carrier under a grant of approval under this subsection is subject to this part.

“(j) *SUPPLEMENTAL ORDERS.*—When cause exists, the Board may issue appropriate orders supplemental to an order made in a proceeding under this section.

“CHAPTER 145—FEDERAL-STATE RELATIONS

“Sec.

“14501. Federal authority over intrastate transportation.

“14502. Tax discrimination against motor carrier transportation property.

“14503. Withholding State and local income tax by certain carriers.

“14504. Registration of motor carriers by a State.

“14505. State tax.

“§ 14501. Federal authority over intrastate transportation

“(a) *MOTOR CARRIERS OF PASSENGERS.*—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route or relating to the implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required. This subsection shall not apply to intrastate commuter bus operations.

“(b) *FREIGHT FORWARDERS AND BROKERS.*—

“(1) *GENERAL RULE.*—Subject to paragraph (2) of this subsection, no State or political subdivision thereof and no intrastate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker.

“(2) *CONTINUATION OF HAWAII’S AUTHORITY.*—Nothing in this subsection and the amendments made by the Surface Freight Forwarder Deregulation Act of 1986 shall be construed to affect the authority of the State of Hawaii to continue to regulate a motor carrier operating within the State of Hawaii.

“(c) *MOTOR CARRIERS OF PROPERTY.*—

“(1) *GENERAL RULE.*—Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political au-

thority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

“(2) MATTERS NOT COVERED.—Paragraph (1)—

“(A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;

“(B) does not apply to the transportation of household goods; and

“(C) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

“(3) STATE STANDARD TRANSPORTATION PRACTICES.—

“(A) CONTINUATION.—Paragraph (1) shall not affect any authority of a State, political subdivision of a State, or political authority of 2 or more States to enact or enforce a law, regulation, or other provision, with respect to the intrastate transportation of property by motor carriers, related to—

“(i) uniform cargo liability rules,

“(ii) uniform bills of lading or receipts for property being transported,

“(iii) uniform cargo credit rules,

“(iv) antitrust immunity for joint line rates or routes, classifications, mileage guides, and pooling, or

“(v) antitrust immunity for agent-van line operations (as set forth in section 13907),

if such law, regulation, or provision meets the requirements of subparagraph (B).

“(B) REQUIREMENTS.—A law, regulation, or provision of a State, political subdivision, or political authority meets the requirements of this subparagraph if—

“(i) the law, regulation, or provision covers the same subject matter as, and compliance with such law, regulation, or provision is no more burdensome than compliance with, a provision of this part or a regulation issued by the Secretary or the Board under this part; and

“(ii) the law, regulation, or provision only applies to a carrier upon request of such carrier.

“(C) ELECTION.—Notwithstanding any other provision of law, a carrier affiliated with a direct air carrier through common controlling ownership may elect to be subject to a

law, regulation, or provision of a State, political subdivision, or political authority under this paragraph.

“(4) *NONAPPLICABILITY TO HAWAII.*—This subsection shall not apply with respect to the State of Hawaii.

“§ 14502. Tax discrimination against motor carrier transportation property

“(a) *DEFINITIONS.*—In this section, the following definitions apply:

“(1) *ASSESSMENT.*—The term ‘assessment’ means valuation for a property tax levied by a taxing district.

“(2) *ASSESSMENT JURISDICTION.*—The term ‘assessment jurisdiction’ means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

“(3) *MOTOR CARRIER TRANSPORTATION PROPERTY.*—The term ‘motor carrier transportation property’ means property, as defined by the Secretary, owned or used by a motor carrier providing transportation in interstate commerce whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135.

“(4) *COMMERCIAL AND INDUSTRIAL PROPERTY.*—The term ‘commercial and industrial property’ means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use, and subject to a property tax levy.

“(b) *ACTS BURDENING INTERSTATE COMMERCE.*—The following acts unreasonably burden and discriminate against interstate commerce and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

“(1) *EXCESSIVE VALUATION OF PROPERTY.*—Assess motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

“(2) *TAX ON ASSESSMENT.*—Levy or collect a tax on an assessment that may not be made under paragraph (1).

“(3) *AD VALOREM TAX.*—Levy or collect an ad valorem property tax on motor carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

“(c) *JURISDICTION.*—

“(1) *IN GENERAL.*—Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section.

“(2) *LIMITATION IN RELIEF.*—Relief may be granted under this subsection only if the ratio of assessed value to true market value of motor carrier transportation property exceeds, by at least 5 percent, the ratio of assessed value to true market value

of other commercial and industrial property in the same assessment jurisdiction.

“(3) *BURDEN OF PROOF.*—The burden of proof in determining assessed value and true market value is governed by State law.

“(4) *VIOLATION.*—If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

“(A) an assessment of the motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the assessment value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all such other property; and

“(B) the collection of ad valorem property tax on the motor carrier transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district.

“§14503. Withholding State and local income tax by certain carriers

“(a) *SINGLE STATE TAX WITHHOLDING.*—

“(1) *IN GENERAL.*—No part of the compensation paid by a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 or by a motor private carrier to an employee who performs regularly assigned duties in 2 or more States as such an employee with respect to a motor vehicle shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee’s residence.

“(2) *EMPLOYEE DEFINED.*—In this subsection, the term ‘employee’ has the meaning given such term in section 31132.

“(b) *SPECIAL RULES.*—

“(1) *CALCULATION OF EARNINGS.*—In this subsection, an employee is deemed to have earned more than 50 percent of pay in a State or subdivision of that State in which the time worked by the employee in the State or subdivision is more than 50 percent of the total time worked by the employee while employed during the calendar year.

“(2) *WATER CARRIERS.*—A water carrier providing transportation subject to jurisdiction under subchapter II of chapter 135 shall file income tax information returns and other reports only with—

“(A) the State and subdivision of residence of the employee (as shown on the employment records of the carrier); and

“(B) the State and subdivision in which the employee earned more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.

“(3) *APPLICABILITY TO SAILORS.*—This subsection applies to pay of a master, officer, or sailor who is a member of the crew on a vessel engaged in foreign, coastwise, intercoastal, or non-contiguous trade or in the fisheries of the United States.

“(c) *FILING OF INFORMATION.*—A motor and motor private carrier withholding pay from an employee under subsection (a) of this section shall file income tax information returns and other reports only with the State and subdivision of residence of the employee.

“§ 14504. Registration of motor carriers by a State

“(a) *DEFINITIONS.*—In this section, the terms ‘standards’ and ‘amendments to standards’ mean the specification of forms and procedures required by regulations of the Secretary to prove the lawfulness of transportation by motor carrier referred to in section 13501.

“(b) *GENERAL RULE.*—The requirement of a State that a motor carrier, providing transportation subject to jurisdiction under subchapter I of chapter 135 and providing transportation in that State, must register with the State is not an unreasonable burden on transportation referred to in section 13501 when the State registration is completed under standards of the Secretary under subsection (c). When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.

“(c) *SINGLE STATE REGISTRATION SYSTEM.*—

“(1) *IN GENERAL.*—The Secretary shall maintain standards for implementing a system under which—

“(A) a motor carrier is required to register annually with only one State by providing evidence of its Federal registration under chapter 139;

“(B) the State of registration shall fully comply with standards prescribed under this section; and

“(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

“(2) *SPECIFIC REQUIREMENTS.*—

“(A) *EVIDENCE OF FEDERAL REGISTRATION; PROOF OF INSURANCE; PAYMENT OF FEES.*—Under the standards of the Secretary implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier registered by the Secretary under this part—

“(i) to file and maintain evidence of such Federal registration;

“(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

“(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

“(iv) to file the name of a local agent for service of process.

“(B) RECEIPTS; FEE SYSTEM.—The standards of the Secretary—

“(i) shall require that the registration State issue a receipt, in a form prescribed under the standards, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this paragraph and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

“(ii) shall require that copies of the receipt issued under clause (i) of this subparagraph be kept in each of the carrier’s commercial motor vehicles;

“(iii) shall not require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by the carrier;

“(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that—

“(I) is based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates;

“(II) minimizes the costs of complying with the registration system; and

“(III) results in a fee for each participating State that is equal to the fee, not to exceed \$10 per vehicle, that such State collected or charged as of November 15, 1991; and

“(v) shall not authorize the charging or collection of any fee for filing and maintaining evidence of Federal registration under subparagraph (A)(i) of this paragraph.

“(C) PROHIBITED FEES.—The charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

“(D) LIMITATION ON PARTICIPATION BY STATES.—Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under part 1023 of title 49, Code of Federal Regulations, shall be eligible to participate as a registration State under this subsection or to receive any fee revenue under this subsection.

“§ 14505. State tax

“A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on—

“(1) a passenger traveling in interstate commerce by motor carrier;

“(2) the transportation of a passenger traveling in interstate commerce by motor carrier;

“(3) the sale of passenger transportation in interstate commerce by motor carrier; or

“(4) the gross receipts derived from such transportation.

**“CHAPTER 147—ENFORCEMENT;
INVESTIGATIONS; RIGHTS; REMEDIES**

“Sec.

“14701. *General authority.*

“14702. *Enforcement by the regulatory authority.*

“14703. *Enforcement by the Attorney General.*

“14704. *Rights and remedies of persons injured by carriers or brokers.*

“14705. *Limitation on actions by and against carriers.*

“14706. *Liability of carriers under receipts and bills of lading.*

“14707. *Private enforcement of registration requirement.*

“14708. *Dispute settlement program for household goods carriers.*

“14709. *Tariff reconciliation rules for motor carriers of property.*

“§ 14701. General authority

“(a) *INVESTIGATIONS.*—The Secretary or the Board, as applicable, may begin an investigation under this part on the Secretary’s or the Board’s own initiative or on complaint. If the Secretary or Board, as applicable, finds that a carrier or broker is violating this part, the Secretary or Board, as applicable, shall take appropriate action to compel compliance with this part. If the Secretary finds that a foreign motor carrier or foreign motor private carrier is violating chapter 139, the Secretary shall take appropriate action to compel compliance with that chapter. The Secretary or Board, as applicable, may take action under this subsection only after giving the carrier or broker notice of the investigation and an opportunity for a proceeding.

“(b) *COMPLAINTS.*—A person, including a governmental authority, may file with the Secretary or Board, as applicable, a complaint about a violation of this part by a carrier providing, or broker for, transportation or service subject to jurisdiction under this part or a foreign motor carrier or foreign motor private carrier providing transportation registered under section 13902 of this title. The complaint must state the facts that are the subject of the violation. The Secretary or Board, as applicable, may dismiss a complaint that it determines does not state reasonable grounds for investigation and action.

“(c) *DEADLINE.*—A formal investigative proceeding begun by the Secretary or Board under subsection (a) of this section is dismissed automatically unless it is concluded with administrative finality by the end of the 3d year after the date on which it was begun.

“§ 14702. Enforcement by the regulatory authority

“(a) *IN GENERAL.*—The Secretary or the Board, as applicable, may bring a civil action—

“(1) to enforce section 14103 of this title; or

“(2) to enforce this part, or a regulation or order of the Secretary or Board, as applicable, when violated by a carrier or broker providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 of this title or by a foreign motor carrier or foreign motor private carrier providing transportation registered under section 13902 of this title.

“(b) *VENUE.*—In a civil action under subsection (a)(2) of this section—

“(1) trial is in the judicial district in which the carrier, foreign motor carrier, foreign motor private carrier, or broker operates;

“(2) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

“(3) a person participating with a carrier or broker in a violation may be joined in the civil action without regard to the residence of the person.

“(c) *STANDING.*—The Board, through its own attorneys, may bring or participate in any civil action involving motor carrier undercharges.

“§ 14703. Enforcement by the Attorney General

“The Attorney General may, and on request of either the Secretary or the Board shall, bring court proceedings—

“(1) to enforce this part or a regulation or order of the Secretary or Board or terms of registration under this part; and

“(2) to prosecute a person violating this part or a regulation or order of the Secretary or Board or term of registration under this part.

“§ 14704. Rights and remedies of persons injured by carriers or brokers

“(a) *IN GENERAL.*—

“(1) *ENFORCEMENT OF ORDER.*—A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.

“(2) *DAMAGES FOR VIOLATIONS.*—A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

“(b) *LIABILITY AND DAMAGES FOR EXCEEDING TARIFF RATE.*—A carrier providing transportation or service subject to jurisdiction under chapter 135 is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.

“(c) *ELECTION.*—

“(1) *COMPLAINT TO DOT OR BOARD; CIVIL ACTION.*—A person may file a complaint with the Board or the Secretary, as applicable, under section 14701(b) or bring a civil action under subsection (b) to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under chapter 135.

“(2) *ORDER OF DOT OR BOARD.*—

“(A) *IN GENERAL.*—When the Board or Secretary, as applicable, makes an award under subsection (b) of this section, the Board or Secretary, as applicable, shall order the

carrier to pay the amount awarded by a specific date. The Board or Secretary, as applicable, may order a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 to pay damages only when the proceeding is on complaint.

“(B) ENFORCEMENT BY CIVIL ACTION.—The person for whose benefit an order of the Board or Secretary requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier or broker does not pay the amount awarded by the date payment was ordered to be made.

“(d) PROCEDURE.—

“(1) IN GENERAL.—When a person begins a civil action under subsection (b) of this section to enforce an order of the Board or Secretary requiring the payment of damages by a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title, the text of the order of the Board or Secretary must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board or Secretary are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district in which the plaintiff resides or in which the principal operating office of the carrier or broker is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

“(2) PARTIES.—All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

“(e) ATTORNEY’S FEES.—The district court shall award a reasonable attorney’s fee under this section. The district court shall tax and collect that fee as part of the costs of the action.

“§ 14705. Limitation on actions by and against carriers

“(a) IN GENERAL.—A carrier providing transportation or service subject to jurisdiction under chapter 135 must begin a civil action to recover charges for transportation or service provided by the carrier within 18 months after the claim accrues.

“(b) OVERCHARGES.—A person must begin a civil action to recover overcharges within 18 months after the claim accrues. If the claim is against a carrier providing transportation subject to jurisdiction under chapter 135 and an election to file a complaint with the Board or Secretary, as applicable, is made under section

14704(c)(1), the complaint must be filed within 3 years after the claim accrues.

“(c) *DAMAGES*.—A person must file a complaint with the Board or Secretary, as applicable, to recover damages under section 14704(b) within 2 years after the claim accrues.

“(d) *EXTENSIONS*.—The limitation periods under subsection (b) of this section are extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsections (b) and (c) of this section are extended for 90 days from the time the carrier begins a civil action under subsection (a) to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

“(e) *PAYMENT*.—A person must begin a civil action to enforce an order of the Board or Secretary against a carrier within 1 year after the date of the order.

“(f) *GOVERNMENT TRANSPORTATION*.—This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the later of the date of—

“(1) payment of the rate for the transportation or service involved;

“(2) subsequent refund for overpayment of that rate; or

“(3) deduction made under section 3726 of title 31.

“(g) *ACCRUAL DATE*.—A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

“§ 14706. Liability of carriers under receipts and bills of lading

“(a) *GENERAL LIABILITY*.—

“(1) *MOTOR CARRIERS AND FREIGHT FORWARDERS*.—A carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 shall issue a receipt or bill of lading for property it receives for transportation under this part. That carrier and any other carrier that delivers the property and is providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or chapter 105 are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (A) the receiving carrier, (B) the delivering carrier, or (C) another carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading and, except in the case of a freight forwarder, applies to property reconsigned or diverted under a tariff under section 13702. Failure to issue a receipt or bill of lading does not affect the liability of a carrier. A delivering carrier is deemed to be the carrier performing the line-haul transpor-

tation nearest the destination but does not include a carrier providing only a switching service at the destination.

“(2) *FREIGHT FORWARDER*.—A freight forwarder is both the receiving and delivering carrier. When a freight forwarder provides service and uses a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 to receive property from a consignor, the motor carrier may execute the bill of lading or shipping receipt for the freight forwarder with its consent. With the consent of the freight forwarder, a motor carrier may deliver property for a freight forwarder on the freight forwarder’s bill of lading, freight bill, or shipping receipt to the consignee named in it, and receipt for the property may be made on the freight forwarder’s delivery receipt.

“(b) *APPORTIONMENT*.—The carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

“(c) *SPECIAL RULES*.—

“(1) *MOTOR CARRIERS*.—

“(A) *SHIPPER WAIVER*.—Subject to the provisions of subparagraph (B), a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 may, subject to the provisions of this chapter (including with respect to a motor carrier, the requirements of section 13710(a)), establish rates for the transportation of property (other than household goods described in section 13102(10)(A)) under which the liability of the carrier for such property is limited to a value established by written or electronic declaration of the shipper or by written agreement between the carrier and shipper if that value would be reasonable under the circumstances surrounding the transportation.

“(B) *CARRIER NOTIFICATION*.—If the motor carrier is not required to file its tariff with the Board, it shall provide under section 13710(a)(1) to the shipper, on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices upon which any rate applicable to a shipment, or agreed to between the shipper and the carrier, is based. The copy provided by the carrier shall clearly state the dates of applicability of the rate, classification, rules, or practices.

“(C) *PROHIBITION AGAINST COLLECTIVE ESTABLISHMENT*.—No discussion, consideration, or approval as to rules to limit liability under this subsection may be undertaken by carriers acting under an agreement approved pursuant to section 13703.

“(2) *WATER CARRIERS*.—If loss or injury to property occurs while it is in the custody of a water carrier, the liability of that carrier is determined by its bill of lading and the law applica-

ble to water transportation. The liability of the initial or delivering carrier is the same as the liability of the water carrier.

“(d) CIVIL ACTIONS.—

“(1) AGAINST DELIVERING CARRIER.—A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State through which the defendant carrier operates.

“(2) AGAINST CARRIER RESPONSIBLE FOR LOSS.—A civil action under this section may be brought against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

“(3) JURISDICTION OF COURTS.—A civil action under this section may be brought in a United States district court or in a State court.

“(4) JUDICIAL DISTRICT DEFINED.—In this section, ‘judicial district’ means—

“(A) in the case of a United States district court, a judicial district of the United States; and

“(B) in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

“(e) MINIMUM PERIOD FOR FILING CLAIMS.—

“(1) IN GENERAL.—A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice.

“(2) SPECIAL RULES.—For the purposes of this subsection—

“(A) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

“(B) communications received from a carrier’s insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reason for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

“(f) LIMITING LIABILITY OF HOUSEHOLD GOODS CARRIERS TO DECLARED VALUE.—A carrier or group of carriers subject to jurisdiction under subchapter I or III of chapter 135 may petition the Board to modify, eliminate, or establish rates for the transportation of household goods under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper or by a written agreement.

“(g) MODIFICATIONS AND REFORMS.—

“(1) STUDY.—The Secretary shall conduct a study to determine whether any modifications or reforms should be made to the loss and damage provisions of this section, including those related to limitation of liability by carriers.

“(2) *FACTORS TO CONSIDER.*—In conducting the study, the Secretary, at a minimum, shall consider—

“(A) the efficient delivery of transportation services;

“(B) international and intermodal harmony;

“(C) the public interest; and

“(D) the interest of carriers and shippers.

“(3) *REPORT.*—Not later than 12 months after the effective date of this section, the Secretary shall submit to Congress a report on the results of the study, together with any recommendations of the Secretary (including legislative recommendations) for implementing modifications or reforms identified by the Secretary as being appropriate.

“§ 14707. Private enforcement of registration requirement

“(a) *IN GENERAL.*—If a person provides transportation by motor vehicle or service in clear violation of section 13901–13904 or 13906, a person injured by the transportation or service may bring a civil action to enforce any such section. In a civil action under this subsection, trial is in the judicial district in which the person who violated that section operates.

“(b) *PROCEDURE.*—A copy of the complaint in a civil action under subsection (a) shall be served on the Secretary and a certificate of service must appear in the complaint filed with the court. The Secretary may intervene in a civil action under subsection (a). The Secretary may notify the district court in which the action is pending that the Secretary intends to consider the matter that is the subject of the complaint in a proceeding before the Secretary. When that notice is filed, the court shall stay further action pending disposition of the proceeding before the Secretary.

“(c) *ATTORNEY’S FEES.*—In a civil action under subsection (a), the court may determine the amount of and award a reasonable attorney’s fee to the prevailing party. That fee is in addition to costs allowable under the Federal Rules of Civil Procedure.

“§ 14708. Dispute settlement program for household goods carriers

“(a) *OFFERING SHIPPERS ARBITRATION.*—As a condition of registration under section 13902 or 13903, a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 must agree to offer in accordance with this section to shippers of household goods arbitration as a means of settling disputes between such carriers and shippers of household goods concerning damage or loss to the household goods transported.

“(b) *ARBITRATION REQUIREMENTS.*—

“(1) *PREVENTION OF SPECIAL ADVANTAGE.*—The arbitration that is offered must be designed to prevent a carrier from having any special advantage in any case in which the claimant resides or does business at a place distant from the carrier’s principal or other place of business.

“(2) *NOTICE OF ARBITRATION PROCEDURE.*—The carrier must provide the shipper an adequate notice of the availability of neutral arbitration, including a concise easy-to-read, accurate summary of the arbitration procedure, any applicable costs, and

disclosure of the legal effects of election to utilize arbitration. Such notice must be given to persons for whom household goods are to be transported by the carrier before such goods are tendered to the carrier for transportation.

“(3) PROVISION OF FORMS.—Upon request of a shipper, the carrier must promptly provide such forms and other information as are necessary for initiating an action to resolve a dispute under arbitration.

“(4) INDEPENDENCE OF ARBITRATOR.—Each person authorized to arbitrate or otherwise settle disputes must be independent of the parties to the dispute and must be capable, as determined under such regulations as the Secretary may issue, to resolve such disputes fairly and expeditiously. The carrier must ensure that each person chosen to settle the disputes is authorized and able to obtain from the shipper or carrier any material and relevant information to the extent necessary to carry out a fair and expeditious decisionmaking process.

“(5) APPORTIONMENT OF COSTS.—No shipper may be charged more than half of the cost for instituting an arbitration proceeding that is brought under this section. In the decision, the arbitrator may determine which party shall pay the cost or a portion of the cost of the arbitration proceeding, including the cost of instituting the proceeding.

“(6) REQUESTS.—The carrier must not require the shipper to agree to utilize arbitration prior to the time that a dispute arises. If the dispute involves a claim for \$1,000 or less and the shipper requests arbitration, such arbitration shall be binding on the parties. If the dispute involves a claim for more than \$1,000 and the shipper requests arbitration, such arbitration shall be binding on the parties only if the carrier agrees to arbitration.

“(7) ORAL PRESENTATION OF EVIDENCE.—The arbitrator may provide for an oral presentation of a dispute concerning transportation of household goods by a party to the dispute (or a party’s representative), but such oral presentation may be made only if all parties to the dispute expressly agree to such presentation and the date, time, and location of such presentation.

“(8) DEADLINE FOR DECISION.—The arbitrator must, as expeditiously as possible but at least within 60 days of receipt of written notification of the dispute, render a decision based on the information gathered; except that, in any case in which a party to the dispute fails to provide in a timely manner any information concerning such dispute which the person settling the dispute may reasonably require to resolve the dispute, the arbitrator may extend such 60-day period for a reasonable period of time. A decision resolving a dispute may include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, and compensation for damages.

“(c) LIMITATION ON USE OF MATERIALS.—Materials and information obtained in the course of a decision making process to settle a dispute by arbitration under this section may not be used to bring an action under section 14905.

“(d) ATTORNEY’S FEES TO SHIPPERS.—In any court action to resolve a dispute between a shipper of household goods and a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 concerning the transportation of household goods by such carrier, the shipper shall be awarded reasonable attorney’s fees if—

“(1) the shipper submits a claim to the carrier within 120 days after the date the shipment is delivered or the date the delivery is scheduled, whichever is later;

“(2) the shipper prevails in such court action; and

“(3)(A) a decision resolving the dispute was not rendered through arbitration under this section within the period provided under subsection (b)(8) of this section or an extension of such period under such subsection; or

“(B) the court proceeding is to enforce a decision rendered through arbitration under this section and is instituted after the period for performance under such decision has elapsed.

“(e) ATTORNEY’S FEES TO CARRIERS.—In any court action to resolve a dispute between a shipper of household goods and a carrier providing transportation, or service subject to jurisdiction under subchapter I or III of chapter 135 concerning the transportation of household goods by such carrier, such carrier may be awarded reasonable attorney’s fees by the court only if the shipper brought such action in bad faith—

“(1) after resolution of such dispute through arbitration under this section; or

“(2) after institution of an arbitration proceeding by the shipper to resolve such dispute under this section but before—

“(A) the period provided under subsection (b)(8) for resolution of such dispute (including, if applicable, an extension of such period under such subsection) ends; and

“(B) a decision resolving such dispute is rendered.

“(f) LIMITATION OF APPLICABILITY TO COLLECT-ON-DELIVERY TRANSPORTATION.—The provisions of this section shall apply only in the case of collect-on-delivery transportation of household goods.

“(g) REVIEW BY SECRETARY.—Not later than 18 months after the effective date of this section, the Secretary shall complete a review of the dispute settlement program established under this section. If, after notice and opportunity for comment, the Secretary determines that changes are necessary to such program to ensure the fair and equitable resolution of disputes under this section, the Secretary shall implement such changes and transmit a report to Congress on such changes.

“§14709. Tariff reconciliation rules for motor carriers of property

“Subject to review and approval by the Board, motor carriers subject to jurisdiction under subchapter I of chapter 135 (other than motor carriers providing transportation of household goods) and shippers may resolve, by mutual consent, overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed upon rates, rules, or classifications in compliance with section 13702 or, with respect to transportation provided

before the effective date of this section, sections 10761 and 10762, as in effect on the day before the effective date of this section. Resolution of such claims among the parties shall not subject any party to the penalties for departing from a tariff.

“CHAPTER 149—CIVIL AND CRIMINAL PENALTIES

Sec.

“14901. General civil penalties.

“14902. Civil penalty for accepting rebates from carrier.

“14903. Tariff violations.

“14904. Additional rate violations.

“14905. Penalties for violations of rules relating to loading and unloading motor vehicles.

“14906. Evasion of regulation of carriers and brokers.

“14907. Recordkeeping and reporting violations.

“14908. Unlawful disclosure of information.

“14909. Disobedience to subpoenas.

“14910. General civil penalty when specific penalty not provided.

“14911. Punishment of corporation for violations committed by certain individuals.

“14912. Weight-bumping in household goods transportation.

“14913. Conclusiveness of rates in certain prosecutions.

“14914. Civil penalty procedures.

“§ 14901. General civil penalties

“(a) *REPORTING AND RECORDKEEPING.*—A person required to make a report to the Secretary or the Board, answer a question, or make, prepare, or preserve a record under this part concerning transportation subject to jurisdiction under subchapter I or III of chapter 135 or transportation by a foreign carrier registered under section 13902, or an officer, agent, or employee of that person that—

“(1) does not make the report;

“(2) does not specifically, completely, and truthfully answer the question;

“(3) does not make, prepare, or preserve the record in the form and manner prescribed;

“(4) does not comply with section 13901; or

“(5) does not comply with section 13902(c);

is liable to the United States for a civil penalty of not less than \$500 for each violation and for each additional day the violation continues; except that, in the case of a person who is not registered under this part to provide transportation of passengers, or an officer, agent, or employee of such person, that does not comply with section 13901 with respect to providing transportation of passengers, the amount of the civil penalty shall not be less than \$2,000 for each violation and for each additional day the violation continues.

“(b) *TRANSPORTATION OF HAZARDOUS WASTES.*—A person subject to jurisdiction under subchapter I of chapter 135, or an officer, agent, or employee of that person, and who is required to comply with section 13901 of this title but does not so comply with respect to the transportation of hazardous wastes as defined by the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Congress) shall be liable to the United States for a civil penalty not to exceed \$20,000 for each violation.

“(c) *FACTORS TO CONSIDER IN DETERMINING AMOUNT.*—In determining and negotiating the amount of a civil penalty under subsection (a) or (d) concerning transportation of household goods, the degree of culpability, any history of prior such conduct, the degree of harm to shipper or shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the proceeding, and such other matters as fairness may require shall be taken into account.

“(d) *PROTECTION OF HOUSEHOLD GOODS SHIPPERS.*—If a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 or a receiver or trustee of such carrier fails or refuses to comply with any regulation issued by the Secretary or the Board relating to protection of individual shippers, such carrier, receiver, or trustee is liable to the United States for a civil penalty of not less than \$1,000 for each violation and for each additional day during which the violation continues.

“(e) *VIOLATION RELATING TO TRANSPORTATION OF HOUSEHOLD GOODS.*—Any person that knowingly engages in or knowingly authorizes an agent or other person—

“(1) to falsify documents used in the transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 which evidence the weight of a shipment; or

“(2) to charge for accessorial services which are not performed or for which the carrier is not entitled to be compensated in any case in which such services are not reasonably necessary in the safe and adequate movement of the shipment; is liable to the United States for a civil penalty of not less than \$2,000 for each violation and of not less than \$5,000 for each subsequent violation. Any State may bring a civil action in the United States district courts to compel a person to pay a civil penalty assessed under this subsection.

“(f) *VENUE.*—Trial in a civil action under subsections (a) through (e) of this section is in the judicial district in which—

“(1) the carrier or broker has its principal office;

“(2) the carrier or broker was authorized to provide transportation or service under this part when the violation occurred;

“(3) the violation occurred; or

“(4) the offender is found.

Process in the action may be served in the judicial district of which the offender is an inhabitant or in which the offender may be found.

“(g) *BUSINESS ENTERTAINMENT EXPENSES.*—

“(1) *IN GENERAL.*—Any business entertainment expense incurred by a water carrier providing transportation subject to this part shall not constitute a violation of this part if that expense would not be unlawful if incurred by a person not subject to this part.

“(2) *COST OF SERVICE.*—Any business entertainment expense subject to paragraph (1) that is paid or incurred by a water carrier providing transportation subject to this part shall not be taken into account in determining the cost of service or the rate base for purposes of section 13702.

“§ 14902. Civil penalty for accepting rebates from carrier

“A person—

“(1) delivering property to a carrier providing transportation or service subject to jurisdiction under chapter 135 for transportation under this part or for whom that carrier will transport the property as consignor or consignee for that person from a State or territory or possession of the United States to another State or possession, territory, or to a foreign country; and

“(2) knowingly accepting or receiving by any means a rebate or offset against the rate for transportation for, or service of, that property contained in a tariff required under section 13702;

is liable to the United States for a civil penalty in an amount equal to 3 times the amount of money that person accepted or received as a rebate or offset and 3 times the value of other consideration accepted or received as a rebate or offset. In a civil action under this section, all money or other consideration received by the person during a period of 6 years before an action is brought under this section may be included in determining the amount of the penalty, and if that total amount is included, the penalty shall be 3 times that total amount.

“§ 14903. Tariff violations

“(a) CIVIL PENALTY FOR UNDERCHARGING AND OVERCHARGING.—A person that offers, grants, gives, solicits, accepts, or receives by any means transportation or service provided for property by a carrier subject to jurisdiction under chapter 135 at a rate different than the rate in effect under section 13702 is liable to the United States for civil penalty of not more than \$100,000 for each violation.

“(b) GENERAL CRIMINAL PENALTY.—A carrier providing transportation or service subject to jurisdiction under chapter 135 or an officer, director, receiver, trustee, lessee, agent, or employee of a corporation that is subject to jurisdiction under that chapter, that willfully does not observe its tariffs as required under section 13702, shall be fined under title 18 or imprisoned not more than 2 years, or both.

“(c) ACTIONS OF AGENTS AND EMPLOYEES.—When acting in the scope of their employment, the actions and omissions of persons acting for or employed by a carrier or shipper that is subject to this section are considered to be the actions and omissions of that carrier or shipper as well as that person.

“(d) VENUE.—Trial in a criminal action under this section is in the judicial district in which any part of the violation is committed or through which the transportation is conducted.

“§ 14904. Additional rate violations

“(a) REBATES BY AGENTS.—A person, or an officer, employee, or agent of that person, that—

“(1) offers, grants, gives, solicits, accepts, or receives a rebate for concession, in violation of a provision of this part related to motor carrier transportation subject to jurisdiction under subchapter I of chapter 135; or

“(2) by any means assists or permits another person to get transportation that is subject to jurisdiction under that sub-

chapter at less than the rate in effect for that transportation under section 13702, is liable to the United States for a civil penalty of \$200 for the first violation and \$250 for a subsequent violation.

“(b) UNDERCHARGING.—

“(1) FREIGHT FORWARDER.—A freight forwarder providing service subject to jurisdiction under subchapter III of chapter 135, or an officer, agent, or employee of that freight forwarder, that assists a person in getting, or willingly permits a person to get, service provided under that subchapter at less than the rate in effect for that service under section 13702, is liable to the United States for a civil penalty of not more than \$500 for the first violation and not more than \$2,000 for a subsequent violation.

“(2) OTHERS.—A person that by any means gets, or attempts to get, service provided under subchapter III of chapter 135 at less than the rate in effect for that service under section 13702, is liable to the United States for a civil penalty of not more than \$500 for the first violation and not more than \$2,000 for a subsequent violation.

“§ 14905. Penalties for violations of rules relating to loading and unloading motor vehicles

“(a) CIVIL PENALTIES.—Whoever knowingly authorizes, consents to, or permits a violation of subsection (a) or (b) of section 14103 or who knowingly violates subsection (a) of such section is liable to the United States for a civil penalty of not more than \$10,000 for each violation.

“(b) CRIMINAL PENALTIES.—Whoever knowingly violates section 14103(b) of this title shall be fined under title 18 or imprisoned not more than 2 years, or both.

“§ 14906. Evasion of regulation of carriers and brokers

“A person, or an officer, employee, or agent of that person, that by any means tries to evade regulation provided under this part for carriers or brokers is liable to the United States for a civil penalty of \$200 for the first violation and at least \$250 for a subsequent violation.

“§ 14907. Recordkeeping and reporting violations

“A person required to make a report to the Secretary or the Board, as applicable, answer a question, or make, prepare, or preserve a record under this part about transportation subject to jurisdiction under subchapter I or III of chapter 135, or an officer, agent, or employee of that person, that—

“(1) does not make that report;

“(2) does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary or Board, as applicable, requires the question to be answered;

“(3) does not make, prepare, or preserve that record in the form and manner prescribed;

“(4) falsifies, destroys, mutilates, or changes that report or record;

“(5) files a false report or record;

“(6) makes a false or incomplete entry in that record about a business related fact or transaction; or

“(7) makes, prepares, or preserves a record in violation of an applicable regulation or order of the Secretary or Board; is liable to the United States for a civil penalty of not more than \$5,000.

“§ 14908. Unlawful disclosure of information

“(a) *DISCLOSURE OF SHIPMENT AND ROUTING INFORMATION.*—

“(1) *VIOLATIONS.*—A carrier or broker providing transportation subject to jurisdiction under subchapter I, II, or III of chapter 135 or an officer, receiver, trustee, lessee, or employee of that carrier or broker, or another person authorized by that carrier or broker to receive information from that carrier or broker may not disclose to another person, except the shipper or consignee, and a person may not solicit, or receive, information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier or broker for transportation provided under this part without the consent of the shipper or consignee if that information may be used to the detriment of the shipper or consignee or may disclose improperly to a competitor the business transactions of the shipper or consignee.

“(2) *PENALTY.*—A person violating paragraph (1) of this subsection is liable to the United States for a civil penalty of not more than \$2,000.

“(b) *LIMITATION ON STATUTORY CONSTRUCTION.*—This part does not prevent a carrier or broker providing transportation subject to jurisdiction under chapter 135 from giving information—

“(1) in response to legal process issued under authority of a court of the United States or a State;

“(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

“(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

“§ 14909. Disobedience to subpoenas

“Whoever does not obey a subpoena or requirement of the Secretary or the Board to appear and testify or produce records shall be fined under title 18 or imprisoned not more than 1 year, or both.

“§ 14910. General civil penalty when specific penalty not provided

“When another civil penalty is not provided under this chapter, a person that violates a provision of this part or a regulation or order prescribed under this part, or a condition of a registration under this part related to transportation that is subject to jurisdiction under subchapter I or III of chapter 135 or a condition of a registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable to the United States for a civil penalty of \$500 for each violation. A separate violation occurs each day the violation continues.

“§ 14911. Punishment of corporation for violations committed by certain individuals

“An act or omission that would be a violation of this part if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier providing transportation or service subject to jurisdiction under chapter 135 that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual.

“§ 14912. Weight-bumping in household goods transportation

“(a) *WEIGHT-BUMPING DEFINED.*—For the purposes of this section, ‘weight-bumping’ means the knowing and willful making or securing of a fraudulent weight on a shipment of household goods which is subject to jurisdiction under subchapter I or III of chapter 135.

“(b) *PENALTY.*—Whoever has been found to have committed weight-bumping shall be fined under title 18 or imprisoned not more than 2 years, or both.

“§ 14913. Conclusiveness of rates in certain prosecutions

“When a carrier publishes or files a particular rate under section 13702 or participates in such a rate, the published or filed rate is conclusive proof against that carrier, its officers, and agents that it is the legal rate for that transportation or service in a proceeding begun under section 14902 or 14903. A departure, or offer to depart, from that published or filed rate is a violation of those sections.

“§ 14914. Civil penalty procedures

“(a) *IN GENERAL.*—After notice and an opportunity for a hearing, a person found by the Surface Transportation Board to have violated a provision of law that the Board carries out or a regulation prescribed under that law by the Board that is related to transportation which occurs under subchapter II of chapter 135 for which a civil penalty is provided, is liable to the United States for the civil penalty provided. The amount of the civil penalty shall be assessed by the Board by written notice. In determining the amount of the penalty, the Board shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

“(b) *COMPROMISE.*—The Board may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

“(c) *COLLECTION.*—If a person fails to pay an assessment of a civil penalty after it has become final, the Board may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

“(d) *REFUNDS.*—The Board may refund or remit a civil penalty collected under this section if—

“(1) application has been made for refund or remission of the penalty within 1 year from the date of payment; and

“(2) the Board finds that the penalty was unlawfully, improperly, or excessively imposed.”.

SEC. 104. MISCELLANEOUS MOTOR CARRIER PROVISIONS.

(a) *GRANTS TO STATES.*—Section 31102(b)(1) of title 49, United States Code, is amended—

- (1) by striking “and” at the end of subparagraph (O);
- (2) by striking the period at the end of subparagraph (P) and inserting in lieu thereof “; and”; and
- (3) by adding at the end the following:

“(Q) ensures that the State will cooperate in the enforcement of registration and financial responsibility requirements under sections 31140 and 31146, or regulations issued thereunder.”

(b) *TRANSPORT VEHICLES FOR OFF-ROAD, COMPETITION VEHICLES.*—Section 31111(b)(1) of such title is amended—

- (1) by striking “or” at the end of subparagraph (C);
- (2) by striking the period at the end of subparagraph (D) and inserting in lieu thereof a semicolon and “or”; and
- (3) by adding at the end thereof the following:

“(E) imposes a limitation of less than 46 feet on the distance from the kingpin to the center of the rear axle on trailers used exclusively or primarily in connection with motorsports competition events.”.

(c) *MULTIPLE INSURERS.*—Section 31138(c) of such title is amended by adding at the end the following new paragraph:

“(3) A motor carrier may obtain the required amount of financial responsibility from more than one source provided the cumulative amount is equal to the minimum requirements of this section.”.

(d) *MINIMUM FINANCIAL RESPONSIBILITY REQUIREMENTS WITH RESPECT TO CERTAIN TRANSPORTATION SERVICE.*—Section 31138(e) is amended—

- (1) by striking “or” at the end of paragraph (2);
- (2) by striking the period at the end of paragraph (3) and inserting in lieu thereof “; or”; and
- (3) by adding at the end the following:

“(4) providing transportation service within a transit service area under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under section 5307, 5310, or 5311, including transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities; except that, in any case in which the transit service area is located in more than 1 State, the minimum level of financial responsibility for such motor vehicle will be at least the highest level required for any of such States.”.

(e) *TRANSPORTERS OF PROPERTY.*—Section 31139(e) of such title is amended by adding at the end the following:

“(3) A motor carrier may obtain the required amount of financial responsibility from more than one source provided the cumulative amount is equal to the minimum requirements of this section.”.

(f) *COMMERCIAL MOTOR VEHICLE DEFINED.*—Section 31132(1) of such title is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by striking subparagraph (B) and inserting in lieu thereof the following:

“(B) is designed or used to transport passengers for compensation, but excluding vehicles providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places;

“(C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or”.

(g) SAFETY FITNESS OF OWNERS AND OPERATORS.—Section 31144 of such title is amended—

(1) the first sentence of subsection (a) by striking “In cooperation with the Interstate Commerce Commission, the” and inserting in lieu thereof “The”;

(2) in such sentence by striking “sections 10922 and 10923” and inserting in lieu thereof “section 13902”;

(3) in subsection (a)(1)(C) by striking “and the Commission”; and

(4) by striking subsection (b) and inserting in lieu thereof the following:

“(b) FINDINGS AND ACTION ON REGISTRATIONS.—The Secretary shall find that a person seeking to register as a motor carrier is unfit if such person does not meet the safety fitness requirements established under subsection (a) and shall not register such person.”.

(h) SELF-INSURANCE RULES.—The Secretary of Transportation shall continue to enforce the rules and regulations of the Interstate Commerce Commission, as in effect on July 1, 1995, governing the qualifications for approval of a motor carrier as a self-insurer, until such time as the Secretary finds it in the public interest to revise such rules. The revised rules must provide for—

(1) continued ability of motor carriers to qualify as self-insurers; and

(2) the continued qualification of all carriers then so qualified under the terms and conditions set by the Interstate Commerce Commission or Secretary at the time of qualification.

SEC. 105. CREDITABILITY OF ANNUAL LEAVE FOR PURPOSES OF MEETING MINIMUM ELIGIBILITY REQUIREMENTS FOR AN IMMEDIATE ANNUITY.

(a) IN GENERAL.—An employee of the Interstate Commerce Commission who is separated from Government service pursuant to the abolition of that agency under section 101 shall, upon appropriate written application, be given credit, for purposes of determining eligibility for and computing the amount of any annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, for accrued annual leave standing to such employee's credit at the time of separation.

(b) LIMITATION AND OTHER CONDITIONS.—Any regulations necessary to carry out this section shall be prescribed by the Office of Personnel Management. Such regulations shall include provisions—

(1) defining the types of leave for which credit may be given under this section (such definition to be similar to the cor-

responding provisions of the regulations under section 351.608(c)(2) of title 5 of the Code of Federal Regulations, as in effect on the date of the enactment of this Act);

(2) limiting the amount of accrued annual leave which may be used for the purposes specified in subsection (a) to the minimum period of time necessary in order to permit such employee to attain first eligibility for an immediate annuity under section 8336, 8412, or 8414 of title 5, United States Code (in a manner similar to the corresponding provisions of the regulations referred to in paragraph (1));

(3) under which contributions (or arrangements for the making of contributions) shall be made so that—

(A) employee contributions for any period of leave for which retirement credit may be obtained under this section shall be made by the employee; and

(B) Government contributions with respect to such period shall similarly be made by the Interstate Commerce Commission or other appropriate officer or entity (out of appropriations otherwise available for such contributions); and

(4) under which subsection (a) shall not apply with respect to an employee who declines a reasonable offer of employment in another position in the Department of Transportation made under this Act or any amendment made by this Act.

(c) **EXTINGUISHMENT OF ELIGIBILITY FOR LUMP-SUM PAYMENT.**—A lump-sum payment under section 5551 of title 5, United States Code, shall not be payable with respect to any leave for which retirement credit is obtained under this section.

SEC. 106. PIPELINE CARRIER PROVISIONS.

(a) **AMENDMENT TO TITLE 49.**—Subtitle IV of title 49, United States Code, is further amended by adding at the end the following:

“PART C—PIPELINE CARRIERS

“CHAPTER 151—GENERAL PROVISIONS

“CHAPTER 151—GENERAL PROVISIONS

“Sec.

“15101. Transportation policy.

“15102. Definitions.

“15103. Remedies as cumulative.

“§ 15101. Transportation policy

“(a) **IN GENERAL.**—To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the national defense, it is the policy of the United States Government to oversee the modes of transportation and in overseeing those modes—

“(1) to recognize and preserve the inherent advantage of each mode of transportation;

“(2) to promote safe, adequate, economical, and efficient transportation;

“(3) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

“(4) to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices;

“(5) to cooperate with each State and the officials of each State on transportation matters; and

“(6) to encourage fair wages and working conditions in the transportation industry.

“(b) ADMINISTRATION TO CARRY OUT POLICY.—This part shall be administered and enforced to carry out the policy of this section.

“§ 15102. Definitions

“In this part—

“(1) BOARD.—The term ‘Board’ means the Surface Transportation Board.

“(2) PIPELINE CARRIER.—The term ‘pipeline carrier’ means a person providing pipeline transportation for compensation.

“(3) RATE.—The term ‘rate’ means a rate or charge for transportation.

“(4) STATE.—The term ‘State’ means a State of the United States and the District of Columbia.

“(5) TRANSPORTATION.—The term ‘transportation’ includes—

“(A) property, facilities, instrumentalities, or equipment of any kind related to the movement of property, regardless of ownership or an agreement concerning use; and

“(B) services related to that movement, including receipt, delivery, transfer in transit, storage, handling, and interchange of property.

“(6) UNITED STATES.—The term ‘United States’ means the States of the United States and the District of Columbia.

“§ 15103. Remedies as cumulative

“Except as otherwise provided in this part, the remedies provided under this part are in addition to remedies existing under another law or common law.

“CHAPTER 153—JURISDICTION

“CHAPTER 153—JURISDICTION

“Sec.

“15301. General pipeline jurisdiction.

“15302. Authority to exempt pipeline carrier transportation.

“§ 15301. General pipeline jurisdiction

“(a) IN GENERAL.—The Board has jurisdiction over transportation by pipeline, or by pipeline and railroad or water, when transporting a commodity other than water, gas, or oil. Jurisdiction under this subsection applies only to transportation in the United States between a place in—

“(1) a State and a place in another State;

“(2) the District of Columbia and another place in the District of Columbia;

“(3) a State and a place in a territory or possession of the United States;

“(4) a territory or possession of the United States and a place in another such territory or possession;

“(5) a territory or possession of the United States and another place in the same territory or possession;

“(6) the United States and another place in the United States through a foreign country; or

“(7) the United States and a place in a foreign country.

“(b) *NO JURISDICTION OVER INTRASTATE TRANSPORTATION.*—The Board does not have jurisdiction under subsection (a) over the transportation of property, or the receipt, delivery, storage, or handling of property, entirely in a State (other than the District of Columbia) and not transported between a place in the United States and a place in a foreign country except as otherwise provided in this part.

“(c) *PROTECTION OF STATES POWERS.*—This part does not affect the power of a State, in exercising its police power, to require reasonable intrastate transportation by carriers providing transportation subject to the jurisdiction of the Board under this chapter unless the State requirement is inconsistent with an order of the Board issued under this part or is prohibited under this part.

“§ 15302. Authority to exempt pipeline carrier transportation

“(a) *IN GENERAL.*—In a matter related to a pipeline carrier providing transportation subject to jurisdiction under this chapter, the Board shall exempt a person, class of persons, or a transaction or service when the Board finds that the application, in whole or in part, of a provision of this part—

“(1) is not necessary to carry out the transportation policy of section 15101; and

“(2) either (A) the transaction or service is of limited scope, or (B) the application, in whole or in part, of the provision is not needed to protect shippers from the abuse of market power.

“(b) *INITIATION OF PROCEEDING.*—The Board may, where appropriate, begin a proceeding under this section on its own initiative or an interested party.

“(c) *PERIOD OF EXEMPTION.*—The Board may specify the period of time during which an exemption granted under this section is effective.

“(d) *REVOCATION.*—The Board may revoke an exemption, to the extent it specifies, when it finds that application, in whole or in part, of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 15101.

“CHAPTER 155—RATES

“Sec.

“15501. Standards for pipeline rates, classifications, through routes, rules, and practices.

“15502. Authority for pipeline carriers to establish rates, classifications, rules, and practices.

“15503. Authority and criteria: rates, classifications, rules, and practices prescribed by Board.

“15504. Government traffic.

“15505. Prohibition against discrimination by pipeline carriers.

“15506. Facilities for interchange of traffic.

“§ 15501. Standards for pipeline rates, classifications, through routes, rules, and practices

“(a) *REASONABLENESS.*—A rate, classification, rule, or practice related to transportation or service provided by a pipeline carrier subject to this part must be reasonable. A through route established by such a carrier must be reasonable.

“(b) *NONDISCRIMINATION.*—A pipeline carrier providing transportation subject to this part may not discriminate in its rates against a connecting line of any other pipeline, rail, or water carrier providing transportation subject to this subtitle or unreasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.

“§ 15502. Authority for pipeline carriers to establish rates, classifications, rules, and practices

“A pipeline carrier providing transportation or service subject to this part shall establish—

“(1) rates and classifications for transportation and service it may provide under this part; and

“(2) rules and practices on matters related to that transportation or service.

“§ 15503. Authority and criteria: rates, classifications, rules, and practices prescribed by Board

“(a) *IN GENERAL.*—When the Board, after a full hearing, decides that a rate charged or collected by a pipeline carrier for transportation subject to this part, or that a classification, rule, or practice of that carrier, does or will violate this part, the Board may prescribe the rate, classification, rule, or practice to be followed. In prescribing the rate, classification, rule, or practice, the Board may utilize rate reasonableness procedures that provide an effective simulation of a market-based price for a stand alone pipeline. The Board may order the carrier to stop the violation. When a rate, classification, rule, or practice is prescribed under this subsection, the affected carrier may not publish, charge, or collect a different rate and shall adopt the classification and observe the rule or practice prescribed by the Board.

“(b) *FACTORS TO CONSIDER.*—When prescribing a rate, classification, rule, or practice for transportation or service by a pipeline carrier, the Board shall consider, among other factors—

“(1) the effect of the prescribed rate, classification, rule, or practice on the movement of traffic by that carrier;

“(2) the need for revenues that are sufficient, under honest, economical, and efficient management, to let the carrier provide that transportation or service; and

“(3) the availability of other economic transportation alternatives.

“(c) *PROCEEDING.*—The Board may begin a proceeding under this section on complaint. A complaint under this section must contain a full statement of the facts and the reasons for the complaint and must be made under oath.

“§ 15504. Government traffic

“A pipeline carrier providing transportation or service for the United States Government may transport property for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply when transportation for the United States Government can be obtained from a carrier lawfully operating in the area where the transportation would be provided.

“§ 15505. Prohibition against discrimination by pipeline carriers

A pipeline carrier providing transportation or service subject to this part may not subject a person, place, port, or type of traffic to unreasonable discrimination.

“§ 15506. Facilities for interchange of traffic

“A pipeline carrier providing transportation subject to this part shall provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of property to and from, its respective line and a connecting line of a pipeline, rail, or water carrier under this subtitle.

“CHAPTER 157—OPERATIONS OF CARRIERS*“CHAPTER 157—OPERATIONS OF CARRIERS**“SUBCHAPTER A—GENERAL REQUIREMENTS*

“15701. Providing transportation and service.

“SUBCHAPTER B—OPERATIONS OF CARRIERS

“15721. Definitions.

“15722. Records: form; inspection; preservation.

“15723. Reports by carriers, lessors, and associations.

*“SUBCHAPTER A—GENERAL REQUIREMENTS***“§ 15701. Providing transportation and service**

“(a) SERVICE ON REASONABLE REQUEST.—A pipeline carrier providing transportation or service under this part shall provide the transportation or service on reasonable request.

“(b) RATES AND OTHER TERMS.—A pipeline carrier shall also provide to any person, on request, the carrier’s rates and other service terms. The response by a pipeline carrier to a request for the carrier’s rates and other service terms shall be—

“(1) in writing and forwarded to the requesting person promptly after receipt of the request; or

“(2) promptly made available in electronic form.

“(c) LIMITATION ON RATE INCREASES AND CHANGES TO SERVICE TERMS.—A pipeline carrier may not increase any common carrier rates or change any common carrier service terms unless 20 days have expired after written or electronic notice is provided to any person who, within the previous 12 months—

“(1) has requested such rates or terms under subsection (b);

or

“(2) has made arrangements with the carrier for a shipment that would be subject to such increased rates or changed terms.

“(d) *PROVISION OF SERVICE.*—A pipeline carrier shall provide transportation or service in accordance with the rates and service terms, and any changes thereto, as published or otherwise made available under subsection (b) or (c).

“(e) *REGULATIONS.*—The Board shall, by regulation, establish rules to implement this section. The regulations shall provide for immediate disclosure and dissemination of rates and service terms, including classifications, rules, and practices, and their effective dates. The regulations may modify the 20-day period specified in subsection (c). Final regulations shall be adopted by the Board not later than 180 days after the effective date of this section.

“SUBCHAPTER B—OPERATIONS OF CARRIERS

“§ 15721. **Definitions**

“In this subchapter, the following definitions apply:

“(1) *CARRIER, LESSOR.*—The terms ‘carrier’ and ‘lessor’ include a receiver or trustee of a pipeline carrier and lessor, respectively.

“(2) *LESSOR.*—The term ‘lessor’ means a person owning a pipeline that is leased to and operated by a carrier providing transportation under this part.

“(3) *ASSOCIATION.*—The term ‘association’ means an organization maintained by or in the interest of a group of pipeline carriers that performs a service, or engages in activities, related to transportation under this part.

“§ 15722. **Records: form; inspection; preservation**

“(a) *FORM OF RECORDS.*—The Board may prescribe the form of records required to be prepared or compiled under this subchapter by pipeline carriers and lessors, including records related to movement of traffic and receipts and expenditures of money.

“(b) *INSPECTION.*—The Board, or an employee designated by the Board, may on demand and display of proper credentials—

“(1) inspect and examine the lands, buildings, and equipment of a pipeline carrier or lessor; and

“(2) inspect and copy any record of—

“(A) a pipeline carrier, lessor, or association; and

“(B) a person controlling, controlled by, or under common control with a pipeline carrier if the Board considers inspection relevant to that person’s relation to, or transaction with, that carrier.

“(c) *PRESERVATION PERIOD.*—The Board may prescribe the time period during which operating, accounting, and financial records must be preserved by pipeline carriers and lessors.

“§ 15723. **Reports by carriers, lessors, and associations**

“(a) *FILING OF REPORTS.*—The Board may require pipeline carriers, lessors, and associations, or classes of them as the Board may prescribe, to file annual, periodic, and special reports with the Board containing answers to questions asked by it.

“(b) UNDER OATH.—Any report under this section shall be made under oath.

“CHAPTER 159—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

“CHAPTER 159—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

“Sec.

“15901. General authority.

“15902. Enforcement by the Board.

“15903. Enforcement by the Attorney General.

“15904. Rights and remedies of persons injured by certain carriers.

“15905. Limitation on actions by and against pipeline carriers.

“15906. Liability of pipeline carriers under receipts and bills of lading.

“15907. Liability when property is delivered in violation of routing instructions.

“§ 15901. General authority

“(a) INVESTIGATION; COMPLIANCE ORDER.—Except as otherwise provided in this part, the Board may begin an investigation under this part only on complaint. If the Board finds that a pipeline carrier is violating this part, the Board shall take appropriate action to compel compliance with this part. The Board shall provide the carrier notice of the investigation and an opportunity for a proceeding.

“(b) COMPLAINT.—A person, including a governmental authority, may file with the Board, a complaint about a violation of this part by a pipeline carrier providing transportation or service subject to this part. The complaint must state the facts that are the subject of the violation. The Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Board may not dismiss a complaint made against a pipeline carrier providing transportation subject to this part because of the absence of direct damage to the complainant.

“(c) AUTOMATIC DISMISSAL.—A formal investigative proceeding begun by the Board under subsection (a) is dismissed automatically unless it is concluded by the Board with administrative finality by the end of the 3d year after the date on which it was begun.

“§ 15902. Enforcement by the Board

“The Board may bring a civil action to enforce an order of the Board, except a civil action to enforce an order for the payment of money, when it is violated by a pipeline carrier providing transportation subject to this part.

“§ 15903. Enforcement by the Attorney General

“(a) ON BEHALF OF BOARD.—The Attorney General may, and on request of the Board shall, bring court proceedings to enforce this part or a regulation or order of the Board and to prosecute a person violating this part or a regulation or order of the Board issued under this part.

“(b) ON BEHALF OF OTHERS.—The United States Government may bring a civil action on behalf of a person to compel a pipeline carrier providing transportation or service subject to this part to provide that transportation or service to that person in compliance with this part at the same rate charged, or on conditions as favor-

able as those given by the carrier, for like traffic under similar conditions to another person.

“§ 15904. Rights and remedies of persons injured by pipeline carriers

“(a) *ENFORCEMENT OF ORDERS.*—A person injured because a pipeline carrier providing transportation or service subject to this part does not obey an order of the Board, except an order for the payment of money, may bring a civil action to enforce that order under this subsection.

“(b) *LIABILITY OF CARRIER.*—

“(1) *EXCESSIVE CHARGES.*—A pipeline carrier providing transportation subject to this part is liable to a person for amounts charged that exceed the applicable rate for the transportation.

“(2) *DAMAGES.*—A pipeline carrier providing transportation subject to this part is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part.

“(c) *COMPLAINTS.*—

“(1) *FILING.*—A person may file a complaint with the Board under section 11501(b) or bring a civil action under subsection (b) to enforce liability against a pipeline carrier providing transportation subject to this part.

“(2) *PAYMENT DEADLINE.*—When the Board makes an award under subsection (b), the Board shall order the carrier to pay the amount awarded by a specific date. The Board may order a carrier providing transportation subject to this part to pay damages only when the proceeding is on complaint. The person for whose benefit an order of the Board requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier does not pay the amount awarded by the date payment was ordered to be made.

“(d) *CIVIL ACTIONS.*—

“(1) *COMPLAINT.*—When a person begins a civil action under subsection (b) to enforce an order of the Board requiring the payment of damages by a pipeline carrier providing transportation subject to this part, the text of the order of the Board must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district in which the plaintiff resides or in which the principal operating office of the carrier is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

“(2) *ATTORNEY’S FEES.*—The district court shall award a reasonable attorney’s fee as a part of the damages for which a carrier is found liable under this subsection. The district court shall tax and collect that fee as a part of the costs of the action.

“§ 15905. Limitation on actions by and against pipeline carriers

“(a) *IN GENERAL.*—A pipeline carrier providing transportation or service subject to this part must begin a civil action to recover charges for transportation or service provided by the carrier within 3 years after the claim accrues.

“(b) *OVERCHARGES.*—A person must begin a civil action to recover overcharges under section 15904(b)(1) within 3 years after the claim accrues. If an election to file a complaint with the Board is made under section 15904(c)(1), the complaint must be filed within 3 years after the claim accrues.

“(c) *DAMAGES.*—A person must file a complaint with the Board to recover damages under section 15904(b)(2) within 2 years after the claim accrues.

“(d) *EXTENSIONS.*—The limitation periods under subsection (b) are extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsection (b) and the 2-year period under subsection (c) are extended for 90 days from the time the carrier begins a civil action under subsection (a) to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

“(e) *PAYMENT.*—A person must begin a civil action to enforce an order of the Board against a carrier for the payment of money within one year after the date the order required the money to be paid.

“(f) *GOVERNMENT TRANSPORTATION.*—This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the date of—

“(1) payment of the rate for the transportation or service involved,

“(2) subsequent refund for overpayment of that rate, or

“(3) deduction made under section 3726 of title 31,

whichever is later.

“(g) *ACCRUAL DATE.*—A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

“§ 15906. Liability of pipeline carriers under receipts and bills of lading

“(a) *GENERAL LIABILITY.*—A pipeline carrier providing transportation or service subject to this part shall issue a receipt or bill of lading for property it receives for transportation under this part. That carrier and any other carrier that delivers the property and is providing transportation or service subject to jurisdiction under this part are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this subsection is for the actual loss or injury to the property caused by the carrier over whose line or route the property is transported in the United States

or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading. Failure to issue a receipt or bill of lading does not affect the liability of a carrier.

“(b) *APPORTIONMENT.*—The carrier issuing the receipt or bill of lading under subsection (a) or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

“(c) *CIVIL ACTIONS.*—A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State, through which the defendant carrier operates a line or route.

“(d) *MINIMUM PERIOD FOR FILING CLAIMS.*—A pipeline carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice. For the purposes of this subsection—

“(1) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

“(2) communications received from a carrier’s insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reasons for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

“CHAPTER 161—CIVIL AND CRIMINAL PENALTIES

“CHAPTER 161—CIVIL AND CRIMINAL PENALTIES

“Sec.

“16101. General civil penalties.

“16102. Recordkeeping and reporting violations.

“16103. Unlawful disclosure of information.

“16104. Disobedience to subpoenas.

“16105. General criminal penalty when specific penalty not provided.

“16106. Punishment of corporation for violations committed by certain individuals.

“§ 16101. General civil penalties

“(a) *IN GENERAL.*—Except as otherwise provided in this section, a pipeline carrier providing transportation subject to this part, an officer or agent of that carrier, or a receiver, trustee, lessee, or agent of one of them, knowingly violating this part or an order of the Board under this part is liable to the United States for a civil penalty of not more than \$5,000 for each violation. Liability under this

subsection is incurred for each distinct violation. A separate violation occurs for each day the violation continues.

“(b) *RECORDKEEPING AND REPORTING.*—

“(1) *RECORDS.*—A person required under chapter 157 to make, prepare, preserve, or submit to the Board a record concerning transportation subject to this part that does not make, prepare, preserve, or submit that record as required under that chapter, is liable to the United States for a civil penalty of \$500 for each violation.

“(2) *INSPECTION.*—A carrier providing transportation subject to this part, and a lessor, receiver, or trustee of that carrier, violating section 15722, is liable to the United States for a civil penalty of \$100 for each violation.

“(3) *REPORTS.*—A carrier providing transportation subject to the jurisdiction of the Board under this part, a lessor, receiver, or trustee of that carrier, and an officer, agent, or employee of one of them, required to make a report to the Board or answer a question that does not make the report or does not specifically, completely, and truthfully answer the question, is liable to the United States for a civil penalty of \$100 for each violation.

“(4) *CONTINUED VIOLATION.*—A separate violation occurs for each day a violation under this subsection continues.

“(d) *VENUE.*—Trial in a civil action under this section is in the judicial district in which the carrier has its principal operating office.

“§ 16102. Recordkeeping and reporting violations

“A person required to make a report to the Board, or make, prepare, or preserve a record, under chapter 157 about transportation subject to this part that knowingly and willfully—

“(1) makes a false entry in the report or record,

“(2) destroys, mutilates, changes, or by another means falsifies the record,

“(3) does not enter business related facts and transactions in the record,

“(4) makes, prepares, or preserves the record in violation of a regulation or order of the Board, or

“(5) files a false report or record with the Board,

shall be fined under title 18 or imprisoned not more than 2 years, or both.

“§ 16103. Unlawful disclosure of information

“(a) *GENERAL PROHIBITION.*—A pipeline carrier providing transportation subject to this part, or an officer, agent, or employee of that carrier, or another person authorized to receive information from that carrier, that knowingly discloses to another person, except the shipper or consignee, or a person who solicits or knowingly receives information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation provided under this part without the consent of the shipper or consignee, if that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee,

is liable to the United States for a civil penalty of not more than \$1,000.

“(b) LIMITATION ON STATUTORY CONSTRUCTION.—This part does not prevent a pipeline carrier providing transportation under this part from giving information—

“(1) in response to legal process issued under authority of a court of the United States or a State;

“(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

“(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

“(c) BOARD EMPLOYEE.—An employee of the Board delegated to make an inspection or examination under section 15722 who knowingly discloses information acquired during that inspection or examination, except as directed by the Board, a court, or a judge of that court, shall be fined under title 18 or imprisoned for not more than 6 months, or both.

“§ 16104. Disobedience to subpoenas

“Whoever does not obey a subpoena or requirement of the Board to appear and testify or produce records shall be fined under title 18 or imprisoned not more than 1 year, or both.

“§ 16105. General criminal penalty when specific penalty not provided

“When another criminal penalty is not provided under this chapter, a pipeline carrier providing transportation subject to this part, and when that carrier is a corporation, a director or officer of the corporation, or a receiver, trustee, lessee, or person acting for or employed by the corporation that, alone or with another person, willfully violates this part or an order prescribed under this part, shall be fined under title 18 or imprisoned not more than 2 years, or both. A separate violation occurs each day a violation of this part continues.

“§ 16106. Punishment of corporation for violations committed by certain individuals

“An act or omission that would be a violation of this subtitle if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a pipeline carrier providing transportation or service subject to this part that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual.”.

(b) GAO REPORT.—Within 3 years after the effective date of this Act, the Comptroller General shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report regarding the impact of regulations under part C of title 49, United States Code, on the competitiveness of pipelines and recommend whether to continue, revise, or sunset such regula-

tions. Congress shall take into account the findings of this report when considering the Board's reauthorization.

TITLE II—SURFACE TRANSPORTATION BOARD

SEC. 201. TITLE 49 AMENDMENT.

(a) AMENDMENT.—Subtitle I of title 49, United States Code, is amended by adding at the end the following new chapter:

“CHAPTER 7—SURFACE TRANSPORTATION BOARD

“SUBCHAPTER I—ESTABLISHMENT

“Sec.

“701. Establishment of Board.

“702. Functions.

“703. Administrative provisions.

“704. Annual report.

“705. Authorization of appropriations.

“706. Reporting official action.

“SUBCHAPTER II—ADMINISTRATIVE

“721. Powers.

“722. Board action.

“723. Service of notice in Board proceedings.

“724. Service of process in court proceedings.

“725. Administrative support.

“726. Railroad-Shipper Transportation Advisory Council.

“727. Definitions.

“SUBCHAPTER I—ESTABLISHMENT

“§ 701. Establishment of Board

“(a) ESTABLISHMENT.—There is hereby established within the Department of Transportation the Surface Transportation Board.

“(b) MEMBERSHIP.—(1) The Board shall consist of 3 members, to be appointed by the President, by and with the advice and consent of the Senate. Not more than 2 members may be appointed from the same political party.

“(2) At any given time, at least 2 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation or transportation regulation, and at least one member shall be an individual with professional or business experience (including agriculture) in the private sector.

“(3) The term of each member of the Board shall be 5 years and shall begin when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified, but for a period not to exceed one year. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

“(4) On the effective date of this section, the members of the Interstate Commerce Commission serving unexpired terms on the date of the enactment of the ICC Termination Act of 1995 shall be-

come members of the Board, to serve for a period of time equal to the remainder of the term for which they were originally appointed to the Interstate Commerce Commission. Any member of the Interstate Commerce Commission whose term expires on December 31, 1995, shall become a member of the Board, subject to paragraph (3).

“(5) No individual may serve as a member of the Board for more than 2 terms. In the case of an individual who becomes a member of the Board pursuant to paragraph (4), or an individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, such individual may not be appointed for more than one additional term.

“(6) A member of the Board may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.

“(7) A vacancy in the membership of the Board does not impair the right of the remaining members to exercise all of the powers of the Board. The Board may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.

“(c) CHAIRMAN.—(1) There shall be at the head of the Board a Chairman, who shall be designated by the President from among the members of the Board. The Chairman shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5.

“(2) Subject to the general policies, decisions, findings, and determinations of the Board the Chairman shall be responsible for administering the Board. The Chairman may delegate the powers granted under this paragraph to an officer, employee, or office of the Board. The Chairman shall—

“(A) appoint and supervise, other than regular and full time employees in the immediate offices of another member, the officers and employees of the Board, including attorneys to provide legal aid and service to the Board and its members, and to represent the Board in any case in court;

“(B) appoint the heads of offices with the approval of the Board;

“(C) distribute Board business among officers and employees and offices of the Board;

“(D) prepare requests for appropriations for the Board and submit those requests to the President and Congress with the prior approval of the Board; and

“(E) supervise the expenditure of funds allocated by the Board for major programs and purposes.

“§ 702. Functions

“Except as otherwise provided in the ICC Termination Act of 1995, or the amendments made thereby, the Board shall perform all functions that, immediately before the effective date of such Act, were functions of the Interstate Commerce Commission or were performed by any officer or employee of the Interstate Commerce Commission in the capacity as such officer or employee.

“§ 703. Administrative provisions

“(a) *EXECUTIVE REORGANIZATION.*—Chapter 9 of title 5, United States Code, shall apply to the Board in the same manner as it does to an independent regulatory agency, and the Board shall be an establishment of the United States Government.

“(b) *OPEN MEETINGS.*—For purposes of section 552b of title 5, United States Code, the Board shall be deemed to be an agency.

“(c) *INDEPENDENCE.*—In the performance of their functions, the members, employees, and other personnel of the Board shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department of Transportation.

“(d) *REPRESENTATION BY ATTORNEYS.*—Attorneys designated by the Chairman of the Board may appear for, and represent the Board in, any civil action brought in connection with any function carried out by the Board pursuant to this chapter or subtitle IV or as otherwise authorized by law.

“(e) *ADMISSION TO PRACTICE.*—Subject to section 500 of title 5, the Board may regulate the admission of individuals to practice before it and may impose a reasonable admission fee.

“(f) *BUDGET REQUESTS.*—In each annual request for appropriations by the President, the Secretary of Transportation shall identify the portion thereof intended for the support of the Board and include a statement by the Board—

“(1) showing the amount requested by the Board in its budgetary presentation to the Secretary and the Office of Management and Budget; and

“(2) an assessment of the budgetary needs of the Board.

“(g) *DIRECT TRANSMITTAL TO CONGRESS.*—The Board shall transmit to Congress copies of budget estimates, requests, and information (including personnel needs), legislative recommendations, prepared testimony for congressional hearings, and comments on legislation at the same time they are sent to the Secretary of Transportation. An officer of an agency may not impose conditions on or impair communications by the Board with Congress, or a committee or member of Congress, about the information.

“§ 704. Annual report

“The Board shall annually transmit to the Congress a report on its activities.

“§ 705. Authorization of appropriations

“There are authorized to be appropriated for the activities of the Board—

“(1) \$8,421,000 for fiscal year 1996;

“(2) \$12,000,000 for fiscal year 1997; and

“(3) \$12,000,000 for fiscal year 1998.

“§ 706. Reporting official action

“(a) *REPORTS ON PROCEEDINGS.*—The Board shall make a written report of each proceeding conducted on complaint or on its own initiative and furnish a copy to each party to that proceeding. The report shall include the findings, conclusions, and the order of the Board and, if damages are awarded, the findings of fact supporting

the award. The Board may have its reports published for public use. A published report of the Board is competent evidence of its contents.

“(b) SPECIAL RULES FOR MATTERS RELATED TO RAIL CARRIERS.—(1) When action of the Board in a matter related to a rail carrier is taken by the Board, an individual member of the Board, or another individual or group of individuals designated to take official action for the Board, the written statement of that action (including a report, order, decision and order, vote, notice, letter, policy statements, or regulation) shall indicate—

“(A) the official designation of the individual or group taking the action;

“(B) the name of each individual taking, or participating in taking, the action; and

“(C) the vote or position of each participating individual.

“(2) If an individual member of a group taking an official action referred to in paragraph (1) does not participate in it, the written statement of the action shall indicate that the member did not participate. An individual participating in taking an official action is entitled to express the views of that individual as part of the written statement of the action. In addition to any publication of the written statement, it shall be made available to the public under section 552(a) of title 5.

“SUBCHAPTER II—ADMINISTRATIVE

“§ 721. Powers

“(a) IN GENERAL.—The Board shall carry out this chapter and subtitle IV. Enumeration of a power of the Board in this chapter or subtitle IV does not exclude another power the Board may have in carrying out this chapter or subtitle IV. The Board may prescribe regulations in carrying out this chapter and subtitle IV.

“(b) INQUIRIES, REPORTS, AND ORDERS.—The Board may—

“(1) inquire into and report on the management of the business of carriers providing transportation and services subject to subtitle IV;

“(2) inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers to the extent that the business of that person is related to the management of the business of that carrier;

“(3) obtain from those carriers and persons information the Board decides is necessary to carry out subtitle IV; and

“(4) when necessary to prevent irreparable harm, issue an appropriate order without regard to subchapter II of chapter 5 of title 5.

“(c) SUBPOENA WITNESSES.—(1) The Board may subpoena witnesses and records related to a proceeding of the Board from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Board, or a party to a proceeding before the Board, may petition a court of the United States to enforce that subpoena.

“(2) The district courts of the United States have jurisdiction to enforce a subpoena issued under this section. Trial is in the district

in which the proceeding is conducted. The court may punish a refusal to obey a subpoena as a contempt of court.

“(d) DEPOSITIONS.—(1) In a proceeding, the Board may take the testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding pending before the Board may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

“(2) If a witness fails to be deposed or to produce records under paragraph (1), the Board may subpoena the witness to take a deposition, produce the records, or both.

“(3) A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

“(4) Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

“(5) The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

“(6) The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Board or agreed on by the parties by written stipulation filed with the Board. A deposition shall be filed with the Board promptly.

“(e) WITNESS FEES.—Each witness summoned before the Board or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

“§ 722. Board action

“(a) EFFECTIVE DATE OF ACTIONS.—Unless otherwise provided in subtitle IV, the Board may determine, within a reasonable time, when its actions, other than an action ordering the payment of money, take effect.

“(b) TERMINATING AND CHANGING ACTIONS.—An action of the Board remains in effect under its own terms or until superseded. The Board may change, suspend, or set aside any such action on notice. Notice may be given in a manner determined by the Board. A court of competent jurisdiction may suspend or set aside any such action.

“(c) RECONSIDERING ACTIONS.—The Board may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances—

“(1) reopen a proceeding;

“(2) grant rehearing, reargument, or reconsideration of an action of the Board; or

“(3) change an action of the Board.

An interested party may petition to reopen and reconsider an action of the Board under this subsection under regulations of the Board.

“(d) *FINALITY OF ACTIONS.*—Notwithstanding subtitle IV, an action of the Board under this section is final on the date on which it is served, and a civil action to enforce, enjoin, suspend, or set aside the action may be filed after that date.

“§ 723. Service of notice in Board proceedings

“(a) *DESIGNATION OF AGENT.*—A carrier providing transportation subject to the jurisdiction of the Board under subtitle IV shall designate an agent in the District of Columbia, on whom service of notices in a proceeding before, and of actions of, the Board may be made.

“(b) *FILING AND CHANGING DESIGNATIONS.*—A designation under subsection (a) shall be in writing and filed with the Board. The designation may be changed at any time in the same manner as originally made.

“(c) *SERVICE OF NOTICE.*—Except as otherwise provided, notices of the Board shall be served on its designated agent at the office or usual place of residence in the District of Columbia of that agent. A notice of action of the Board shall be served immediately on the agent or in another manner provided by law. If that carrier does not have a designated agent, service may be made by posting the notice in the office of the Board.

“(d) *SPECIAL RULE FOR RAIL CARRIERS.*—In a proceeding involving the lawfulness of classifications, rates, or practices of a rail carrier that has not designated an agent under this section, service of notice of the Board on an attorney in fact for the carrier constitutes service of notice on the carrier.

“§ 724. Service of process in court proceedings

“(a) *DESIGNATION OF AGENT.*—A carrier providing transportation subject to the jurisdiction of the Board under subtitle IV shall designate an agent in the District of Columbia on whom service of process in an action before a district court may be made. Except as otherwise provided, process in an action before a district court shall be served on the designated agent of that carrier at the office or usual place of residence in the District of Columbia of that agent. If the carrier does not have a designated agent, service may be made by posting the notice in the office of the Board.

“(b) *CHANGING DESIGNATION.*—A designation under this section may be changed at any time in the same manner as originally made.

“§ 725. Administrative support

“The Secretary of Transportation shall provide administrative support for the Board.

“§ 726. Railroad-Shipper Transportation Advisory Council

“(a) *ESTABLISHMENT; MEMBERSHIP.*—There is established the Railroad-Shipper Transportation Advisory Council (in this section referred to as the ‘Council’) to be composed of 19 members, of which 15 members shall be appointed by the Chairman of the Board, after recommendation from rail carriers and shippers, within 60 days

after the date of enactment of the ICC Termination Act of 1995. The members of the Council shall be appointed as follows:

“(1) The members of the Council shall be appointed from among citizens of the United States who are not regular full-time employees of the United States and shall be selected for appointment so as to provide as nearly as practicable a broad representation of the various segments of the railroad and rail shipper industries.

“(2) Nine of the members shall be appointed from senior executive officers of organizations engaged in the railroad and rail shipping industries, which 9 members shall be the voting members of the Council. Council action and Council positions shall be determined by a majority vote of the members present. A majority of such voting members shall constitute a quorum. Of such 9 voting members—

“(A) at least 4 shall be representative of small shippers (as determined by the Chairman); and

“(B) at least 4 shall be representative of Class II or III railroads.

“(3) The remaining 6 members of the Council shall serve in a nonvoting advisory capacity only, but shall be entitled to participate in Council deliberations. Of the remaining members—

“(A) 3 shall be representative of Class I railroads; and

“(B) 3 shall be representative of large shipper organizations (as determined by the Chairman).

“(4) The Secretary of Transportation and the members of the Board shall serve as *ex officio*, nonvoting members of the Council. The Council shall not be subject to the Federal Advisory Committee Act. A list of the members appointed to the Council shall be forwarded to the Chairmen and ranking members of the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

“(5) Each *ex officio* member of the Council may designate an alternate, who shall serve as a member of the Council whenever the *ex officio* member is unable to attend a meeting of the Council. Any such designated alternate shall be selected from individuals who exercise significant decision-making authority in the Federal agency involved.

“(b) *TERM OF OFFICE.*—The members of the Council shall be appointed for a term of office of 3 years, except that of the members first appointed—

“(1) 5 members shall be appointed for terms of 1 year; and

“(2) 5 members shall be appointed for terms of 2 years,

as designated by the Chairman at the time of appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office. Vacancies on the Council shall be filled in the same manner in which the original appointments were made. No member of the Council shall be eligible to serve in excess of two consecutive terms.

“(c) *ELECTION AND DUTIES OF OFFICERS.*—The Council Chairman and Vice Chairman and other appropriate officers of the Coun-

cil shall be elected by and from the voting members of the Council. The Council Chairman shall serve as the Council's executive officer and shall direct the administration of the Council, assign officer and committee duties, and shall be responsible for issuing and communicating the reports, policy positions and statements of the Council. In the event that the Council Chairman is unable to serve, the Vice Chairman shall act as Council Chairman.

“(d) EXPENSES.—(1) The members of the Council shall receive no compensation for their services as such, but upon request by the Council Chairman, based on a showing of significant economic burden, the Secretary of Transportation or the Chairman of the Board, to the extent provided in advance in appropriation Acts, may provide reasonable and necessary travel expenses for such individual Council members from Department or Board funding sources in order to foster balanced representation on the Council.

“(2) Upon request by the Council Chairman, the Secretary or Chairman of the Board, to the extent provided in advance in appropriations Acts, may pay the reasonable and necessary expenses incurred by the Council in connection with the coordination of Council activities, announcement and reporting of meetings, and preparation of such Council documents as are required or permitted by this section.

“(3) The Council may solicit and use private funding for its activities, subject to this subsection.

“(4) Prior to making any Federal funding requests, the Council Chairman shall undertake best efforts to fund such activities privately unless the Council Chairman determines that such private funding would create a conflict of interest, or the appearance thereof, or is otherwise impractical. The Council Chairman shall not request funding from any Federal agency without providing written justification as to why private funding would create any such conflict or appearance, or is otherwise impractical.

“(5) To enable the Council to carry out its functions—

“(A) the Council Chairman may request directly from any Federal agency such personnel, information, services, or facilities, on a compensated or uncompensated basis, as the Council Chairman determines necessary to carry out the functions of the Council;

“(B) each Federal agency may, in its discretion, furnish the Council with such information, services, and facilities as the Council Chairman may request to the extent permitted by law and within the limits of available funds; and

“(C) each Federal agency may, in its discretion, detail to temporary duty with the Council, such personnel as the Council Chairman may request for carrying out the functions of the Council, each such detail to be without loss of seniority, pay, or other employee status.

“(e) MEETINGS.—The Council shall meet at least semi-annually and shall hold other meetings at the call of the Council Chairman. Appropriate Federal facilities, where available, may be used for such meetings. Whenever the Council, or a committee of the Council, considers matters that affect the jurisdictional interests of Federal agencies that are not represented on the Council, the Council Chair-

man may invite the heads of such agencies, or their designees, to participate in the deliberations of the Council.

“(f) FUNCTIONS AND DUTIES; ANNUAL REPORT.—(1) The Council shall advise the Secretary, the Chairman, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives with respect to rail transportation policy issues it considers significant, with particular attention to issues of importance to small shippers and small railroads, including car supply, rates, competition, and effective procedures for addressing legitimate shipper and other claims.

“(2) To the extent the Council addresses specific grain car issues, it shall coordinate such activities with the National Grain Car Council. The Secretary and Chairman shall cooperate with the Council to provide research, technical and other reasonable support in developing any reports and policy statements required or authorized by this subsection.

“(3) The Council shall endeavor to develop within the private sector mechanisms to prevent, or identify and effectively address, obstacles to the most effective and efficient transportation system practicable.

“(4) The Council shall prepare an annual report concerning its activities and the results of Council efforts to resolve industry issues, and propose whatever regulatory or legislative relief it considers appropriate. The Council shall include in the annual report such recommendations as it considers appropriate with respect to the performance of the Secretary and Chairman under this chapter, and with respect to the operation and effectiveness of meetings and industry developments relating to the Council’s efforts, and such other information as it considers appropriate. Such annual reports shall be reviewed by the Secretary and Chairman, and shall include the Secretary’s and Chairman’s views or comments relating to—

“(A) the accuracy of information therein;

“(B) Council efforts and reasonableness of Council positions and actions; and

“(C) any other aspects of the Council’s work as they may consider appropriate.

The Council may prepare other reports or develop policy statements as the Council considers appropriate. An annual report shall be submitted for each fiscal year and shall be submitted to the Secretary and Chairman within 90 days after the end of the fiscal year. Other such reports and statements may be submitted as the Council considers appropriate.

“§ 727. Definitions

“All terms used in this chapter that are defined in subtitle IV shall have the meaning given those terms in that subtitle.”

(b) TABLE OF CHAPTERS AMENDMENT.—The table of chapters of subtitle I of title 49, United States Code, is amended by adding at the end the following new item:

“7. SURFACE TRANSPORTATION BOARD 3701”.

SEC. 202. REORGANIZATION.

The Chairman of the Surface Transportation Board (in this Act referred to as the “Board”) may allocate or reallocate any function

of the Board, consistent with this title and subchapter I of chapter 7, as amended by section 201 of this title, among the members or employees of the Board, and may establish, consolidate, alter, or discontinue in the Board any organizational entities that were entities of the Interstate Commerce Commission, as the Chairman considers necessary or appropriate.

SEC. 203. TRANSFER OF ASSETS AND PERSONNEL.

(a) *TO BOARD.*—Except as otherwise provided in this Act and the amendments made by this Act, those personnel, property, and records employed, used, held, available, or to be made available in connection with a function transferred to the Board by this Act shall be transferred to the Board for use in connection with the functions transferred, and unexpended balances of appropriations, allocations, and other funds of the Interstate Commerce Commission shall also be transferred to the Board. Such unexpended balances, allocations, and other funds, together with any unobligated balances from user fees collected by the Commission during fiscal year 1996, may be used to pay for the closedown of the Commission and severance costs for Commission personnel, regardless of whether those costs are incurred at the Commission or at the Board.

(b) *TO SECRETARY.*—Except as otherwise provided in this Act and the amendments made by this Act, those personnel, property, and records employed, used, held, available, or to be made available in connection with a function transferred to the Secretary by this Act shall be transferred to the Secretary for use in connection with the functions transferred.

(c) *SEPARATED EMPLOYEES.*—Notwithstanding all other laws and regulations, the Department of Transportation shall place all Interstate Commerce Commission employees separated from the Commission as a result of this Act on the DOT reemployment priority list (competitive service) or the priority employment list (excepted service).

SEC. 204. SAVING PROVISIONS.

(a) *LEGAL DOCUMENTS.*—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the Interstate Commerce Commission, any officer or employee of the Interstate Commerce Commission, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act or the amendments made by this Act; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date),

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board, any other authorized official, a court of competent jurisdiction, or operation of law. The Board shall promptly rescind all regulations established by the Interstate Commerce Commission that are based on provisions of law repealed and not substantively reenacted by this Act.

(b) *PROCEEDINGS.*—(1) *The provisions of this Act shall not affect any proceedings or any application for any license pending before the Interstate Commerce Commission at the time this Act takes effect, insofar as those functions are retained and transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.*

(2) *The Board and the Secretary are authorized to provide for the orderly transfer of pending proceedings from the Interstate Commerce Commission.*

(3)(A) *Except as provided in subparagraphs (B) and (C), in the case of a proceeding under a provision of law repeal, and not reenacted, by this Act such proceeding shall be terminated.*

(B) *Any proceeding involving a pipeline carrier under subtitle IV of title 49, United States Code, shall be continued to be heard by the Board under such subtitle, as in effect on the day before the effective date of this section, until completion of such proceeding.*

(C) *Any proceeding involving the merger of a motor carrier property under subtitle IV of title 49, United States Code, shall continue to be heard by the Board under such subtitle, as in effect on the day before the effective date of this section, until completion of such proceeding.*

(4) *Any proceeding with respect to any tariff, rate charge, classification, rule, regulation, or service that was pending under the Intercoastal Shipping Act, 1933 or the Shipping Act, 1916 before the Federal Maritime Commission on November 1, 1995, shall continue to be heard until completion or issuance of a final order thereon under all applicable laws in effect as of November 1, 1995.*

(c) *SUITS.*—(1) *This Act shall not affect suits commenced before the date of the enactment of this Act, except as provided in paragraphs (2) and (3). In all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.*

(2) *Any suit by or against the Interstate Commerce Commission begun before the effective date of this Act shall be continued, insofar as it involves a function retained and transferred under this Act, with the Board (to the extent the suit involves functions transferred to the Board under this Act) or the Secretary (to the extent the suit involves functions transferred to the Secretary under this Act) substituted for the Commission.*

(3) *If the court in a suit described in paragraph (1) remands a case to the Board or the Secretary, subsequent proceedings related to such case shall proceed in accordance with applicable law and regulations as in effect at the time of such subsequent proceedings.*

(d) *CONTINUANCE OF ACTIONS AGAINST OFFICERS.*—No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Interstate Commerce Commission shall abate by reason of the enactment of this Act. No cause of action by or against the Interstate Commerce Commission, or by or against any officer thereof in his official capacity, shall abate by reason of enactment of this Act.

(e) *EXERCISE OF AUTHORITIES.*—Except as otherwise provided by law, an officer or employee of the Board may, for purposes of performing a function transferred by this Act or the amendments made by this Act, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this Act or the amendments made by this Act.

SEC. 205. REFERENCES.

Any reference to the Interstate Commerce Commission in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Interstate Commerce Commission or an officer or employee of the Interstate Commerce Commission, is deemed to refer to the Board, a member or employee of the Board, or the Secretary, as appropriate.

TITLE III—CONFORMING AMENDMENTS

Subtitle A—Amendments to United States Code

SEC. 301. TITLE 5 AMENDMENTS.

(a) *COMPENSATION FOR POSITIONS AT LEVEL III.*—Section 5314 of title 5, United States Code, is amended by striking “Chairman, Interstate Commerce Commission.” and inserting in lieu thereof “Chairman, Surface Transportation Board.”.

(b) *COMPENSATION FOR POSITIONS AT LEVEL IV.*—Section 5315 of title 5, United States Code, is amended by striking “Members, Interstate Commerce Commission.” and inserting in lieu thereof “Members, Surface Transportation Board.”.

SEC. 302. TITLE 11 AMENDMENTS.

Subchapter IV of chapter 11 of title 11, United States Code, is amended—

(1) by striking section 1162 and inserting in lieu thereof the following:

“§ 1162. Definition

“In this subchapter, ‘Board’ means the ‘Surface Transportation Board.’; and

(2) by striking “Commission” each place it appears and inserting in lieu thereof “Board”.

SEC. 303. TITLE 18 AMENDMENTS.

Title 18, United States Code, is amended—

(1) in section 921(a)(27) by striking “10102” and inserting in lieu thereof “13102”; and

(2) in section 6001(1) by striking “Interstate Commerce Commission” and inserting in lieu thereof “Surface Transportation Board”.

SEC. 304. INTERNAL REVENUE CODE OF 1986 AMENDMENTS.

(a) SECTION 168.—Section 168(g)(4)(B)(i) of the Internal Revenue Code of 1986 is amended by striking “domestic railroad corporation providing transportation subject to subchapter I of chapter 105” and inserting in lieu thereof “rail carrier subject to part A of subtitle IV”.

(b) SECTION 281.—Subparagraphs (A) and (B) of section 281(d)(1) of such Code are each amended by striking “domestic railroad corporations providing transportation subject to subchapter I of chapter 105” and inserting in lieu thereof “rail carriers subject to part A of subtitle IV”.

(c) SECTION 354.—Section 354(c) of such Code is amended by striking “or approved by the Interstate Commerce Commission under subchapter IV of chapter 113 of title 49,”.

(d) SECTION 3231.—Section 3231 of such Code is amended—

(1) in subsection (a) by striking “Interstate Commerce Commission” and inserting in lieu thereof “Surface Transportation Board”; and

(2) in subsection (g) by striking “an express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105” and inserting in lieu thereof “a rail carrier subject to part A of subtitle IV”.

(e) SECTION 7701.—Section 7701(a) of such Code is amended—

(1) in paragraph (33)(B) by striking “Federal Power Commission” and inserting in lieu thereof “Federal Energy Regulatory Commission”;

(2) in paragraph (33)(C)(i) by striking “Interstate Commerce Commission” and inserting in lieu thereof “Surface Transportation Board”;

(3) in paragraph (33)(C)(ii) by striking “Interstate Commerce Commission” and inserting in lieu thereof “Federal Energy Regulatory Commission”;

(4) in paragraph (33)(F) by striking “common carrier” and all that follows through “1933” and inserting in lieu thereof “a water carrier subject to jurisdiction under subchapter II of chapter 135 of title 49”;

(5) in paragraph (33)(G) by striking “railroad corporation subject to subchapter I of chapter 105” and inserting in lieu thereof “rail carrier subject to part A of subtitle IV”; and

(6) in paragraph (33)(H) by striking “subchapter I of chapter 105” and inserting in lieu thereof “part A of subtitle IV”.

SEC. 305. TITLE 28 AMENDMENTS.

(a) CHAPTER 85.—Chapter 85 of title 28, United States Code, is amended—

(1) in the section heading to section 1336 by striking “**Interstate Commerce Commission’s**” and inserting in lieu thereof “**Surface Transportation Board’s**”;

(2) in section 1336 by striking “Interstate Commerce Commission” each place it appears and inserting in lieu thereof “Surface Transportation Board”;

(3) in section 1337 by striking “11707” each place it appears and inserting in lieu thereof “11706 or 14706”; and

(4) in the item relating to section 1336 of the table of sections by striking “Interstate Commerce Commission’s” and inserting in lieu thereof “Surface Transportation Board’s”.

(b) SECTION 1445.—Section 1445(b) of such title is amended—

(1) by striking “common”; and

(2) by striking “11707” and inserting in lieu thereof “11706 or 14706”.

(c) CHAPTER 157 AMENDMENTS.—

(1) IN GENERAL.—Chapter 157 of such title is amended—

(A) by striking “**INTERSTATE COMMERCE COMMISSION**” in the chapter heading and inserting in lieu thereof “**SURFACE TRANSPORTATION BOARD**”;

(B) by striking “**Commission’s**” in the section heading to section 2321 and inserting in lieu thereof “**Board’s**”;

(C) by striking “Interstate Commerce Commission” each place it appears and inserting in lieu thereof “Surface Transportation Board”;

(D) in section 2323 by striking “Commission” the second and third places it appears and inserting in lieu thereof “Board”; and

(E) in the item relating to section 2321 of the table of sections by striking “Commission’s” and inserting in lieu thereof “Board’s”.

(2) TABLE OF CHAPTERS.—The item relating to chapter 157 in the table of chapters of such title is amended by striking “Interstate Commerce Commission” and inserting in lieu thereof “Surface Transportation Board”.

(d) CHAPTER 158 AMENDMENTS.—Chapter 158 of such title is amended—

(1) in section 2341(3)(A) by striking “the Interstate Commerce Commission,”;

(2) by striking “and” at the end of section 2341(3)(C);

(3) by striking the period at the end of section 2341(3)(D) and inserting in lieu thereof “; and”;

(4) by inserting at the end of section 2341(3) the following new subparagraph:

“(E) the Board, when the order was entered by the Surface Transportation Board.”;

(5) in section 2342(3)(A) by striking “41, or 43” and inserting in lieu thereof “or 41”;

(6) by inserting “or pursuant to part B or (C) of subtitle IV of title 49” before the semicolon at the end of section 2342(3)(A);

(7) in section 2342(3)(B)—

(A) by striking clauses (i) and (iii); and

(B) by redesignating clauses (ii), (iv), and (v) as clauses (i), (ii), and (iii), respectively; and

(8) by striking paragraph (5) of section 2342 and inserting in lieu thereof the following:

“(5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;”.

SEC. 306. TITLE 31 AMENDMENTS.

Section 3726(b) of title 31, United States Code, is amended—

(1) in paragraph (1) by striking “on file with the Interstate Commerce Commission,” and inserting in lieu thereof “under title 49 or on file with”;

(2) in paragraph (1) by striking “or” at the end;

(3) by redesignating paragraph (2) as paragraph (3);

(4) by inserting after paragraph (1) the following new paragraph:

“(2) a lawfully quoted rate subject to the jurisdiction of the Surface Transportation Board; or”; and

(5) in paragraph (3), as redesignated by paragraph (4) of this section, by striking “sections 10721–10724” and inserting in lieu thereof “sections 10721, 13712, and 15504”.

SEC. 307. TITLE 39 AMENDMENTS.

Title 39, United States Code, is amended—

(1) in section 5005(a)(4) by striking “5201(7)” and inserting in lieu thereof “5201(6)”;

(2) in section 5005(b)(3) by striking “Interstate Commerce Commission” and inserting in lieu thereof “Surface Transportation Board”; and

(3) by striking paragraph (1) of section 5201 and inserting in lieu thereof the following:

“(1) ‘Board’ means the Surface Transportation Board;”;

(4) in section 5201(2) by striking “a motor common carrier, or express carrier” and inserting in lieu thereof “or a motor carrier”;

(5) in section 5201(4)—

(A) by striking “common”; and

(B) by striking “permit” and inserting in lieu thereof “registration”;

(6) in section 5201(5)—

(A) by striking “common” each place it appears;

(B) by striking “10102(14)” and inserting in lieu thereof “13102(12)”;

(C) by striking “certificate of public convenience and necessity” and inserting in lieu thereof “registration”;

(7) by striking paragraph (6) of section 5201;

(8) in section 5201 by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively;

(9) in section 5201(6), as so redesignated, by striking “certificate of public convenience and necessity” and inserting in lieu thereof “certificate or registration”;

(10) in section 5203(f) by striking “motor common carrier” each place it appears and inserting in lieu thereof “motor carrier”;

(11) in the section heading to section 5207 by striking “**Interstate Commerce Commission**” and inserting in lieu thereof “**Surface Transportation Board**”;

(12) in sections 5208(a) and 5215(a) by striking “Commission’s” and inserting in lieu thereof “Board’s”;

(13) in section 5215(a) by striking “motor common carrier” and inserting in lieu thereof “motor carrier”;

(14) in chapter 52 by striking “Commission” each place it appears and inserting in lieu thereof “Board”; and

(15) in the item relating to section 5207 of the table of sections of chapter 52, by striking “Interstate Commerce Commission” and inserting in lieu thereof “Surface Transportation Board”.

SEC. 308. TITLE 49 AMENDMENTS.

(a) SECTION 302.—Section 302(a) of title 49, United States Code, is amended by striking “10101a” and inserting in lieu thereof “13101”.

(b) SECTION 333.—Section 333 of such title is amended—

(1) in subsection (c)(2) by striking “11910(a)(1)” and inserting in lieu thereof “11904”; and

(2) in subsection (e)—

(A) by striking “11343(a)” and inserting in lieu thereof “11323(a)”; and

(B) by striking “11344(b)” and inserting in lieu thereof “11324(b)”.

(c) CHAPTER 5.—Subchapter I of chapter 5 of such title is amended—

(1) by striking “DUTIES” the first place it appears in the subchapter heading; and

(2) in section 501(a)(1) by striking “section 10102” and inserting in lieu thereof “sections 10102 and 13102”.

(d) SECTION 5102.—Section 5102(7) of such title is amended.—

(1) by striking “common”;

(2) by striking “motor contract carrier,”; and

(3) by striking “10102” and inserting in lieu thereof “13102”.

(e) SECTION 5333.—Section 5333(b)(3) of such title is amended by striking “11347” and inserting in lieu thereof “11326”.

(f) CHAPTER 221.—Chapter 221 of such title is amended—

(1) in section 22101(a) by striking “subchapter I of chapter 105” and inserting in lieu thereof “part A of subtitle IV”;

(2) in section 22101(a)(1) by striking “Interstate Commerce Commission” and inserting in lieu thereof “Surface Transportation Board”;

(3) in section 22103(b)(1) by striking “Interstate Commerce Commission” and inserting in lieu thereof “Surface Transportation Board”;

(4) in section 22107(c)—

(A) by striking “Interstate Commerce Commission” and inserting in lieu thereof “Surface Transportation Board”; and

(B) by striking “Commission” the second place it appears and inserting in lieu thereof “Board”; and

(5) in section 22107(d) by striking “subchapter I of chapter 105” and inserting in lieu thereof “part A of subtitle IV”.

(g) SECTION 24301.—Section 24301 of such title is amended—

(1) in subsection (c)—

(A) by striking “Subtitle IV” in paragraph (1) and inserting in lieu thereof “Part A of subtitle IV”;

(B) by striking “sections 10721–10724 of this title apply” in paragraph (2)(A) and inserting in lieu thereof “section 10721 of this title applies”; and

(C) by striking “Interstate Commerce Commission under any provision of subtitle IV of this title applicable to a carrier subject to subchapter I of chapter 105” in paragraph (2)(B) and inserting in lieu thereof “Surface Transportation Board under part A of subtitle IV”; and

(2) in subsection (d) by striking “common carrier subject to subchapter I of chapter 105” and inserting in lieu thereof “rail carrier subject to part A of subtitle IV”.

(h) SECTION 24501.—Section 24501(b) of such title is amended by striking “subchapter I of chapter 105” and inserting in lieu thereof “part A of subtitle IV”.

(i) SECTION 24705.—Section 24705 of such title is amended by striking subsection (d).

(j) SECTIONS 30103 AND 30166.—Sections 30103(a) and 30106(d) of such title are each amended by striking “subchapter II of chapter 105” each place it appears and inserting in lieu thereof “subchapter I of chapter 135”.

(k) CHAPTER 315.—Chapter 315 of such title is amended—

(1) in section 31501(2) by striking “10102” and inserting in lieu thereof “13102”;

(2) in section 31501(3)(A) by striking “10521(a)” and inserting in lieu thereof “13501”;

(3) in section 31502(a)(1) by striking “10521 and 10522” by inserting in lieu thereof “13501 and 13502”; and

(4) in section 31503(a) by striking “subchapter II of chapter 105” and inserting in lieu thereof “subchapter I of chapter 135”.

(l) SECTIONS 41309 AND 41502.—Sections 41309(b)(2)(A) and 41502 of such title are each amended by striking “common” each place it appears.

(m) SECTION 60115.—Section 60115(b)(4)(A) of such title is amended by striking “(referred to in section 10344(f) of this title)”.

Subtitle B—Other Amendments

SEC. 311. AGRICULTURAL ADJUSTMENT ACT OF 1938 AMENDMENTS.

Section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291) is amended—

(1) by striking “Interstate Commerce Commission” each place it appears and inserting in lieu thereof “Surface Transportation Board”;

(2) by striking “Commission” each place it appears (other than a place to which paragraph (1) applies) and inserting in lieu thereof “Board”; and

(3) by striking “Commission’s” in subsection (b) and inserting in lieu thereof “Board’s”.

SEC. 312. ANIMAL WELFARE ACT AMENDMENT.

Section 15(a) of the Animal Welfare Act (7 U.S.C. 2145(a)) is amended by striking "Interstate Commerce Commission" and inserting in lieu thereof "Surface Transportation Board".

SEC. 313. FEDERAL ELECTION CAMPAIGN ACT OF 1971 AMENDMENTS.

Section 401 of the Federal Election Campaign Act of 1971 is amended—

(1) by striking "Interstate Commerce Commission shall each promulgate, within ninety days after the date of enactment of this Act" and inserting in lieu thereof "Surface Transportation Board shall each maintain"; and

(2) by inserting "or Board" after "or such Commission".

SEC. 314. FAIR CREDIT REPORTING ACT AMENDMENT.

Section 621(b)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681s(b)(4)) is amended by striking "Interstate Commerce Commission with respect to any common carrier subject to those Acts" and inserting in lieu thereof "Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board".

SEC. 315. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.

Section 704(a)(4) of the Equal Credit Opportunity Act (15 U.S.C. 1691c(a)(4)) is amended by striking "Interstate Commerce Commission with respect to any common carrier subject to those Acts" and inserting in lieu thereof "Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board".

SEC. 316. FAIR DEBT COLLECTION PRACTICES ACT AMENDMENT.

Section 814(b)(4) of the Fair Debt Collection Practices Act (15 U.S.C. 1692l(b)(4)) is amended by striking "Interstate Commerce Commission with respect to any common carrier subject to those Acts" and inserting in lieu thereof "Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board".

SEC. 317. NATIONAL TRAILS SYSTEM ACT AMENDMENTS.

The National Trails System Act is amended—

(1) in section 8(d)—

(A) by striking "Chairman of the Interstate Commerce Commission" and inserting in lieu thereof "Chairman of the Surface Transportation Board"; and

(B) by striking "Commission" the second place it appears and inserting in lieu thereof "Board"; and

(2) in section 9(b) by striking "Interstate Commerce Commission" and inserting in lieu thereof "Surface Transportation Board".

SEC. 318. CLAYTON ACT AMENDMENTS.

The Clayton Act is amended—

(1) in section 7 (15 U.S.C. 18)—

(A) by striking "Interstate Commerce Commission" and inserting in lieu thereof "Surface Transportation Board"; and

(B) by inserting ", Board," after "vesting such power in such Commission";

(2) in section 11(a) (15 U.S.C. 21(a)) by striking “Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended” and inserting in lieu thereof “Surface Transportation Board where applicable to common carriers subject to jurisdiction under subtitle IV of title 49, United States Code”; and

(3) in section 16 (15 U.S.C. 22) by striking “in equity for injunctive relief” and all that follows through “Interstate Commerce Commission” and inserting in lieu thereof “for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49, United States Code”.

SEC. 319. INSPECTOR GENERAL ACT OF 1978 AMENDMENT.

Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking “the Interstate Commerce Commission,”.

SEC. 320. ENERGY POLICY ACT OF 1992 AMENDMENTS.

Subsections (a) and (d) of section 1340 of the Energy Policy Act of 1992 (42 U.S.C. 13369(a) and (d)) are each amended by striking “Interstate Commerce Commission” and inserting in lieu thereof “Surface Transportation Board”.

SEC. 321. MERCHANT MARINE ACT, 1920, AMENDMENTS.

The Merchant Marine Act, 1920, is amended—

(1) in section 8 (46 U.S.C. App. 867)—

(A) by striking “Interstate Commerce Commission” both places it appears and inserting in lieu thereof “Surface Transportation Board”; and

(B) by striking “commission” and inserting in lieu thereof “Board”;

(2) in section 27A (46 U.S.C. App. 883–1) by striking “common or contract” and all that follows through “, which otherwise” and inserting in lieu thereof “carrier subject to jurisdiction under subchapter II of chapter 135 of title 49, United States Code, which otherwise”; and

(3) in section 28 (46 U.S.C. App. 884)—

(A) by striking “common”;

(B) by striking “Interstate Commerce Commission” and inserting in lieu thereof “Surface Transportation Board”; and

(C) by striking “commission” each place it appears and inserting in lieu thereof “Board”.

SEC. 322. RAILWAY LABOR ACT AMENDMENTS.

Section 1 of the Railway Labor Act (45 U.S.C. 151) is amended—

(1) in the first paragraph by striking “express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act” and inserting in lieu thereof “railroad subject to the jurisdiction of the Surface Transportation Board”;

(2) in the first and fifth paragraphs by striking “Interstate Commerce Commission” each place it appears and inserting in lieu thereof “Surface Transportation Board”; and

(3) in the fifth paragraph by striking "Commission" the second and fourth places it appears and inserting in lieu thereof "Board".

SEC. 323. RAILROAD RETIREMENT ACT OF 1974 AMENDMENTS.

Section 1 of the Railroad Retirement Act of 1974 (45 U.S.C. 231) is amended—

(1) by striking subsection (a)(1)(i) and inserting in lieu thereof the following:

"(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code";

(2) in subsection (a)(2)(ii) by striking "Interstate Commerce Commission is hereby authorized and directed upon request of the Board" and inserting in lieu thereof "Surface Transportation Board is hereby authorized and directed upon request of the Railroad Retirement Board"; and

(3) in subsection (o) by inserting "the Surface Transportation Board," after "the Interstate Commerce Commission,".

SEC. 324. RAILROAD UNEMPLOYMENT INSURANCE ACT AMENDMENTS.

The Railroad Unemployment Insurance Act is amended—

(1) in section 1(a) (45 U.S.C. 351(a)) by striking "Interstate Commerce Commission is hereby authorized and directed upon request of the Board" and inserting in lieu thereof "Surface Transportation Board is hereby authorized and directed upon request of the Railroad Retirement Board";

(2) by striking paragraph (b) of such section 1 and inserting in lieu thereof the following:

"(b) The term 'carrier' means a railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code."; and

(3) by striking "Interstate Commerce Commission, adjusted, as determined by the Board" in section 2(h)(3) (45 U.S.C. 352(h)(3)) and inserting in lieu thereof "Surface Transportation Board, adjusted, as determined by the Railroad Retirement Board".

SEC. 325. EMERGENCY RAIL SERVICES ACT OF 1970 AMENDMENTS.

The Emergency Rail Services Act of 1970 is amended—

(1) in section 2 (45 U.S.C. 661)—

(A) by striking paragraph (2) and inserting in lieu thereof the following:

"(2) 'Board' means the Surface Transportation Board."; and

(B) in paragraph (3) by striking "common carrier by railroad subject to part I of the Interstate Commerce Act (49 U.S.C. 1-27)" and inserting in lieu thereof "rail carrier subject to part A of subtitle IV of title 49, United States Code";

(2) in section 3—

(A) by striking "the provisions of section 5 of the Interstate Commerce Act" in subsection (b)(4) and inserting in lieu thereof "subchapter II of chapter 113 of title 49, United States Code"; and

(B) by striking "Commission" each place it appears and inserting in lieu thereof "Board"; and

(3) in section 6(a) (45 U.S.C. 665(a)) by striking “Interstate Commerce Commission” and inserting in lieu thereof “Board”.

SEC. 326. ALASKA RAILROAD TRANSFER ACT OF 1982 AMENDMENTS.

Section 608 of the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1207) is amended—

(1) by striking “the jurisdiction of the Interstate Commerce Commission under chapter 105” in subsection (a)(1) and inserting in lieu thereof “part A”; and

(2) by striking “the jurisdiction of the Interstate Commerce Commission under chapter 105” in subsection (c) and inserting in lieu thereof “part A”.

SEC. 327. REGIONAL RAIL REORGANIZATION ACT OF 1973 AMENDMENTS.

The Regional Rail Reorganization Act of 1973 is amended—

(1) in section 102(15) (45 U.S.C. 702(15)) by striking “common carrier by railroad as defined in section 1(3) of part I of the Interstate Commerce Act (49 U.S.C. 1(3))” and inserting in lieu thereof “rail carrier subject to part A of subtitle IV of title 49, United States Code”;

(2) in section 301(b) (45 U.S.C. 741(b)) by striking “common carrier by railroad under section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3))” and inserting in lieu thereof “rail carrier subject to part A of subtitle IV of title 49, United States Code”;

(3) in section 304 (45 U.S.C. 744)—

(A) by striking “205(d)(6) of this Act” in subsection (a)(2)(B) and inserting in lieu thereof “10362(b)(6) of title 49, United States Code”;

(B) by striking “Interstate Commerce Act” and inserting in lieu thereof “part A of subtitle IV of title 49, United States Code”;

(C) in subsection (d)(3)—

(i) by striking “this title,” and all that follows through “(A) shall take” and inserting in lieu thereof “this title, the Commission shall take”; and

(ii) by striking “this subsection; and” and all that follows through “205(d)(6) of this Act” and inserting in lieu thereof “this subsection”;

(D) in subsection (e)(4)—

(i) by striking “and under regulations issued by the Office pursuant to section 205(d)(5) of this Act” in subparagraph (A); and

(ii) by striking “and regulations issued by the Office pursuant to section 205(d)(5) of this Act” in subparagraph (C);

(E) in subsection (e)(5)—

(i) by striking “and under regulations issued by the Office pursuant to section 205(d)(5) of this Act” in subparagraph (A); and

(ii) by striking “and under regulations issued by the Office pursuant to section 205(d)(5) of this Act” in subparagraph (B);

(F) in subsection (e)(7)(A) by striking “and under regulations issued by the Office pursuant to section 205(d)(5) of this Act”; and

(G) in subsection (g) by striking “the Interstate Commerce Act” and inserting in lieu thereof “part A of subtitle IV of title 49, United States Code”;

(4) in section 308 (45 U.S.C. 748)—

(A) by striking “10905(d)-(f)” in subsection (d)(1) and inserting in lieu thereof “10904”; and

(B) by striking “10903(b)(2)” in subsection (f) and inserting in lieu thereof “10903(b)(3)”; and

(5) by inserting after section 712 the following new section:

“CLASS II RAILROADS RECEIVING FEDERAL ASSISTANCE

“SEC. 713. The Surface Transportation Board shall impose no labor protection conditions in approving an application under section 10902 of title 49, United States Code, when the application involves a Class II rail carrier which—

“(1) is headquartered in a State, and operates in at least one State, with a population of less than 1,000,000 persons, as determined by the 1990 census; and

“(2) has, as of January 1, 1996, been a recipient of repayable Federal Railroad Administration assistance in excess of \$5,000,000.”.

SEC. 328. MILWAUKEE RAILROAD RESTRUCTURING ACT AMENDMENT.

Section 18 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 916) is repealed.

SEC. 329. ROCK ISLAND RAILROAD TRANSITION AND EMPLOYEE ASSISTANCE ACT AMENDMENTS.

The Rock Island Railroad Transition and Employee Assistance Act is amended—

(1) in section 104(a) (45 U.S.C. 1003(a)) by striking “section 11125 of title 49, United States Code, or”; and

(2) by striking section 120 (45 U.S.C. 1015).

SEC. 330. RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976 AMENDMENTS.

The Railroad Revitalization and Regulatory Reform Act of 1976 is amended—

(1) in section 102(7) (45 U.S.C. 802(7)) by striking “common carrier by railroad or express, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3))” and inserting in lieu thereof “rail carrier subject to part A of subtitle IV of title 49, United States Code”;

(2) in section 505(a)(3) (45 U.S.C. 825(a)(3))—

(A) by striking “A financially responsible person (as defined in section 10910(a)(1) of title 49, United States Code)” and inserting in lieu thereof “(A) A financially responsible person”; and

(B) by inserting at the end the following new subparagraph:

“(B) For purposes of this paragraph, the term ‘financially responsible person’ means a person who (i) is capable of paying the constitutional minimum value of the railroad line proposed to be ac-

quired, and (ii) is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years. Such term includes a governmental authority but does not include a class I or class II rail carrier.”;

(3) in section 509(b) (45 U.S.C. 829(b)) by striking paragraph (2); and

(4) in section 510 (45 U.S.C. 830) by striking “the provisions of section 20a of the Interstate Commerce Act (49 U.S.C. 20a), nor”.

SEC. 331. NORTHEAST RAIL SERVICE ACT OF 1981 AMENDMENTS.

The Northeast Rail Service Act of 1981 is amended in section 1164 (45 U.S.C. 1112) by striking “11344 or 11345” each place it appears and inserting in lieu thereof “11324 or 11325”.

SEC. 332. CONRAIL PRIVATIZATION ACT AMENDMENT.

Section 4036 of the Conrail Privatization Act (45 U.S.C. 1344) is amended by striking “(19)”.

SEC. 333. MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT AMENDMENTS.

Section 401(b)(2)(C) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)(2)(C)) is amended by striking “part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.), or any successor provision of” and inserting in lieu thereof “part B of”.

SEC. 334. FEDERAL AVIATION ADMINISTRATION AUTHORIZATION ACT OF 1994.

Section 601(d) of the Federal Aviation Administration Authorization Act of 1994 (Public Law 103-305) is repealed.

SEC. 335. TERMINATION OF CERTAIN MARITIME AUTHORITY.

(a) **REPEAL OF INTERCOASTAL SHIPPING ACT, 1933.**—The Intercoastal Shipping Act, 1933 (46 U.S.C. App. 843 et seq.) is repealed effective September 30, 1996.

(b) **REPEAL OF PROVISIONS OF SHIPPING ACT, 1916.**—The following provisions of the Shipping Act, 1916 are repealed effective September 30, 1996:

- (1) Section 3 (46 U.S.C. App. 804).
- (2) Section 14 (46 U.S.C. App. 812).
- (3) Section 15 (46 U.S.C. App. 814).
- (4) Section 16 (46 U.S.C. App. 815).
- (5) Section 17 (46 U.S.C. App. 816).
- (6) Section 18 (46 U.S.C. App. 817).
- (7) Section 19 (46 U.S.C. App. 818).
- (8) Section 20 (46 U.S.C. App. 819).
- (9) Section 21 (46 U.S.C. App. 820).
- (10) Section 22 (46 U.S.C. App. 821).
- (11) Section 23 (46 U.S.C. App. 822).
- (12) Section 24 (46 U.S.C. App. 823).
- (13) Section 25 (46 U.S.C. App. 824).
- (14) Section 27 (46 U.S.C. App. 826).
- (15) Section 29 (46 U.S.C. App. 828).
- (16) Section 30 (46 U.S.C. App. 829).
- (17) Section 31 (46 U.S.C. App. 830).
- (18) Section 32 (46 U.S.C. App. 831).

(19) Section 33 (46 U.S.C. App. 832).

(20) Section 35 (46 U.S.C. App. 833a).

(21) Section 43 (46 U.S.C. App. 841a).

(22) Section 45 (46 U.S.C. App. 841c).

(c) CONFORMING AMENDMENTS.—

(1) MERCHANT MARINE ACT, 1936.—Section 204(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1114(a)) is amended by striking “the Intercoastal Shipping Act, 1933,”.

(2) SHIPPING ACT OF 1984.—Section 5(e) of the Shipping Act of 1984 (46 U.S.C. App. 1704(e)) is amended—

(A) by striking “This Act, the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933,” and inserting “This Act and the Shipping Act, 1916”; and

(B) by striking “this Act, the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933,” and inserting “this Act or the Shipping Act, 1916”.

SEC. 336. ARMORED CAR INDUSTRY RECIPROCITY ACT OF 1993 AMENDMENTS.

Section 5(2) of the Armored Car Industry Reciprocity Act of 1993 (15 U.S.C. 5904) is amended—

(1) by striking “subchapter II of chapter 105” and inserting in lieu thereof “subchapter I of chapter 135”; and

(2) by striking “holding the appropriate certificate, permit, or license issued under subchapter II of chapter 109” and inserting in lieu thereof “is registered under chapter 139”.

SEC. 337. LABOR MANAGEMENT RELATIONS ACT, 1947 AMENDMENT.

Section 302(b)(2) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(b)(2)) is amended by striking the parenthetical phrase and inserting in lieu thereof “(as defined in section 13102 of title 49, United States Code)”.

SEC. 338. INLANDS WATERWAY REVENUE ACT OF 1978 AMENDMENT.

Section 205(f)(1) of the Inlands Waterway Revenue Act of 1978 (33 U.S.C. 1803(f)(1)) is amended by striking “as set forth” and all that follows through the period at the end and inserting in lieu thereof “as set forth in sections 10101 and 13101 of title 49, United States Code.”.

SEC. 339. NOISE CONTROL ACT OF 1972 AMENDMENT.

Section 18(d) of the Noise Control Act of 1972 (42 U.S.C. 4917(d)) is amended to read as follows:

“(d) For purposes of this section, the term ‘motor carrier’ includes a motor carrier and motor private carrier as those terms are defined in section 13102 of title 49, United States Code.”.

SEC. 340. FAIR LABOR STANDARDS ACT OF 1938 AMENDMENT.

Section 13(b)(2) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(b)(2)) is amended by striking “common carrier by rail and subject to the provisions of part I of the Interstate Commerce Act” and inserting in lieu thereof “rail carrier subject to part A of subtitle IV of title 49, United States Code”.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. CERTAIN COMMERCIAL SPACE LAUNCH ACTIVITIES.

The licensing of a launch vehicle or launch site operator (including any amendment, extension, or renewal of the license) under chapter 701 of title 49, United States Code, shall not be considered a major Federal action for purposes of section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) if—

- (1) the Department of the Army has issued a permit for the activity; and
- (2) the Army Corps of Engineers has found that the activity has no significant impact.

SEC. 402. DESTRUCTION OF MOTOR VEHICLES OR MOTOR VEHICLE FACILITIES; WRECKING TRAINS.

(a) DESTRUCTION OF MOTOR VEHICLES OR MOTOR VEHICLE FACILITIES.—Section 33 of title 18, United States Code, is amended—

- (1) by inserting “(a)” before “Whoever” the first place it appears; and
- (2) by adding at the end the following:

“(b) Whoever is convicted of a violation of subsection (a) involving a motor vehicle that, at the time the violation occurred, carried high-level radioactive waste (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12))) or spent nuclear fuel (as that term is defined in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23))), shall be fined under this title and imprisoned for any term of years not less than 30, or for life.”.

(b) WRECKING TRAINS.—Section 1992 of such title is amended—

- (1) by inserting “(a)” before “Whoever” the first place it appears;
- (2) by inserting “(b)” before “Whoever is convicted”;
- (3) striking “any such crime, which” and inserting “a violation of subsection (a) that”;
- (4) by inserting after the paragraph beginning “Whoever is convicted” the following:

“Whoever is convicted of any such violation involving a train that, at the time the violation occurred, carried high-level radioactive waste (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12))) or spent nuclear fuel (as that term is defined in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23))), shall be fined under this title and imprisoned for any term or years not less than 30, or for life.”; and

- (5) by inserting “(c)” before “A judgment”.

SEC. 403. VIOLATION OF GRADE-CROSSING LAWS AND REGULATIONS.

(a) FEDERAL REGULATIONS.—Section 31310 of title 49, United States Code, is amended by adding at the end thereof the following:

“(h) GRADE-CROSSING VIOLATIONS.—

- “(1) SANCTIONS.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations, by per-

sons operating commercial motor vehicles, of laws and regulations pertaining to railroad-highway grade crossings.

“(2) *MINIMUM REQUIREMENTS.*—The regulations issued under paragraph (1) shall, at a minimum, require that—

“(A) the penalty for a single violation is not less than a 60-day disqualification of the driver’s commercial driver’s license; and

“(B) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of such a law or regulation shall be subject to a civil penalty of not more than \$10,000.”.

(b) *DEADLINE.*—The initial regulations required under section 31310(h) of title 49, United States Code, shall be issued not later than 1 year after the date of the enactment of this Act.

(c) *STATE REGULATIONS.*—Section 31311(a) of title 49, United States Code, is amended by adding at the end thereof the following:

“(18) The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(h) of this title.”.

SEC. 404. MISCELLANEOUS TITLE 23 AMENDMENTS.

Section 127 of title 23, United States Code, is amended by adding at the end the following:

“(g) *OPERATION OF CERTAIN SPECIALIZED HAULING VEHICLES ON CERTAIN PENNSYLVANIA HIGHWAYS.*—If the segment of United States Route 220 between Bedford and Bald Eagle, Pennsylvania, is designated as part of the Interstate System, the single axle weight, tandem axle weight, gross vehicle weight, and bridge formula limits set forth in subsection (a) shall not apply to that segment with respect to the operation of any vehicle which could have legally operated on that segment before the date of the enactment of this subsection.”.

SEC. 405. TECHNICAL AMENDMENTS.

(a) *NHS DESIGNATION ACT.*—Effective November 28, 1995, the National Highway System Designation Act of 1995 (Public Law 104-59) is amended—

(1) in section 312(b) (109 Stat. 584) by striking “of such title” and inserting in lieu thereof “of title 23, United States Code”;

(2) in section 319(b)(3) (109 Stat. 589) by striking “at the end” and inserting in lieu thereof “after paragraph (3)”;

(3) in section 332(a)(1)(C)(iii) (109 Stat. 596) by inserting closing quotation marks after “Mexico”;

(4) in section 336(1) (109 Stat. 602)—

(A) by striking “for” each place it appears; and

(B) by inserting “for” after “million” each place it appears; and

(5) by inserting closing quotation marks and a period after the period at the end of section 337(c)(1)(B) (109 Stat. 603).

(b) *TITLE 23.*—Section 149(b) of title 23, United States Code, is amended—

(1) by inserting “or” after the semicolon at the end of paragraph (3); and

(2) by striking “; or” at the end of paragraph (4) and inserting a period.

(c) *ISTEA*.—Section 1069(v) of the International Surface Transportation Efficiency Act of 1991 (105 Stat. 2010) is amended by striking the period at the end of the first sentence.

SEC. 406. FIBER DRUM PACKAGING.

(a) *IN GENERAL*.—In the administration of chapter 51 of title 49, United States Code, the Secretary of Transportation shall issue a final rule within 60 days after the date of the enactment of this Act authorizing the continued use of fiber drum packaging with a removable head for the transportation of liquid hazardous materials with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991, if—

(1) the packaging is in compliance with regulations of the Secretary under the Hazardous Materials Transportation Act as in effect on September 30, 1991; and

(2) the packaging will not be used for the transportation of hazardous materials that include materials which are poisonous by inhalation or materials in Packing Groups I and II.

(b) *EXPIRATION*.—The regulation referred to in subsection (a) shall expire on the later of September 30, 1997, or the date on which funds are authorized to be appropriated to carry out chapter 51 of title 49, United States Code (relating to transportation of hazardous materials), for fiscal years beginning after September 30, 1997.

(c) *STUDY*.—

(1) *IN GENERAL*.—Within 90 days after the date of the enactment of this Act, the Secretary shall contract with the National Academy of Sciences to conduct a study—

(A) to determine whether the requirements of section 5103(b) of title 49, United States Code (relating to regulations for safe transportation), as they pertain to fiber drum packaging with a removable head can be met for the transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards (including fiber drum industry standards set forth in a June 8, 1992, exemption application submitted to the Department of Transportation), other than the performance-oriented packaging standards adopted under docket number HM-181 contained in part 178 of title 49, Code of Federal Regulations; and

(B) to determine whether a packaging standard (including such fiber drum industry standards), other than such performance-oriented packaging standards, will provide an equal or greater level of safety for the transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect.

(2) *COMPLETION*.—The study shall be completed before March 1, 1997 and shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Transportation and Infrastructure Committee of the House of Representatives.

(d) *SECRETARIAL ACTION*.—By September 30, 1997, the Secretary shall issue final regulations to determine what standards

should apply to fiber drum packaging with a removable head for transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) after September 30, 1997. In issuing such regulations, the Secretary shall give full and substantial consideration to the results of the study conducted in subsection (c).

SEC. 407. NONCONTIGUOUS DOMESTIC TRADE STUDY.

Within 6 months after the effective date of this Act, the Secretary of Transportation shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a study that analyzes each of the noncontiguous domestic trades, including analyzing—

- (1) carrier competition in both regulated and unregulated portions of those trades;
- (2) rate structures in those trades;
- (3) the impact of tariff filing on carrier pricing;
- (4) the problems of parallel pricing and its impact on competition in the domestic trades;
- (5) the impact on domestic cargo pricing of foreign cargo services;
- (6) whether additional protections are needed to protect shippers from the abuse of market power; and
- (7) the extent to which statutory or regulatory changes should be made to further the transportation policy of section 13101 of title 49, United States Code.

SEC. 408. FEDERAL HIGHWAY ADMINISTRATION RULEMAKING.

(a) *ADVANCE NOTICE.*—The Federal Highway Administration shall issue an advance notice of proposed rulemaking dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle motor vehicle safety (including 8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver alertness) not later than March 1, 1996.

(b) *RULEMAKING.*—The Federal Highway Administration shall issue a notice of proposed rulemaking dealing with such issues within 1 year after issuance of the advance notice under subsection (a) is published and shall issue a final rule dealing with those issues within 2 years after the last day of such 1-year period.

And the Senate agree to the same.

From the Committee on Transportation and Infrastructure, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

BUD SHUSTER,
BILL CLINGER,
TOM PETRI,
HOWARD COBLE,
SUSAN MOLINARI,
NICK RAHALL,

As additional conferees from the Committee on the Judiciary, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

HENRY HYDE,
CARLOS J. MOORHEAD,

Managers on the Part of the House.

LARRY PRESSLER,
TED STEVENS,
CONRAD BURNS,
TRENT LOTT,
KAY BAILEY HUTCHISON,
JOHN ASHCROFT,
FRITZ HOLLINGS,
DANIEL K. INOUE,
J.J. EXON,
JAY ROCKEFELLER,
JOHN BREAU,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF
CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2539) to abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

SECTION-BY-SECTION ANALYSIS OF H.R. 2539

TITLE I—ABOLITION OF INTERSTATE COMMERCE COMMISSION

SECTION 101. ABOLITION.

House provision

This section abolishes the Interstate Commerce Commission upon enactment.

Senate amendment

This section would terminate the ICC upon the transfer of its remaining functions to the Board and the Secretary, on January 1, 1996. It would terminate the FMC one year later, on January 1, 1997 and transfer its remaining functions to the new Board.

Conference amendment

The conference terminates the ICC and transfers remaining functions to a new Surface Transportation Board and the Secretary effective January 1, 1996.

SEC. 102. RAIL PROVISIONS.

This section rewrites the rail portions of subtitle IV of Title 49, United States Code (Interstate Commerce Act) as follows:

SUBTITLE IV—INTERSTATE TRANSPORTATION

Part A—Rail

Chapter 101—General Provisions

SEC. 10101. RAIL TRANSPORTATION POLICY.*House provision*

This provision integrates the relevant portion of former Section 10101 (general national transportation policy) and former Section 10101a (rail transportation policy). The changes to the content of the rail transportation policy are to conform to the abolition of minimum rate jurisdiction.

Senate amendment

Section 302 (Rail Transportation Policy) amends 49 U.S.C. 10101a, which states the rail transportation policy, to add an additional national policy goal of providing for expeditious handling and resolution of all proceedings required or permitted to be brought under the provisions of this subtitle. The provision recognizes that timely action by the Board is necessary, particularly when providing remedies to protect captive shippers against market abuse.

Conference substitute

The Conference provision integrates all policy goals into a single rail transportation policy. It retains relevant prior policy goals, while adding the additional goal of providing expeditious administrative remedies.

SEC. 10102. DEFINITIONS.*House provision*

The amended definitions delete several terms rendered redundant in light of the abolition of regulatory jurisdiction over express and sleeping car companies. Unlike the former Section 10102, the definitions are confined entirely to terms relevant to railroad provisions.

Senate amendment

Section 303 (Definitions) amends 49 U.S.C. 10102, which defines terms used in rail provisions to remove terms that are not pertinent, to update and clarify the term “rail carrier”, and to remove references to passenger transportation.

Conference substitute

This provision integrates changes common to both House and Senate provisions to reflect reductions in regulatory jurisdiction. To reflect the reorganization of all rail provisions into a separate part, non-rail definitions have been deleted. To clarify that only providers of rail transportation for compensation are within the scope of the statute, the definition of “rail carrier” is limited to persons providing *common carrier* rail transportation.

Chapter 105—Jurisdiction

SEC. 10501. GENERAL JURISDICTION.*House provision*

This provision (Section 10301) replaces the railroad portion of former Section 10501. Conforming changes are made to reflect the direct preemption of State economic regulation of railroads.

Senate amendment

Section 304 (General Jurisdiction) amends 49 U.S.C. 10501, which establishes jurisdiction over rail and pipeline transportation and intermodal rail-water or pipeline-water transportation in several respects. The exclusive nature of the Board's regulatory authority would be clarified. The Board's rail jurisdiction would be limited to freight transportation, because rail passenger transportation today (other than service by Amtrak, which is not regulated under the Interstate Commerce Act) is now purely local or regional in nature and should be regulated (if at all) at that level. Outdated references to express and sleeping car carriers, which no longer exist, would be removed. References to the regulation of intrastate rail transportation would be updated.

Conference substitute

This provision adopted by the Conference changes the statement of agency jurisdiction to reflect curtailment of regulatory jurisdiction in areas such as passenger transportation. In light of the exclusive Federal authority over auxiliary tracks and facilities, this subject is integrated into the statement of general jurisdiction. This section also clarifies that, although regulation of passenger transportation is generally eliminated, public transportation authorities that meet the existing criteria for being rail carriers may invoke the terminal area and reciprocal switching access remedies of section 11102 and 11103.

Also integrated into the statement of general jurisdiction is the delineation of the exclusivity of Federal remedies with respect to the regulation of rail transportation. Former section 10103 dealt with remedies in all modes of transportation regulated by the ICC, but since 1980, former section 10501(d) and 11501(b), with respect to rail transportation, had already replaced the former standard of cumulative remedies with an exclusive Federal standard, in order to assure uniform administration of the regulatory standards of the Staggers Act. The Conference provision retains this general rule, while clarifying that the exclusivity is limited to remedies with respect to rail regulation—not State and Federal law generally. For example, criminal statutes governing antitrust matters not preempted by this Act, and laws defining such criminal offenses as bribery and extortion, remain fully applicable unless specifically displaced, because they do not generally collide with the scheme of economic regulation (and deregulation) of rail transportation.

SEC. 10502. AUTHORITY TO EXEMPT RAIL CARRIER TRANSPORTATION.*House provision*

This provision replaces the railroad portions of former section 10505. The basic criteria for exemption—a crucially important delegated power to expand existing statutory deregulation through administrative action—remain as in prior law. However, the new provision sets a 90-day time limit on the agency's decision to initiate a requested exemption proceeding, and a one-year statutory limit on completion of any ensuing rail exemption proceeding. The new provision also eliminates former restrictions on use of the exemption power in matters relating to intermodal ownership. The new provision also emphasizes in subsection (a) the Staggers Act policy that the exemption power should be utilized to the maximum extent consistent with applicable law and policy.

Senate amendment

Section 306 (Authority to Exempt Rail Carrier and Motor Carrier Transportation) amends 49 U.S.C. 10505, which authorizes discretionary exemptions from the application of statutory provisions to comport with the scope of this part, by excluding entities and matters not regulated under Part A and by embracing pipeline carriage. The exemption authority is further modified to afford the Board flexibility to change the way in which a provision applies (and not simply whether it applies) through exemption.

A 180-day time limit would be imposed for decisions to grant or revoke an exemption, in response to concerns that both exemption applications and revocation applications have not been processed with sufficient expedition. The revocation provision is also clarified, by directing the Board to revoke an exemption to the extent that regulation is needed and by directing the Board to consider the availability of other economic transportation alternatives, among other factors. In considering monetary damages upon revocation of an exemption, the Board is directed to take into account any dilatory railroad practices. Outdated restrictions against intermodal ownership would be removed.

Conference substitute

The Conference provision combines the general standards and directives of the House bill with the accountability and time limit features of the House bill and Senate amendment. In responding to either a request to issue an exemption or to revoke one, the Board must determine within 90 days whether to conduct a proceeding as requested. If a denied request involves a class exemption, a public explanation of the denial must be given in the Federal Register. Any proceeding to grant or revoke an exemption must be completed within 9 months of the initiation of the proceeding.

The Conference recognizes that in the exemption context, as well as in other areas of the Board's jurisdiction, situations may arise in which irreparable harm is threatened and immediate action therefore required. The agency's previously established implied power to grant administrative injunctive relief has now been codified in section 721(b)(4). It is the Conference's intent that this

power should be fully available to address situations involving imminent threats of irreparable harm in the exemption context and elsewhere.

While the Conference supports the current practice of granting exemptions from regulation when regulation is not needed to carry out the national transportation policy or protect against market abuse, the Conference is equally concerned that requests to revoke exemptions be given careful consideration by the Board. When considering a revocation request, the Board should continue to require demonstrated abuse of market power that can be remedied only by reimposition of regulation or that regulation is needed to carry out the national transportation policy. The Conference expects the Board to examine all competitive transportation factors that restrain rail carriers' actions and that affect the market for transportation of the particular commodity or type of service for which revocation has been requested. The concern reflected in the Senate amendment regarding dilatory tactics is addressed in section 10704.

Chapter 107—Rates

SEC. 10701. STANDARDS FOR RATES, CLASSIFICATIONS, THROUGH ROUTES, RULES, AND PRACTICES.

House provision

This provision replaces the rail portions of former section 10701. It retains the basic Staggers Act standards for evaluating reasonableness of rail rates, including criteria related to market dominance and the need for rail carriers to earn adequate revenues. Subsection (d)(3) requires the agency to complete within 1 year after enactment the pending ICC proceeding to establish non-coal rate guidelines aimed at providing simplified evidentiary standards for rate-reasonableness proceedings.

Senate amendment

Section 307 (Standards for Rates, Classifications, Etc.) amends 49 U.S.C. 10701, which requires that a carrier's classifications, rules, practices, through routes, and divisions of joint rates be reasonable, that pipeline rates also be reasonable, and that rates (of both rail and pipeline carriers) not unreasonably discriminate against connecting carriers, to remove provisions addressed to entities not regulated under Part A.

Section 308 (Standards for Rates for Rail Carriers) amends 49 U.S.C. 10701a, which requires that rail rates be reasonable if the carrier has market dominance over the transportation involved, to impose time limits on the Board's handling of rate reasonableness cases (and to make other changes of a conforming nature). It requires the Board to complete the pending Non-Coal Rate Guidelines proceeding to establish, within 1 year, a simplified method to be used where a full stand-alone cost presentation is impractical. Within 6 months, the Board is required to establish procedures for expeditiously processing rate cases. It would be required to decide individual rate complaints within 6 months after the close of the administrative record in cases in which a stand-alone cost presentation is made, and within 3 months after the close of the record

in cases using the simplified methodology the bill directs the Board to adopt.

Conference substitute

The Conference provision is confined to rail transportation only, to reflect the reorganization of the statute into separate parts for each mode of transportation. It also integrates into the general statement of the rule of rate reasonableness the “Long-Cannon amendment” decisional factors enacted as part of the Staggers Act in former section 10707a.

The provision also retains the obligation stated in the House bill and Senate amendment for the agency to complete within 1 year the long-pending non-coal rate guidelines proceeding, which is aimed at providing simplified and more cost-effective evidentiary standards for rate-reasonableness cases. The decisional time limits and procedural requirements reflected in the Senate amendment are addressed in section 10704. To replace the prior power to suspend and investigate rates under former section 10707, the new Board is specifically empowered under section 721(b)(4) to grant administrative injunctive relief to address imminent threats of irreparable harm.

SEC. 10702. AUTHORITY FOR RAIL CARRIERS TO ESTABLISH RATES, CLASSIFICATIONS, RULES, AND PRACTICES.

House provision

This provision (section 10502) replaces and retains the rail portion of former section 10702 regarding the duty of rail carriers to establish rates (including joint rates), classifications, rules, and practices governing the rail transportation they provide.

Senate amendment

Section 309 (Authority for Carriers to Establish Rates, Classifications, Etc.) amends 49 U.S.C. 10702, which states a carrier's right to establish its own rates, classifications, rules, and practices to remove unnecessary language and provisions regarding entities not regulated under this part.

Conference substitute

The Conference provision retains the basic standards from both House and Senate provisions.

SEC. 10703. AUTHORITY FOR RAIL CARRIERS TO ESTABLISH THROUGH ROUTES.

House provision

This section (10503) replaces rail portions of former section 10703, retaining the duty of rail carriers to establish through (connecting) routes, and to provide reasonable facilities and compensation for furnished facilities.

Senate amendment

Section 310 (Authority for Carriers to Establish Through Routes) amends 49 U.S.C. 10703, which directs rail and pipeline carriers to establish through routes with other such carriers, and also directs rail carriers to establish through routes with water

common carriers, to remove provisions regarding entities not regulated under Part A and to make other conforming changes.

Conference substitute

The Conference provision retains the basic obligation of rail carriers to maintain through routes with other rail carriers, and with water carriers. However, in light of reductions in regulation of water carriers, the rail carriers' obligation toward water carriers is limited to water carriers subject to chapter 137. In addition, the Conference provision replaces the detailed requirements of former section 10503 with respect to rail-water connections and rates with a general obligation to maintain physical connections between rail carriers and water carriers of the type described above.

SEC. 10704. AUTHORITY AND CRITERIA: RATES, CLASSIFICATIONS, RULES AND PRACTICES ESTABLISHED BY THE BOARD.

House provision

This section (10504) replaces the rail portions of former section 10704. It retains for the new agency the former ICC authority to review and order changes in rates, classifications, rules, and practices and to prescribe such matters.

Senate amendment

Section 311 (Authority and Criteria for Prescribed Rates, Classifications, Etc.) amends 49 U.S.C. 10704, under which rates, classifications, rules, and practices can be prescribed to correct violations of the statute in various respects. Most significantly, the Board's authority to review the reasonableness of a rate, classification, rule, or practice is limited to instances where it receives a complaint. An unnecessary restatement of requirements for a complaint is removed. A provision to protect existing rate relationships between commodities, ports, or geographic areas is also removed.

A long-past initial deadline for establishing railroad revenue adequacy standards and an unnecessary statement of the Board's authority to revisit that standard is removed. A similar initial deadline for annually determining which rail carriers are earning adequate revenues is also removed. Finally, provisions regarding entities not regulated under this part, and other unnecessary language are removed, and conforming changes are also made.

Conference substitute

This provision retains the revisions and limitations of the House and Senate provisions. In addition, it includes the procedural deadlines of section 308 of the Senate amendment for rate-reasonableness proceedings, but with certain modifications. In rate-reasonableness proceedings using the stand-alone cost evidentiary standards, the proceeding must be concluded within 9 months after the close of the record; for proceedings utilizing the simplified methodology to be developed in non-coal rate guidelines proceeding, the agency's decision would have to be rendered within 6 months after the close of the record.

This section also incorporates with modifications portions of section 308 of the Senate amendment dealing with assurance of expeditious procedures for the handling of rate-reasonableness cases.

Specifically, the agency is required within 9 months of the date of enactment to establish procedures to ensure expeditious handling of cases of this type. The scope of the procedures has been enlarged to include provision for sanctions to be imposed for dilatory tactics in rate cases and revocation proceedings.

SEC. 10705. AUTHORITY: THROUGH ROUTES, JOINT CLASSIFICATIONS, RATES, AND DIVISIONS PRESCRIBED BY THE BOARD.

House provision

This section (10505) replaces rail portions of former Section 10705 and maintains the existing regulatory authority over inter-carrier dealings consisting of joint rates, the divisions (revenue splitting) of such rates, and classifications.

Senate amendment

Section 312 (Authority for Prescribed Through Routes, Joint Classifications, Etc.) amends 49 U.S.C. 10705, under which through routes (and the conditions under which they must be operated) and joint rates (and the division of the joint rate received by each participating carrier) can be prescribed in several respects. A reference to tariffs is replaced with a reference to proposed rate changes, given that tariff requirements are eliminated for most transportation.

Provisions regarding carriers not regulated under this part would be removed, as would unnecessary language. Other conforming changes reflect the removal of authority to investigate a proposed rate on the agency's own initiative and the removal of Federal regulatory authority over rail passenger transportation.

Conference substitute

This provision retains the basic powers of the agency to prescribe joint rates, divisions, and related matters, with modifications and conforming changes from the House bill and the Senate amendment.

SEC. 10706. RATE AGREEMENT: EXEMPTION FROM ANTITRUST LAWS.

House provision

In replacing the rail portions of former Section 10706, this provision (10506) maintains the existing system of approval of multi-carrier ratemaking agreements and scope of immunity, once approved by the agency, from challenge under the antitrust laws.

Senate amendment

Section 313 (Antitrust Exemption for Rate Agreements) amends 49 U.S.C. 10706, which allows discretionary approval of certain collective activity by carriers and confers antitrust immunity on such approved activity. It removes as unnecessary a requirement for periodic review of approvals granted for collective activities. This change would not affect the Board's authority to reconsider an approval at any time as the need arises. Similarly, it removes a requirement for the Federal Trade Commission, in consultation with the Antitrust Division of the Department of Justice, to periodically assess (and report to the Board on) collective activity

authorized by the Board. Such assessments and reports may be made at any time.

Other changes remove expired provisions, remove provisions regarding entities not regulated under Part A, correct a typographical error, supply an actual date, and make conforming changes.

Conference substitute

The Conference provision incorporates changes from House bill and the Senate amendment. It retains the requirement for monitoring by the Department of Justice and the Federal Trade Commission.

SEC. 10707. DETERMINATION OF MARKET DOMINANCE IN RAIL RATE PROCEEDINGS.

House provision

This provision (10507), which replaces former section 10709, retains the Staggers Act criteria for evaluating the market dominance (absence of effective competitions) of a rail carrier when a rail rate is challenged as unreasonably high. Language dealing with minimum rate regulation is deleted as unnecessary.

Senate amendment

Section 317 (Determination of Market Dominance) amends 49 U.S.C. 10709 which governs the determination of whether a carrier has market dominance over traffic and thus whether the rates for that traffic are subject to the maximum rate regulation in several respects. To clarify Congressional intent regarding market dominance, the Board is directed to consider the availability of other economic transportation alternatives. The cost-recovery percentage, which was meant to serve as an adjustable jurisdictional floor, is removed because as a practical matter it has not been capable of calculation due to data limitations. In addition, the phase-in of the revenue-variable cost percentage floor for market dominance is deleted the phase-in has already served its purpose of dampening the precipitousness of rate increases prompted by the Staggers Rail Act of 1980. Finally, conforming changes are made.

Conference substitute

The Conference provision retains the present jurisdictional market-dominance standard. References to the ICC's former cost-accounting system are replaced with references to the current Uniform Rail Costing System (URCS). Modernizing and conforming changes from the Senate amendment are also incorporated.

Although the conference provision does not disturb the existing statutory standard or the current agency regulations implementing the market-dominance standard, the Conference recognizes that the agency has broad discretion to consider additional factors such as the availability of other forms of transportation and other economic alternatives, and to revise and supplement its existing standards and regulations as appropriate.

SEC. 10708. RAIL COST ADJUSTMENT FACTOR.*House provision*

This provision (10508) retains the former ICC authority under former section 10712 to compute and publish a quarterly inflation cost index to reflect rises in railroad costs. The Committee is aware that, since the advent of the critically important Staggers Act authority for rail carriers and shippers to conduct their commercial relationships under confidential rate contracts, the common carrier regulatory regime for railroad rates has been relegated to a role as a backstop or safety net for use when commercial negotiation cannot produce a satisfactory carrier-shipper relationship. The cost index information and the related rail cost adjustment factor (RCAF) play an important role in the contractual relationships between shippers and carriers—particularly long-term contracts—by establishing a neutral and authoritative benchmark for inflation-based escalation of rates during the life of the contract.

Senate amendment

Section 315 (Zone of Rail Carrier Rate Flexibility) amends 49 U.S.C. 10707a, which establishes a zone of rate flexibility (ZORF) that gives carriers limited freedom to increase rates with immunity from suspension or ICC-instituted investigations. The ZORF itself would be removed, because it has outlived its usefulness. However, the so-called Long-Cannon Factors to be considered when evaluating the reasonableness of rates would be retained, along with criteria for investigating a proposed rate increase. In addition, language would be clarified, a date that has already been complied with would be removed, and reference to a repealed provision would be removed.

Conference substitute

The Conference provision retains the Rail Cost Adjustment Factor with clarifying language from the House bill, and eliminates the Zone of Rate Flexibility as provided in the Senate amendment. The Long-Cannon factors bearing on rate-reasonableness determinations have been relocated to new section 10701.

SEC. 10709. CONTRACTS.*House provision*

This provision (10509) replaces former section 10713. It retains the Staggers Act's very successful encouragement and legal authorization of customized and confidential rate contracts between shippers and carriers, including the immunity of contracts from challenge under common carrier rate-reasonableness standards. This section eliminates the very limited and seldom utilized complaint procedures for certain types of rate contracts, as well as the obligation to file summaries of contracts with the regulatory agency. The elimination of the filing requirement is consistent with the bill's elimination of common carrier tariff filing as the single lawful means of quoting and disseminating rates (prices). This section also corrects an oversight in the original Staggers Act provision by clarifying that rate contract information is not only confidential, but is also protected against disclosure under the Freedom of Information

Act. The provision replaces the administrative complaint remedies formerly available by statutory directive with equivalent agency regulations.

Senate amendment

Section 318 (Contracts) amends 49 U.S.C. 10713, which authorizes rail carriers to enter into contracts for transportation that are thereby removed from regulation, to retain the filing requirements for, and regulatory restrictions upon, rail transportation contracts only for agricultural products. Except as to those commodities, the contract limitations represent unneeded and unduly burdensome regulation, particularly given the elimination of tariffs for other traffic. Any egregious equipment and discrimination concerns could be brought to the Board under other remaining statutory provisions.

In the case of agricultural commodity contracts, only a contract summary, and not the contract itself, would be filed. In other respects, jurisdiction over agricultural commodity contracts remains as under the Staggers Act. The purpose for retaining this jurisdiction is primarily due to concerns brought before the Committee about enforcement of the common carrier obligation.

The amendments also clarify that, in the absence of tariffs, a rate is immune from regulation only if the shipper had expressly waived its regulatory rights and remedies. The Railroad Contract Rate Advisory Service is removed in light of the Board's budgetary constraints. Unnecessary language is eliminated and conforming language changes are made.

Conference substitute

The conference provision repeals obsolete provisions addressed by both the Senate amendment and House bill. It also retains the statutory provision for administrative complaints as provided in the Senate amendment. Filing requirements for agricultural transportation contracts are limited to summaries. The definition of agricultural commodities is clarified.

Current shipper-specific limitations on commitment of rail cars to agricultural transportation contracts are eliminated, but the fleet-wide ceiling of 40 percent of a rail carrier's fleet by car type is retained for the 3-year authorization of this bill. One year before the expiration of the provision, the Railroad-Shipper Transportation Advisory Council and the National Grain Car Council are to make recommendations to Congress on whether to retain or modify the car-commitment ceiling.

Subchapter II—Special Circumstances

SEC. 10721. GOVERNMENT TRAFFIC.

House provision

This provision (10521), which replaces the rail portions of former section 10721, retains the legal permission for rail carriers, when acting as common (as distinguished from contract) carriers, to provide reduced charge or free transportation for the United States Government. Language dealing with passenger rates is

omitted as unnecessary in light of the abolition of regulatory jurisdiction over passenger rates.

Senate amendment

Section 319 (Government Traffic) amends 49 U.S.C. 10721, which provides special treatment for rates paid by the United States government, to reduce the language to what would be needed in the absence of tariff rates.

Conference substitute

The Conference provision includes the House language, as well as the former language retained by the Senate amendment covering transportation of individuals. Although passenger fare jurisdiction is eliminated by the legislation, Federal agencies have indicated that legal difficulties under other statutes might result if the authority to provide reduced rates did not also clearly extend to passenger transportation provided to the government.

SEC. 10722. CAR UTILIZATION.

House provision

This provision (10523) replaces former section 10734, while retaining the authority for rail carrier to establish premium charges for special services outside the normal structure of rates otherwise applicable to a particular rail movement.

Senate amendment

No provision.

Conference substitute

The Conference provision incorporates the House provision.

Subchapter III—Limitations

SEC. 10741. PROHIBITIONS AGAINST DISCRIMINATION BY RAIL CARRIERS.

House provision

This section (10541) contains the relevant rail portions of former section 10741, and prohibits unreasonable discrimination by rail carriers against a shipper or other entity providing rail traffic to the carrier. References to provisions amended or repealed elsewhere in the bill are also eliminated.

Senate amendment

Section 321 (Prohibitions Against Discrimination by Common Carriers) amends 49 U.S.C. 10741, which prohibits kickbacks and unreasonable discrimination, only with conforming changes, thus retaining the present standards governing discrimination by common carriers.

Conference substitute

This Conference provision reflects the language of the House bill.

SEC. 10742. FACILITIES FOR INTERCHANGE OF TRAFFIC.*House provision*

This replacement (10542) for former section 10742 maintains the obligation of rail carriers to provide reasonable means for the interchange of traffic with other rail carriers. This provision is the cornerstone of the integrity of the national rail system, because it precludes the balkanization of the system through the possible refusal of one carrier to deal with another connecting carrier.

Senate amendment

Section 322 (Facilities for Interchange of Traffic) amends 49 U.S.C. 10742, which requires a carrier to provide reasonable facilities for interchange of traffic, only with conforming changes.

Conference substitute

The Conference provision incorporates portions of both the House bill and Senate amendment. To reflect the reduced scope of regulation for water carriers, the obligation of rail carriers to provide interchange facilities to connecting water carriers is limited to such carriers as are subject to chapter 137.

SEC. 10743. LIABILITY FOR PAYMENT OF RATES.*House provision*

No provision.

Senate amendment

The Senate amendment retained former section 10744 concerning rules of liability (including statutes of limitation) for recovering payment of rates owed to rail carriers.

Conference substitute

The Conference provision includes the relevant portions of former section 10744 for rail transportation, with conforming changes.

SEC. 10744. CONTINUOUS CARRIAGE OF FREIGHT.*House provision*

In replacing former section 10745, this section 10543 retains the legal obligation of rail carriers to maintain continuous means for the efficient handling of freight that travels over more than one carrier's lines.

Senate amendment

Section 324 (Continuous Carriage of Freight) amends 49 U.S.C. 10745, which prohibits carrier combinations or arrangements that prevent the continuous movement of freight, only with conforming changes.

Conference substitute

The Conference provision retain the language of the House bill.

SEC. 10745. TRANSPORTATION SERVICES OR FACILITIES FURNISHED BY SHIPPER.*House provision*

This provision (10544), which replaces the rail portions of former section 10747, maintains the agency's regulatory authority to address the treatment by railroads of shipper-furnished or other non-railroad-owned cars, equipment, and services. The Committee is aware that certain segments of the national rail car fleet are already owned largely or entirely by non-carriers, and that there is a strong possibility in the future that even more of the fleet will cease to be carrier-owned. Therefore, this provision remains highly relevant to future dealings of railroads with the owners of non-railroad-owned equipment.

Senate amendment

Section 325 (Transportation Services of Facilities Furnished by Shipper) amends 49 U.S.C. 10747, under which carrier allowances for shipper-furnished services and equipment or facilities may be prescribed, to reflect the elimination of most tariffs and to limit the Board's authority to instances in which a complaint is filed.

Conference substitute

The Conference provision incorporates the House and Senate changes to reflect the elimination of tariff filing.

SEC. 10746. DEMURRAGE CHARGES.*House provision*

In replacing former section 10750, this provision retains the agency's authority over demurrage charges and related rules. Demurrage is the charge paid to the owner of a rail carrier for its delayed return to the owner. The ICC's existing rules on this subject and on car supply generally represent a limited and negotiation-based regulatory framework for assuring timely and efficient use of the rail car fleet. This section makes no changes that would disturb that framework.

Senate amendment

The Senate amendment did not amend former section 10750.

Conference substitute

The Conference provision includes the language of the House bill.

Chapter 109—Licensing

SEC. 10901. AUTHORIZING CONSTRUCTION AND OPERATION OF RAILROAD LINES.*House provision**1. Construction and operation cases*

Subsections (a) through (c) of section 10701 retain the current Federal jurisdiction under former Section 10901 over authority to construct, acquire or operate lines. Non-construction transactions of

this type involving smaller railroads are governed by a new separate provision, section 10702, discussed below. The new Section 10701 also eliminates the former optional authority to impose labor protection (mandatory severance and salary and benefit protection) to employees affected by construction and operation cases. This power has rarely been utilized since enactment of the Staggers Act.

2. Crossing cases

Subsection (d) replaces former Section 10901(d), which empowers the agency to order one railroad whose tracks block the access of another railroad's tracks to provide crossing arrangements. The Committee is aware that in the past, some cases of this type, which can involve significant issues of rail competition, have not been adjudicated expeditiously. Therefore, subsection (d)(2) establishes a new 90-day deadline for determination of a dispute of this type, once submitted to the Panel for decision.

Senate amendment

The Senate amendment amends former section 10901 to provide that acquisitions of lines by noncarriers, Class II railroads, and Class III railroads (with certain exceptions) would be subject to a maximum of 1 year of labor protection, at the agency's discretion, plus advance notice of the transaction.

Conference substitute

The Conference provision retains the House language as new section 10901, with line acquisitions by Class II and Class III railroads addressed separately in section 10902. Although section 10901 has been amended to conform to the reclassification of certain line acquisition transactions under other new provisions, the Conference intends no change in existing law with respect to the coverage of regulatory authority over construction of rail lines. Specifically, non-railroad companies who construct rail lines to serve their own facilities, whether or not such lines would be classified as a spur or other auxiliary track exempt from agency jurisdiction, are not required to obtain agency approval to engage in such construction. The 90-day time limit in the House bill for disposition of crossing cases is changed in the provision to 120 days.

SEC. 10902. SHORT LINE TRANSACTIONS BY CLASS II AND CLASS III RAIL CARRIERS.

House provision

1. Construction and operation cases

This new provision (10702) includes the authority of the agency to approve acquisition, construction, and operation of rail lines by Class II and Class III railroads and by noncarriers, previously governed by former Section 10901. Section 10702 is intended to avoid the protracted regulatory and court litigation generated by the former dichotomy between "carrier" and "noncarrier" transactions and the consequent applicability or inapplicability of mandatory "carrier" labor protection requirements. Instead, this new provision, in combination with Section 10701, establishes a clear statutory division between transactions involving large Class I rail-

roads on one hand and smaller railroads on the other. This should promote clearer and more expeditious handling of the affected transactions, and avoid imposing additional and sometimes potentially fatal costs on start-up operations of smaller railroads who often can keep rail lines in service, even if not viable as part of a larger carrier's system.

As to line acquisitions by Class II railroads, the House provision requires 1 year of mandatory labor protection in the form of severance pay, computed under the standards of section 11126(b). No labor protection requirement is imposed on acquisitions by Class III railroads.

Senate amendment

Section 330 (Authorizing Construction and Operation of Railroad Lines) amends 49 U.S.C. 10901, under which the construction of new rail lines and the operations of new rail carriers must be authorized to reduce the level of employee protection that may be imposed by the Board on smaller carriers and noncarriers. While employee protective conditions have not often been required for such new operations, the minimum level of protection available, if protection was imposed, was inordinately high (up to 6 years of salary protection). As amended, the maximum level of protection that could be imposed on smaller carriers and noncarrier entities is reduced to a more realistic level: advance notice (the same requirement imposed on other industries) and up to one year's salary protection, unless the parties voluntarily agree otherwise. In addition, labor protection arrangements could only be imposed when consistent with the public interest.

Conference substitute

The Conference provision includes the substantive provisions of the House bill. Class II rail carriers acquiring a line under this section are subject to a mandatory 1-year severance pay requirement for severed employees, computed as provided in the House bill. No protection is imposed on Class III rail carrier line acquisitions.

By providing this clear delineation of requirements for Class II and Class III rail carriers acquiring rail lines, the Conference does not intend to limit the availability of section 10901 for non-carrier acquisitions. In addition, Class II and Class III carriers retain the existing option (as do Class I carriers) to obtain approval of inter-carrier transactions under section 11323, such as trackage rights agreements under section 11323(a)(6). The House references to definitions of Class II and Class III rail carriers are deleted as unnecessary. The Conference intends to follow the prior practice in the Staggers Act and elsewhere of employing the Class II and Class III categories formerly established by the ICC, and now to be the responsibility of the Surface Transportation Board.

SEC. 10903. FILING AND PROCEDURE FOR APPLICATION TO ABANDON OR DISCONTINUE.

House provision

This provision (10703), which replaces former Sections 10903 and 10904, converts applications for the abandonment or discontinuance of service on a rail line from a "public convenience and

necessity” licensing proceeding into a notification process to maximize the opportunity for the line to be acquired for continued operation by a smaller railroad, even though the line is revenue-deficient for a large trunk carrier.

Given the change from licensing to notification, the agency’s powers are limited to enforcing the notification requirements and, if appropriate, specifying that the scope of the proposed abandonment be amended to afford the best opportunity for the line to be sold and operated as a viable short-line railroad. Labor protection requirements now applicable to abandonments are unaffected.

Senate amendment

Section 333 (Filing and Procedure for Applications to Abandon or Discontinue) amends 49 U.S.C. 10904, which contains the procedural requirements for applications to abandon a rail line, to remove outdated provisions for rail restructuring plans sponsored by the Secretary and to make conforming changes.

Conference substitute

The Conference provision retains the Senate formulation of an application for abandonment or discontinuance under the public convenience and necessity standard, making other technical changes.

SEC. 10904. OFFERS TO PURCHASE TO AVOID ABANDONMENT AND DISCONTINUANCE.

House provision

This provision (10704), which replaces former Section 10905, governs so-called “forced sales” of lines proposed for abandonment. The new provision retains the procedure under which the agency screens potential offerors for fitness and, if specified conditions are met, sets the price for the sale of the line proposed for abandonment. The new provision eliminates the alternative (and rarely utilized) process for forcing continued operation of a line through use of a shipper or other non-rail party’s subsidy of its operation.

Senate amendment

The Senate amendment retains the existing procedures of section 10905, including the option for agency-supervised subsidy of a rail line to keep it in service.

Conference substitute

The Conference provision includes the House provision, with the addition of the subsidy option, but specifies in subsection (f)(4)(B) that any subsidy arrangement must be limited to a maximum duration of 1 year, unless otherwise mutually agreed by the parties.

SEC. 10905. OFFERING ABANDONED RAIL PROPERTIES FOR SALE FOR PUBLIC PURPOSES.

House provision

In replacing former Section 10906, this provision retains existing agency authority to examine the possibility that a line proposed for abandonment may be suitable for alternative public uses. Aban-

donment may be postponed for up to 6 months to allow for the pursuit of such alternatives.

Senate amendment

The Senate amendment retained former section 10906.

Conference substitute

The Conference provision is the House provision, renumbered as section 10905.

SEC. 10906. EXCEPTION.

House provision

This section replaces former section 10907(a) as the source of rail carriers' authority to enter into joint ownership or use arrangements for spur, industrial, team, switching or side tracks without agency approval. The provision also clarifies that such auxiliary tracks are not subject to the regulatory approval processes under chapter 109. Former section 10907(b) is eliminated to conform to the general pre-emption of State economic regulation of rail carriers.

Senate amendment

Section 334 (Exceptions) amends 49 U.S.C. 10907, which exempts spur, industrial, team, switching, and side tracks from the approval requirement for constructions and abandonments, only for conforming changes.

Conference substitute

The Conference provision, renumbered as section 10906, is the House provision.

SEC. 10907. RAILROAD DEVELOPMENT.

House provision

This provision (10707) retains the feeder line development program of former section 10910, under which another party may acquire ownership of a rail line over which service is inadequate. No changes in the former section, other than the deletion of mandatory labor protection, is made.

Senate amendment

The Senate amendment retained former section 10910 with repeals of obsolete and executed provisions.

Conference substitute

The Conference provision combines the House and Senate changes to former section 10910.

Chapter 111—Operations

SEC. 11101. COMMON CARRIER TRANSPORTATION, SERVICE, AND RATES.*House provision*

This section (10901) replaces former section 11101, but retains the existing legal duty of a rail carrier to provide transportation upon reasonable request—the “common carrier obligation.” In lieu of the former duty to quote rates in the form of a tariff, the provision is changed to conform with the abolition of tariff filing by stating the duty of the carrier to quote rates on reasonable request in writing or electronically.

Senate amendment

Section 336 (Providing Transportation, Service, and Rates) amends 49 U.S.C. 11101, which sets forth a carrier’s obligation to provide service on reasonable request to require that a rail carrier establish common carriage rates and other service terms (of the type requested for specified service between specified points) within 30 days of a reasonable request. A carrier may not refuse to provide a common carriage rate on grounds that there is a transportation contract covering the traffic. The amended section also requires a carrier to provide 20 days’ advance notice of rate increases.

Conference substitute

The Conference provision modifies the House provision to clarify the obligation of the carrier to make its common carrier rates and service terms available to any person on request. It requires that 20 days’ advance notification of any rate increases or changes in service terms be given to parties who either requested such quotations or have made arrangements with the carrier during the preceding year. The provision also includes specific additional obligations of the carrier with respect to transportation of agricultural products, including making rate and service terms, and any changes (actual and proposed) publicly available.

The agency is to issue implementing regulations under this section within 180 days of enactment of the legislation. It is the Conference’s intent that in fashioning the regulations, the agency should accommodate wherever possible the use of electronic media in making the required information available.

SEC. 11102. USE OF TERMINAL FACILITIES.*House provision*

This section (10902) replaces former section 11103, which empowers the agency to order use of terminal facilities and to require “reciprocal switching” arrangements between rail carriers. A time limit of 180 days is imposed on processing of terminal facilities cases.

Senate amendment

Section 337 (Use of Terminal Facilities) amends 49 U.S.C. 11103, under which a carrier may be compelled to provide competi-

tive access to terminal facilities or switching arrangements, only with conforming changes.

Conference substitute

The Conference provision incorporates the House time limit and other conforming changes. As noted in connection with section 10501, local government authorities are to be excluded from economic regulation (rates, fares, entry, and exit) under the amended statute. A specific exception is made in section 10501(c) for matters arising under sections 11102 and 11103, which deal with access to or use of railroad facilities and infrastructure. Under the amended section 11102, the agency's existing power to order access to terminal facilities, including main-line tracks a reasonable distance from the terminal, would be retained. Thus local transportation authorities satisfying the jurisdictional requirements of section 10501 could invoke the remedies of this section and section 11103 with respect to both freight and passenger transportation uses of railroad facilities, based on the existing public interest standard. It is the Conference's intent that, subject to the foregoing limitations and the operational and compensation requirements stated in this section, a local transportation authority's request would virtually always satisfy the public interest standard.

SEC. 11103. SWITCH CONNECTIONS AND TRACKS.

House provision

In replacing former section 11104, this section (10904) maintains the agency's authority to require that switch connections be made to branch lines or private side tracks, as well as the authority for the line owner or shipper to seek redress through an administrative complaint to the agency.

Senate amendment

Section 338 (Switch Connections and Tracks) amends 49 U.S.C. 11104, which requires rail carriers to maintain switch connections with other carriers, only with conforming changes.

Conference substitute

The Conference provision retains existing law as stated in the House bill.

Subchapter II—Car Service

SEC. 11121. CRITERIA.

House provision

This section (10921) replaces former section 11121, retaining existing authority to oversee and require reasonable rules and practices regarding car service. References to tariff requirements are deleted.

Senate amendment

Section 339 (Criteria) amends 49 U.S.C. 11121, which provides regulatory oversight over rail car service, to reflect the elimination of most tariffs, and to provide for the Board to consult with the Na-

tional Grain Car Council as necessary. The National Grain Car Council is an advisory group formed by the ICC in 1994, composed of representatives of railroads of varying size, shippers, manufacturers, and government officials. Conforming changes are also made.

Conference substitute

The Conference provision incorporates changes from both the House bill and the Senate amendment.

SEC. 11122. COMPENSATION AND PRACTICE.

House provision

This section (10922) replaces former section 11122, as the source of agency authority over arrangements for compensating the owners of rail cars for use of the cars. No substantive change is made to the statute, and no effect upon existing rules now in place is intended.

Senate amendment

The Senate amendment made no change in existing law.

Conference substitute

The Conference provision utilizes the House provision. It is the Conference's intent not to disturb any rules or regulations now in force regarding matters subject to this section.

SEC. 11123. SITUATIONS REQUIRING IMMEDIATE ACTION TO SERVE THE PUBLIC.

House provision

This section (10923), which replaces former section 11124, retains present agency authority to make arrangements, without a formal regulatory proceeding, for rail service when the carrier presently serving a particular area is unable to provide adequate service. Former section 11125 on directed rail transportation was repealed.

Senate amendment

Section 340 (Rerouting Traffic on Failure of Rail Carrier to Serve Public) amends 49 U.S.C. 11124, under which traffic can be ordered to be rerouted when a carrier cannot provide service, only with conforming changes. Former sections 11123 and 11125 are also amended with conforming changes only.

Conference substitute

The Conference provision consolidates the emergency powers contained in former sections 11123 (situations requiring immediate action), 11124 (rerouting traffic on failure of a carrier to serve the public), and 11125 (directed rail transportation). In addition to elimination of obsolete provisions, the conference provision restricts directed rail transportation to situations where no Federal funding is involved, and compensation to the carrier providing the directed service comes entirely from the revenues generated by the service. The provision retains the existing overall 270-day limit on directed rail service arrangements.

SEC. 11124. WAR EMERGENCIES; EMBARGOES IMPOSED BY CARRIERS.*House provision*

This section (10924) replaces former section 11128, retaining existing powers of the agency to give preference or priority to military or war-related traffic at Presidential request.

Senate amendment

Section 342 (War Emergencies; Embargoes) amends 49 U.S.C. 11128, under which preferences and priorities in traffic can be directed in wartime, only with conforming changes.

Conference substitute

The Conference provision retains the substantive content of existing law.

*Subchapter III—Reports and Records***SEC. 11141. DEFINITIONS.***House provision*

This section (10941) replaces the relevant rail definitions of former section 11141.

Senate amendment

Section 343 (Definitions for Subchapter III) amends 49 U.S.C. 11141, which provides definitions for subchapter III of chapter 111, title 49 (covering carrier reports and records) to limit coverage to entities regulated under this part.

Conference substitute

The Conference provision follows the House bill in confining coverage of the definitions to rail matters.

SEC. 11142. UNIFORM ACCOUNTING SYSTEM.*House provision*

This section (10942) retains the agency's power to prescribe standard accounting procedures for rail carriers. To conform to the Staggers Act policy explicitly referenced in other accounting provisions, the section includes a directive that the agency utilize, to the maximum extent feasible, generally accepted accounting principles.

Senate amendment

No comparable provision.

Conference substitute

The Conference provision utilizes the language of the House bill.

SEC. 11143. DEPRECIATION CHARGES.*House provision*

This section (10943) retains the agency's authority over rail carrier depreciation procedures under former section 11143.

Senate amendment

Section 344 (Depreciation Charges) amends 49 U.S.C. 11143, under which appropriate depreciation charges are prescribed, to remove a reference to entities not regulated under Part A and to make other conforming changes.

Conference substitute

The Conference provision utilizes the language of the House provision, to reflect the structure of the bill in confining Part A to rail matters only.

SEC. 11144. RECORDS: FORM; INSPECTION; PRESERVATION.*House provision*

This section (10944) replaces former section 11144, regarding the agency's authority over carrier and broker records. References to authority over "protective services" (refrigerated car arrangements) are deleted to conform to the abolition of regulation over such matters.

Senate amendment

Section 345 (Records, Etc.) amends 49 U.S.C. 11144, which provides for prescribing and inspecting carrier records, to remove references to entities not regulated under Part A, to reflect an earlier repeal, and to make other conforming changes.

Conference substitute

The Conference provision incorporates the language of both provisions, limited to reflect the rail-only content of Part A.

SEC. 11145. REPORTS BY RAIL CARRIERS, LESSORS, AND BROKERS.*House provision*

This section (10945) retains existing agency authority to require annual and other reports by regulated entities under former section 11145.

Senate amendment

Section 346 (Reports by Carriers, Lessors, and Associations) amends 49 U.S.C. 11145, which addresses carrier reports, to remove provisions regarding entities not regulated under part A and to make conforming changes.

Conference substitute

The Conference provision utilizes the House provision, with the addition of language from existing law concerning reporting authority over persons supplying cars to rail carriers.

*Subchapter IV—Railroad Cost Accounting***SEC. 11161. IMPLEMENTATION OF COST ACCOUNTING PRINCIPLES.***House provision*

This section (10961) retains existing agency jurisdiction over railroad accounting practices under former section 11163. Former sections 11161 and 11162 are deleted as obsolete references to ac-

tions taken by the now defunct Railroad Accounting Principles Board temporarily established by the Staggers Rail Act.

Senate amendment

No comparable provisions.

Conference substitute

The Conference provision contains the House provision, but with the deletion of a fixed 5-year maximum interval between periodic agency reviews of cost accounting principles. Instead, it relies on the general obligation to review such principles periodically.

SEC. 11162. RAIL CARRIER COST ACCOUNTING SYSTEM.

House provision

This section replaces former section 11164, but retains the obligation of rail carriers to maintain a cost accounting system consistent with agency requirements. Obsolete references to the activities of the Railroad Accounting Principles Board are deleted.

Senate amendment

No comparable provision.

Conference substitute

The Conference provision utilizes the language of the House provision.

SEC. 11163. COST AVAILABILITY.

House provision

In replacing former section 11165, this provision retains the existing obligation of rail carriers to make relevant cost data available to other parties to agency proceedings.

Senate amendment

No amendment to existing law.

Conference substitute

The Conference provision utilizes the House provision.

SEC. 11164. ACCOUNTING AND COST REPORTING.

House provision

This section replaces former section 11165, and retains the existing agency authority to promulgate accounting rules for rail carriers. Former section 11167, regarding the report of the Railroad Accounting Principles Board, is deleted as obsolete and executed.

Senate amendment

Section 347 (Accounting and Cost Reporting) amends 49 U.S.C. 11166, under which rail carrier expense and revenue accounting and reporting requirements may be prescribed, to remove a reference to a repealed provision, make other conforming changes, and condense the language.

Conference substitute

The Conference provision follows the language of the Senate amendment, with condensed and streamlined language.

Chapter 113—Finance

*Subchapter I—Equipment Trusts and Security Interests***SEC. 11301. EQUIPMENT TRUSTS: RECORDATION; EVIDENCE OF INDEBTEDNESS.***House provision*

This section (11101) replaces former section 11303, governing recordation of security interests and other financial instruments affecting railroad rolling stock and locomotives. The new agency will assume the former ICC's function as a central point of recordation for such financial instruments. The filing of such instruments, already a virtually universal practice requirement, is made mandatory. Given the ministerial nature of this function and its susceptibility to computerization, new language is added directing the agency to use private sector contractors to the greatest extent practicable in carrying out these duties. The agency is also directed to collect user fees for services under this section and is authorized to use such fees to offset its costs, to the extent allowed by applicable appropriations measures. The current railway equipment register provision was retained.

Senate amendment

Section 349 (Equipment Trusts) amends 49 U.S.C. 11303, which provides for centralized recordation of liens on railroad cars, locomotives, and other rolling stock, to require continuation of the ICC's current railway equipment register and to give equal effect to foreign registration of such equipment.

Conference substitute

The Conference provision is based on the House provision, but includes from prior law recordation of instruments affecting vessels (other than mortgages under chapter 313 of title 46). The provision also deletes the House language regarding user fees.

*Subchapter II—Combinations***SEC. 11321. SCOPE OF AUTHORITY.***House provision*

This section (11121) retains the basic authority of the ICC to approve inter-carrier transactions among railroads, as well as combinations and acquisitions of control involving rail carriers.

Senate amendment

No change to existing law.

Conference substitute.

The Conference provision combines the House provision with certain additional language from former subsections 11341(a) and

11341(b), to clarify that—even though securities jurisdiction over rail carriers is abolished by this legislation—the Federal statute also establishes basic corporate-approval requirements for transactions subject to this subchapter. Although substantial changes are made in this legislation to the line acquisition provisions as to acquisitions by noncarriers (section 10901) and acquisitions by Class II and Class III railroads (section 10902), the option of using existing authority to approve inter-carrier transactions under this subchapter is not affected. Thus, where a Class I railroad sells a line to another Class I carrier, this subchapter would apply. Similarly, in trackage rights or other inter-carrier transactions involving rail carriers of any size, this subchapter remains available.

SEC. 11322. LIMITATION ON POOLING AND DIVISION OF TRANSPORTATION OR EARNINGS.

House provision

This provision replaces former section 11342. It retains agency authority over pooling arrangements, most commonly used in the railroad industry to arrange for joint ownership of cars through joint ventures.

Senate amendment

Section 351 would amend 49 U.S.C. 11342—under which carrier arrangements to pool traffic, services, or earnings can be authorized and immunized from other laws—to remove provisions regarding entities not regulated under Part A and to make conforming changes.

Conference substitute

The Conference provision incorporates the language of the House bill and the Senate amendment.

SEC. 11323. CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL.

House provision

This section (11123) replaces former section 11343. The extent of agency jurisdiction over intercarrier transactions involving mergers, trackage rights, and similar transactions remains essentially the same as under the former provision, except for new procedures limited to Class II and Class III railroads.

Senate amendment

Section 352 (Consolidation, Merger, and Acquisition of Control) amends 49 U.S.C. 11343, under which advance approval is required for certain intercarrier mergers, control acquisition, or other forms of consolidations, to remove provisions regarding entities not regulated under part A.

Conference substitute

The Conference provision utilizes the language of the House provision.

SEC. 11324. CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL: CONDITIONS OF APPROVAL.

House provision

This section (11124) replaces former section 11344, and lists the specific criteria to be used in deciding whether and on what conditions to approve proposed mergers and related transactions involving Class I railroads. The sole change to the criteria is broadening subsection (b)(5) to include evaluation of adverse competitive effects to include effects on competition among rail carriers in the national rail system, not just “in the affected region.”

A second change from present law elaborates on the existing power to impose conditions on the approval of a merger or other regulated transaction. The bill explicitly authorizes imposition of conditions requiring divestiture of parallel tracks or requiring the granting of trackage rights. It also requires that, if trackage rights are required, the agency must provide for compensation arrangements that ensure the alleviation of the underlying anticompetitive effects sought to be avoided by imposing the trackage rights conditions.

The principal procedure change is the express authorization for what would otherwise be impermissible *ex parte* communications between the decision makers and parties to the proceeding, as long as the communications are preserved in the record. Any such consultations are entirely at the decision maker’s option. This is intended to address complaints that the former ICC process did not allow sufficient procedural flexibility to allow informal consultation to identify areas of concern at an early stage of the approval process. Subsection (a) makes applicable to Class II and Class III mergers the prohibitions on avoiding collective bargaining agreements and shifting work from union to nonunion carriers.

Senate amendment

Section 353 (General Procedure and Conditions of Approval for Consolidation) amends 49 U.S.C. 11344, which contains the administrative procedures, decisional criteria, and conditioning authority for carrier consolidation proposals, to remove unnecessary and inappropriate limitations on railroad acquisitions of motor carriers and on a railroad’s ability to provide motor carrier transportation prior or subsequent to rail transportation. It would also remove outdated provisions regarding restructurings that are sponsored by the Secretary or that involve only passenger carriers. In addition, motor carrier provisions would be removed and other conforming changes would be made.

Conference substitute

The Conference provisions follows the House provision.

SEC. 11325. CONSOLIDATION, MERGER, AND ACQUISITION OF CONTROL: PROCEDURE.

House provision

The section (11125) replaces former section 11345 with respect to rail transactions. Current law allows up to 31 months for reaching an ICC decision on an application involving control of a Class

I rail carrier. The new section reduces the deadline for processing of Class I merger and related cases to 270 days. This compares with the ICC's administrative compression of the schedule for the recently completed Burlington Northern-Santa Fe merger to 180 days and the ICC's recent decision to establish a 255-day processing schedule for the proposed Union Pacific/Southern Pacific merger.

Senate amendment

Section 354 (Rail Carrier Procedure for Consolidation, Etc.) amends 49 U.S.C. 11345, which further specifies administrative procedures for handling rail carrier consolidation proposals, to provide for receiving the comments of the Secretary and the Attorney General at the same time as other parties and to make conforming changes. The Senate provision made no change to the existing 31-month time limit for mergers of Class I railroads.

Conference substitute

The Conference provision incorporates the Senate changes in the timing of comments and adopts an overall 15-month maximum time limit for Class I mergers. It also includes the House language (paralleled by Senate floor amendment changes) specifying the agency's powers regarding trackage rights arrangements and related compensation issues. The provision also includes the House formulation of the scope of the competitive analysis to be conducted by the agency.

SEC. 11326. EMPLOYEE PROTECTIVE ARRANGEMENTS IN TRANSACTIONS AMONG RAIL CARRIERS.

House provision

This provision (11126), which replaces former section 11347, continues the requirements for mandatory imposition of labor protection benefits (severance and salary and benefit protection) in subsection (a) for transactions between Class I railroads and between Class II railroads. These include mergers, trackage rights transactions, and abandonments.

Subsection (b) establishes a separate labor protection standard for mergers between Class II and Class III railroads. Instead of the existing ICC standard of mandatory ("New York Dock") labor protection involving 1 year of salary and benefit protection for each year of prior service up to a maximum of 6 years (now applicable to all merger and related transactions among railroads of any size), Class II-Class III mergers would be subject to a mandatory protection requirement of 1 year of severance pay as defined in subsection (b). There would also be separate limitations on Class II-Class III mergers and acquisitions, including limitations contained in section 11124(e) on the effect of the transaction on collective bargaining agreements and on shifting of work between union and nonunion carriers.

Senate amendment

Section 355 of the Senate amendment made no changes to former section 11347 and retained existing law on labor protection

in mergers and inter-carrier transactions, with only conforming changes.

Conference substitute

The Conference provision includes the requirements from the House bill specifying a separate labor protection regime for Class II-Class III mergers. However, the Conference provision also includes the option, at the applicant's discretion, of seeking approval of a Class II-Class III merger or similar transaction using existing law, which includes the mandatory New York Dock labor protection requirements of up to 6 years of pay. Thus, as to this category of transactions, both the House and Senate positions are embodied in the Conference provision.

SEC. 11327. SUPPLEMENTAL ORDERS.

House provision

This section (11127) replaces without alteration the existing agency power under former section 11351 to exercise continuing jurisdiction over the implementation of regulated mergers or other inter-carrier transactions.

Senate amendment

The Senate bill amendment changes to former section 11351.

Conference substitute

The Conference provision utilizes the House language.

Chapter 115—Federal-State Relations

SEC. 11501. TAX DISCRIMINATION AGAINST RAIL TRANSPORTATION PROPERTY.

House provision

This provision (11301) replaces without substantive change former section 11503, which forbids discriminatory State taxation of rail property as an unreasonable burden on interstate commerce.

Senate amendment

Section 358 of the Senate amendment made only conforming changes to 49 U.S.C. 11503.

Conference substitute

The Conference provision utilizes the House language.

SEC. 11502. WITHHOLDING STATE AND LOCAL INCOME TAX BY RAIL CARRIERS.

House provision

This section (11302) preserves without substantive change the existing protections in former section 11504 against double State or local taxation of the income of railroad employees whose work locations cover more than one State.

Senate amendment

Section 359 of the Senate amendment removed non-rail portions of 49 U.S.C. 11504 and made conforming changes.

Conference substitute

The Conference provision utilizes the House language.

Chapter 117—Enforcement: Investigations, Rights, and Remedies

SEC. 11701. GENERAL AUTHORITY.*House provision*

This section (11501) replaces former section 11701 with respect to rail matters. It is the source of the agency's authority to investigate rail matters under its jurisdiction, but is now limited to action on the basis of a complaint, not on the agency's own motion.

Senate amendment

Section 360 (General Authority for Enforcement, Investigations, Etc.) amends 49 U.S.C. 11701, which contains general authority to conduct administrative investigations and hear complaints, to remove language and provisions regarding entities not regulated under Part A and to make conforming changes.

Conference substitute

The Conference provision utilizes the House language, with changes to reflect the name of the Surface Transportation Board.

SEC. 11702. ENFORCEMENT BY THE BOARD.*House provision*

This provision (11502) replaces former section 11702 in rail matters. It preserves without substantive change the agency's authority to enforce the statute and applicable regulations in the Federal courts.

Senate amendment

Section 361 (Enforcement) amends 49 U.S.C. 11702, which authorizes civil enforcement actions by the regulatory agency, to remove provisions regarding entities and matters not regulated under Part A and to make conforming changes.

Conference substitute

The Conference provision utilizes the House language with conforming changes regarding the title of the Board.

SEC. 11703. ENFORCEMENT BY THE ATTORNEY GENERAL.*House provision*

This provision (11503), which replaces former section 11703, authorizes the Attorney General to prosecute violations of the agency's statute and administrative requirements. The Attorney General is required, as under current law, to undertake such action upon request of the agency.

Senate amendment

Section 362 (Attorney General Enforcement) amends 49 U.S.C. 11703, which authorizes civil and criminal enforcement actions by the Attorney General, to remove language unrelated to Part A.

Conference substitute

The Conference provision incorporates the House provision, as well as the relevant portions of former subsection (b), regarding the authority of the Attorney General to bring a civil action to compel a rail carrier to fulfill its common carrier obligation by providing required transportation.

SEC. 11704. RIGHTS AND REMEDIES OF PERSONS INJURED BY RAIL CARRIERS.*House bill*

Section 11504 reenacts the applicable rail portions of former section 11705. These include authority for injured persons to seek judicial enforcement of agency orders and to seek damages for a violation of the statute.

Senate amendment

Section 363 (Rights and Remedies) amends 49 U.S.C. 11705, which specifies the rights and remedies of persons injured by carrier actions, to remove language regarding entities not regulated under Part A and to make conforming changes.

Conference substitute

The Conference adopts the House language, with modifications.

SEC. 11705. LIMITATIONS ON ACTIONS BY AND AGAINST RAIL CARRIERS.*House bill*

Section 11505 retains the current statutes of limitation governing the timeliness of court actions involving rail carriers.

Senate amendment

Section 364 (Limitation on Actions) amends 49 U.S.C. 11706, which contains time limits for bringing actions by and against carriers, to remove provisions related to carriers not regulated under Part A.

Conference substitute

The Conference adopts the House language with modifications.

SEC. 11706. LIABILITY OF RAIL CARRIERS UNDER RECEIPTS AND BILL OF LADING.*House bill*

Section 11506 replaces the rail portions of former section 11707, which includes the rule of carrier liability known as the Carmack amendment. The new section makes no substantive change in the rules of liability for loss or damage to rail shipment. Although entry, exit, and rate regulation of passenger rail transportation is terminated by other provisions of the bill, this section

retains the Carmack amendment as the governing law for shipment or baggage damage, retaining the existing authority (new subsection (c)(3)) to limit liability as part of the rates charged to rail passengers. Other new additions in subsection (c) confirm the right of rail carriers and shippers to provide by mutual agreement for declared-value limits on loss and damage claims or to provide for specific deductibles applicable to such claims, to replace the relevant provisions of former section 10730.

Senate amendment

Section 365 (Liability of Common Carriers under Receipts and Bills of Lading) amends 49 U.S.C. 11707 (commonly referred to as the Carmack Amendment), governing cargo liability, to remove provisions regarding entities not regulated under Part A, to reflect the elimination of tariffs for most traffic, and to remove provisions regarding passenger transportation.

Conference substitute

The Conference adopts the House provision with modifications.

SEC. 11707. LIABILITY WHEN PROPERTY IS DELIVERED IN VIOLATION OF ROUTING INSTRUCTIONS.

House bill

No provision.

Senate amendment

Section 366 amends 49 U.S.C. 11710—which makes rail carriers liable for violating shipper routing instructions—only for conforming changes.

Conference substitute

The Conference adopts the Senate provision.

Chapter 119—Civil and Criminal Penalties

GENERAL CIVIL PENALTIES

SEC. 11901. GENERAL CIVIL PENALTIES.

House bill

Section 11701 reenacts without substantive change the existing civil penalties applicable to rail carriers under former section 11901.

Senate amendment

Section 367 (General Civil Penalties) amends 49 U.S.C. 11901, which contains general civil penalties for violating Part A, to remove penalties related to provisions that are repealed from Part A and to make conforming changes.

Conference substitute

The Conference adopts the House provision with modifications. The Conference provision deletes the specific penalties provided for in former sections 11903, 11904, and 11912 in view of the availability of the general penalty under this section, which would cover

those situations. Deletion of penalties for accepting rebates under former section 11902 is not intended to sanction such conduct, which would be actionable under other laws.

SEC. 11902. INTERFERENCE WITH RAILROAD CAR SUPPLY.

House bill

Section 11702 replaces without substantive change the criminal penalties specified in former section 11907 regarding bribery-related actions or inducements to interfere with or alter the distribution of rail cars.

Senate amendment

Section 371 (Interference with Railroad Car Supply) amends 49 U.S.C. 11907, which contains penalties for interference with railroad car supply, only for conforming changes.

Conference substitute

The Conference adopts the House provision with modifications.

SEC. 11903. RECORD KEEPING AND REPORTING VIOLATIONS.

House bill

Section 11703 replaces the rail portions of former section 11909, regarding willful falsification, destruction, or omissions of required records and reports.

Senate amendment

Section 372 (Record Keeping and Reporting Violations) amends 49 U.S.C. 11909, which contains penalties for record keeping and reporting violations, to remove provisions regarding entities not regulated under Part A and to make conforming changes.

Conference substitute

The Conference adopts the House language with modifications.

SEC. 11904. UNLAWFUL DISCLOSURE OF INFORMATION.

House bill

In replacing the rail portions of former section 11910, this section (11704) preserves existing criminal penalties for unauthorized and unlawful disclosure of shipment-related and cost-accounting confidential business information.

Senate amendment

Section 373 (Unlawful Disclosure of Information) amends 49 U.S.C. 11910, which contains penalties for unlawful carrier disclosure of confidential shipper information, to remove provisions regarding entities not regulated under Part A and to make conforming changes.

Conference substitute

The Conference adopts the House language with modifications.

SEC. 11905. DISOBEDIENCE TO SUBPOENAS.*House bill*

Section 11705 retains existing criminal penalties under former section 11913 regarding noncompliance with agency subpoenas.

Senate amendment

The Senate amendment retains existing law.

Conference substitute

The Conference adopts the House language with modifications.

SEC. 11906. GENERAL CRIMINAL PENALTY WHEN SPECIFIC CRIMINAL PENALTY NOT PROVIDED.*House bill*

Section 11706 retains the existing general criminal penalty provisions with respect to rail matters formerly contained in section 11914.

Senate amendment

Section 375 (General Criminal Penalty) amends 49 U.S.C. 11914, which contains general criminal penalties when specific penalties are not provided, to remove provisions regarding entities not regulated under part A and to make conforming changes.

Conference substitute

The Conference adopts the House language with modifications, but removes references to specific sections of law.

SEC. 11907. PUNISHMENT OF CORPORATION FOR VIOLATION COMMITTED BY CERTAIN INDIVIDUALS.*House bill*

Section 11707 retains the existing rules of corporate criminal responsibility in former section 11915 for actions by directors, officers, and other officials of the corporation. This section also makes a conforming organizational amendment to reflect the separation of economic regulation of railroads from other former ICC responsibilities.

Senate amendment

The Senate amendment retains existing law.

Conference substitute

The Conference adopts the House language with modifications.

SEC. 11908. OTHER FEDERAL CRIMINAL PENALTIES.*House bill*

No provision.

Senate amendment

No provision.

Conference substitute

Section 11908 clarifies that specific criminal penalties are the exclusive criminal penalties for violations of Part A, notwithstanding 18 U.S.C. 3571.

SEC. 103. MOTOR CARRIER, WATER CARRIER, BROKER, AND FREIGHT FORWARDER PROVISIONS.

This section creates a new Motor Carrier Act by amending Subtitle IV of title 49. It inserts after chapter 117 a new Part B relating to motor carriers, water carriers, brokers, and freight forwarders. Part B is administered by the Secretary except for those provisions which specifically provide for administration by the Board.

Chapter 131—General Provisions

TRANSPORTATION POLICY

House bill

Sec. 13101. Transportation policy. This section maintains the current national transportation policy for the Motor Carrier Act.

Senate amendment

Sec. 13101 (Transportation policy) sets out the national transportation policy from existing 49 U.S.C. 10101, and adds a water policy for noncontiguous domestic trade.

Conference substitute

The Conference adopts the House provision with the Senate addition and includes a public interest consideration.

DEFINITIONS

House bill

Sec. 13102. Definitions. This section maintains existing motor and water carrier definitions that apply to part B. Revisions have been made to the definition of household goods to deregulate office and trade show moves, and the definition of foreign motor carriers is modified as requested by the Department of Transportation to conform to the NAFTA treaty.

Senate amendment

Sec. 13102. (Definitions) imports those definitions from existing 49 U.S.C. 10102 that would be applicable to Part B. The definitions of foreign motor carriers and foreign motor private carriers, which are needed for enforcement of the provisions of the North American Free Trade Agreement (NAFTA), are imported from existing 49 U.S.C. 10530. The definition of residential household goods is subdivided between those transported for the individual householder (for which contract rates are precluded) and those transported under an arrangement with a third party (which are not so restricted). The definition of “transportation” was expanded to include “arranging for”, “packing”, and “unpacking” passengers and property as part of services related to transportation.

Conference substitute

The Conference adopts the House provision modified by the broader Senate language, with a technical clarification, regarding the definition of “freight forwarder.” The Conference adopts the Senate definition of “transportation” to clarify that services related to the movement of passengers or property include all pre- and post-move services directly related to that transportation. The Conference believes that, with respect to remedies, the transportation of passengers and property includes the entire process from arranging for the movement through the final resolution of any claims disputes. In place of the definition of the Panel, the Conference provides for a definition of the Surface Transportation Board.

REMEDIES

House bill

Sec. 13103. Remedies as cumulative. This section maintains current law that remedies under this part are in addition to remedies existing under another law or common law.

Senate amendment

The Senate amendment contains an identical provision with a different section title.

Conference substitute

The Conference adopts the House provision.

Chapter 133—Administrative Provisions

POWERS

House bill

Sec. 13301. Powers. This section transfers to the Secretary all of the existing general regulatory powers of the ICC. Subsection (f) also transfers existing ICC powers to the Panel, insofar as they relate any functions under the Motor Carrier Act transferred to the Panel.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

INTERVENTION

House bill

Sec. 13302. Intervention. This section maintains current law regarding the right of interested persons to be afforded notice and an opportunity to participate in proceedings under part B.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

SERVICE OF NOTICE

House bill

Sec. 13303. Service of notice in proceedings. This section maintains current law requiring entities regulated under part B to designate an agent on whom service of notice of administrative proceedings can be made, and includes provisions requiring a motor carrier to file with appropriate authorities in States in which the carrier operates.

Senate amendment

Sec. 13303 (Service of notice in proceedings under this part) imports from existing 49 U.S.C. 10329 the provisions requiring regulated entities to designate agents on whom notice of administrative proceedings can be served.

Conference substitute

The Conference adopts the House provision.

SERVICE OF PROCESS

House bill

Sec. 13304. Service of process in court proceedings. This section maintains current law requiring motor carriers and brokers to designate an agent on whom service of process in court proceedings can be made.

Senate amendment

Sec. 13304 (Service of process in court proceedings) would import from existing 49 U.S.C. 10330 the provisions requiring carriers and brokers to designate an agent on whom notice of court proceedings can be served, and allows States in which carriers operate to require such designation to be filed with it.

Conference substitute

The Conference adopts the Senate provision.

Chapter 135—Jurisdiction

House bill

Sec. 13501. General jurisdiction. This section transfers to the Secretary and the Panel the current ICC jurisdiction over transportation by motor carriers.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

ALASKA

House bill

Sec. 13502. Exempt transportation between Alaska and other States. This section preserves the current exclusion from jurisdiction for transportation conducted while in a foreign country en route between Alaska and another state.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

TERMINAL AREAS

House bill

Sec. 13503. Exempt motor vehicle transportation in terminal areas. This section preserves the current jurisdictional exemptions for operations conducted in a terminal area.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

TRANSPORTATION IN ONE STATE

House bill

Sec. 13504. Exempt motor carrier transportation entirely in one State. This section preserves the current exemption from jurisdiction for transportation (other than of household goods) and terminal operations within the State of Hawaii.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

PRIMARY BUSINESS

House bill

Sec. 13505. Transportation furthering a primary business. This section preserves the current exemption from jurisdiction for transportation, by a person engaged in a business other than transportation, which furthers a primary business.

Senate amendment

The Senate amendment contains no comparable provision.

Conference substitute

The Conference adopts the House provision.

MISCELLANEOUS EXEMPTIONS

House bill

Sec. 13506. Miscellaneous motor carrier transportation exemptions. This section preserves the current exemption from jurisdiction for several types of transportation and transportation of certain commodities.

Senate amendment

The Senate amendment contains no comparable provision.

Conference substitute

The Conference adopts the House provision.

MIXED LOADS

House bill

Sec. 13507. Mixed loads of regulated and unregulated property. This section preserves current law regarding the transportation of regulated and unregulated property in the same vehicle at the same time.

Senate amendment

The Senate amendment contains no comparable provision.

Conference substitute

The Conference adopts the House provision.

COOPERATIVE ASSOCIATIONS

House bill

Sec. 13508. Limited authority over cooperative associations. This section preserves current law regarding authority over cooperative associations.

Senate amendment

The Senate amendment contains no comparable provision.

Conference substitute

The Conference adopts the House provision.

Subchapter II—Water Carrier Transportation

JURISDICTION

House bill

Sec. 13521. General jurisdiction. This section transfers to the Secretary and the Panel the current jurisdiction of the ICC over water carrier transportation. The jurisdiction has been expanded to include port-to-port water carrier transportation and transportation to the U.S. territories.

Senate amendment

Sec. 13521 (General jurisdiction) imports the basic jurisdictional statement of existing 49 U.S.C. 10541(a) (except for the in-

troductory clause that allowed regulation through other laws) to the Board.

Conference substitute

The Conference adopts the House provisions modified by moving subsection (b), relating to exemptions of water carriers from the requirements of sections 13701 or 13702, to section 13541(e)(2).

Subchapter III—Freight Forwarder Service

JURISDICTION

House bill

Sec. 13531. General jurisdiction. This section transfers to the Secretary jurisdiction over all freight forwarders and certain household goods freight forwarders.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

Subchapter IV—Authority to Exempt

EXEMPTION AUTHORITY

House bill

Sec. 13541. Authority to exempt transportation or services. This section broadens the ICC's current exemption authority and grants the Secretary and the Panel broad regulatory exemption authority over the entire Motor Carrier Act. However, it provides that this exemption authority may not be used to relieve an entity from the cargo liability, insurance, safety fitness requirements or anti-trust immunity authorities under sections 13703 and 14302 or activities not terminated under 13907(d)(2).

Senate amendment

Sec. 13541 (Authority to exempt transportation or service) gives broad exemption authority, comparable to that of the Board under 49 U.S.C. 10505, to both the Secretary and the Board, for each to apply to the portions of Part B that it is charged with administering. This exemption authority could not be used to relieve an entity from the cargo liability, insurance, or safety fitness requirements of Part B, however, unless that entity would have been eligible for a statutory exemption available prior to this bill. The Secretary or Board may not exempt a water carrier from sections 13701 or 13702.

Conference substitute

The Conference adopts the House provision from section 13521(b), modified by the Senate language prohibiting the Secretary or the Board from exempting a water carrier from the requirements of sections 13701 or 13702.

Chapter 137—Rates and Through Routes

REASONABLE RATES

House bill

Sec. 13701. Requirements for rates, classifications, through routes, rules, and practices for certain transportation. This section virtually eliminates existing ICC motor carrier rate regulation by limiting the rate reasonableness requirement only to household goods movements, a movement by or with a water carrier in non-contiguous domestic trade and collective rates, rules and classification under an agreement pursuant to section 13709. The section maintains the current basic rate reasonableness requirements for these three limited areas and transfers the regulatory authority to the Panel to prescribe a rate when the carrier's rate is not reasonable. Zone of reasonableness provisions for water carriers are included.

Senate amendment

Sec. 13701 (Requirements for rates, classifications, through routes, rules, and practices for certain transportation) retains rate regulation for two categories of traffic under Part B: (1) residential household goods movements and (2) joint-rate water-motor movements in non-contiguous domestic trade. For the two categories of traffic for which rates would be regulated, subsection (a) would import the basic rate reasonableness requirement from existing 49 U.S.C. 10701, while subsection (b) would import from existing 49 U.S.C. 10704 and section 10705 the regulatory authority to prescribe a rate when the carrier's rate is unreasonable. The responsibility for administering these provisions would be placed with the Board. Subsection (d) set forth the requirements for reasonable rate determination for noncontiguous domestic trade.

Conference substitute

The Conference adopts the House provision modified by the Senate language in subsection (d) establishing a "zone of reasonableness" of 7.5 percent (adjusted by the change in the Consumer Price Index) above or 10 percent below the rate in effect one year prior to the proposed rate for motor carriers and port-to-port movements by water carriers in the noncontiguous domestic trades.

TARIFF REQUIREMENTS

House bill

Sec. 13702. Tariff requirement for certain transportation. This section narrows the requirement to maintain tariffs to two categories of traffic: noncontiguous domestic trade and movements of household goods paid for by the householder. Tariff filings with the Panel are required only for noncontiguous domestic trade and certain requirements for the composition of tariffs are streamlined and clarified. Carriers providing transportation of household goods must publish tariffs and maintain such tariffs for inspection, are bound by the terms of the tariffs, and transportation without a tariff is prohibited. This section also precludes the possibility of any future undercharges.

Senate amendment

Sec. 13702 (Tariff requirement for certain transportation) retains a tariff requirement only for the same two limited categories of traffic: (1) joint rates for motor-water movements in noncontiguous domestic trade and (2) residential movements of household goods. Subsection(a) imports from existing 49 U.S.C. 10761 the requirement for a tariff and the prohibition against charging an amount different from that contained in the tariff. Subsections (b) through (e) imports the applicable tariff filing requirements of existing 49 U.S.C. 10762 for joint-rate movements in the non-contiguous domestic trade. The tariffs for such movements would be filed with the Board. Subsection (f) requires household goods carriers to maintain tariffs applicable to those residential moves, but does not require that those tariffs be filed with the Board. Rather, those tariffs are required to be published and kept open and available for inspection. The carrier is bound by the terms of its tariffs, and is prohibited from transporting residential household goods movements for individual householders without a tariff. The Board is charged with administering and enforcing these requirements.

Conference substitute

The Conference adopts the House provision, modified in subsection (a) to exempt transportation for charitable purposes without charge. Subsection (b) of this section allows the Board to prescribe the form and manner of publishing and filing tariffs. In prescribing the method for making tariffs available for public inspection, the Board is urged to continue the FMC's practice of allowing carriers to file their tariffs electronically.

COLLECTIVE ACTIVITIES

House bill

Sec. 13703. Certain collective activities; exemption from anti-trust laws. This section streamlines and reforms the current authority to exempt carriers from the antitrust law. The section authorizes the Panel to approve agreements between motor carriers and confer antitrust immunity for establishing through routes and joint rates, rates for the movement of household goods, classifications and mileage guides and certain other activities. Agreements may be approved only if the Panel finds it is in the public interest and the approval would expire three years after the approval date. Approvals may be renewed unless renewal is not in the public interest.

Senate amendment

Sec. 13703 (Certain collective activities: exemption from anti-trust laws), imported from existing 49 U.S.C. 10706, provides for Board approval of, and concomitant antitrust immunity for, certain motor carrier collective activities. Subsection (d) would make Board approval effective only for a 3-year period; an approval would expire at the end of the 3-year period if not reapproved at the request of the carriers. Subsection (e) would contain a "grandfather" provision allowing existing approved agreements to continue in effect (unless earlier withdrawn or revoked) for an initial 3 years (at the

end of which the renewal requirement would apply). Subsection (f) would preclude the approval of collective activity from providing a basis for an undercharge claim and it would provide that an undercharge claim could not be based solely on a commodity classification established pursuant to that section. Subsection (g) would codify the existing ICC requirement, upheld by the courts, that a carrier must participate in a mileage guide established under an approved collective-action agreement in order to enforce mileage rates using such a guide.

Conference substitute

The conference adopts the House provision with a modification to subsection (g)(2) to clarify that carriers may use mileage guides formulated under an agreement approved under this section or any other published mileage guide that can be examined by any interested person upon reasonable request.

HOUSEHOLD GOODS RATES

House bill

Sec. 13704. Household goods rates—estimates; guarantees of service. This section incorporates current law allowing household goods carriers to use binding estimates and guaranteed pick-up and delivery times. Oversight is transferred to the Secretary.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

THROUGH ROUTES AMONG BUS CARRIERS

House bill

Sec. 13705. Requirements for through routes among motor carriers of passengers. This section preserves current law providing that intercity bus companies may establish through routes with each other and such through routes must be reasonable. It authorizes the Panel to prescribe through routes and the conditions under which they are operated when necessary to enforce the requirement for rate reasonableness. This section permits the Panel to resolve disputes between bus carriers involving their operations.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

LIABILITY FOR PAYMENT

House bill

Sec. 13706. Liability for payment of rates. This section preserves current law regarding the liability, as between a consignor or consignee, for payment for transportation.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

PAYMENT OF RATES

House bill

Sec. 13707. Payment of Rates. This section retains current law regarding payment for transportation and services and allows the extension of credit.

Senate amendment

The Senate amendment contains no comparable provision.

Conference substitute

The Conference adopts the House provision.

BILLING AND COLLECTING PRACTICES

House bill

Sec. 13708. Billing and collecting practices. This section preserves current law regarding the truth-in-billing requirement, enacted for motor carriers in the Negotiated Rates Act of 1993 and requires a carrier to disclose whether and to whom an allowance or reduction is made.

Senate amendment

Sec. 13707 (Billing and collecting practices) preserves the truth-in-billing requirement of existing 49 U.S.C. 10767(b), enacted for motor carriers in the Negotiated Rates Act of 1993. It also retains the prohibition against rate reductions to someone other than the person ultimately responsible for paying the transportation charges.

Conference substitute

The Conference adopts the provision.

UNDERCHARGE SETTLEMENTS

House bill

Sec. 13709. Procedures for resolving claims involving unfiled, negotiated transportation rates. This section preserves, and places under the Panel's administration, the undercharge resolution provisions, as enacted in the Negotiated Rates Act of 1993, for transportation conducted prior to the effective date of this Act.

Senate amendment

Sec. 13708 (Procedures for resolving claims involving unfiled, negotiated transportation rates) contains an identical provision with only a technical change.

Conference substitute

The Conference adopts the Senate provision.

ADDITIONAL UNDERCHARGE PROVISIONS

House bill

Sec. 13710. Additional motor carrier undercharge provisions. This section preserves, and places under the Panel's administration, further undercharge procedures enacted in the Transportation Regulatory Reform Act of 1994 (TIRRA).

Senate amendment

Section 13709 (Additional motor carrier undercharge provisions) would import and place under the Board's administration, the further billing and undercharge procedures of existing 49 U.S.C. 10762(a)(3)–(5), enacted in the Transportation Regulatory Reform Act of 1994 (TIRRA).

Conference substitute

The Conference adopts the House provision with a modification to subsection (a)(2) relating to rate applicability or reasonableness disputes.

ALTERNATIVE UNDERCHARGE PROCEDURE

House bill

Sec. 13711. Alternative procedure for resolving undercharge disputes. This section expands and codifies the undercharge relief provided in section 2(e) of the Negotiated Rates Act of 1993 (NRA). Specifically, it expands the unreasonable practice relief by removing the September 30, 1990 cut-off date. The section applies to all cases and proceedings pending on the effective date of the section.

Senate amendment

Sec. 13710 (Alternative procedure for resolving undercharge disputes) codifies the undercharge relief provided in section 2(e) of the Negotiated Rates Act of 1993 (NRA). It expands that unreasonable practice relief by removing the September 30, 1990, cut-off date.

Conference substitute

The Conference adopts the House provision.

GOVERNMENT TRAFFIC

House bill

Sec. 13712. Government traffic. This section preserves current law that transportation may be provided for the U.S. Government at discounted rates.

Senate amendment

Sec. 13711 (Government traffic) contains an identical provision.

Conference substitute

The Conference adopts the provision.

FOOD AND GROCERY TRANSPORTATION

House bill

Sec. 13713. Food and grocery transportation. This section preserves current law regarding compensation to a customer picking up food and grocery products at the shipping point of a seller using a uniform zone delivered pricing system.

Senate amendment

Sec. 13712 (Food and grocery transportation) contains an identical provision.

Conference substitute

The Conference adopts the provision.

Chapter 139—Registration

REGISTRATION REQUIREMENT

House bill

Sec. 13901. Requirement for registration. This section conforms current law to provide that carriers register, rather than be granted a certificate of operating authority. This section preserves the concept from current law that a person may operate as a motor carrier, broker, or freight forwarder only if registered with the Secretary under chapter 139.

Senate amendment

The Senate contains a nearly identical provision with one minor technical difference.

Conference substitute

The Conference adopts the House provision.

MOTOR CARRIER REGISTRATION

House bill

Sec. 13902. Registration of motor carriers. This section transfers the responsibility and current requirements for registration of for-hire motor carriers to the Secretary. Registration is based on safety fitness and financial responsibility and shall be withheld if the carrier does not meet these requirements. This section also covers small package carriers and provides for intrastate bus service in conjunction with interstate bus operations. This section contains special registration provisions for foreign carriers, amended as requested by the Department of Transportation to reflect requirements under the NAFTA treaty.

Senate amendment

Sec. 13902 (Registration of motor carriers), distilled from existing 49 U.S.C. 10922, contains the registration provisions for motor carriers (in subsection (a)). With respect to intercity bus operations, it retains the current restrictions on subsidized operations to prevent them from competing unfairly with unsubsidized operations (in subsections (b) (1)–(2), (8)). It retains the current provisions au-

thorizing intrastate service to be provided in conjunction with interstate bus operations (in subsections (b) (3)–(6)). It retains the existing preemption for intercity bus operators providing pickup and delivery of express packages, newspapers or mail (in subsection (b)(7)). Finally, it contains special registration provisions for foreign carriers, drawn from existing 49 U.S.C. 10530 and 10922(m), to reflect the special foreign policy implications in that area (in subsection (c)).

Conference substitute

The Conference adopts the House provision with Senate modifications to clarify that the registration requirements do not affect the requirement for foreign motor private carriers operating to the United States to comply with laws and regulations relating to fitness, safety, financial responsibility, and taxes. In addition, the Conference adopts a new subsection (d) which authorizes the Secretary, pending implementation of the new registration system under section 13908, to continue to register persons separately as motor common carriers and motor contract carriers and the Secretary is authorized to continue to collect fees for registering as both common and contract carriers.

FREIGHT FORWARDER REGISTRATION

House bill

Sec. 13903. Registration of freight forwarders. This section transfers the responsibility for registration and current requirements of freight forwarders to the Secretary. Registration is based on whether the registrant is willing and able to provide the service and comply with requirements imposed by the Secretary and Panel. When a freight forwarder acts in the capacity of a carrier for the entire move, it must be registered as a carrier as well.

Senate amendment

Sec. 13903 (Registration of freight forwarders), drawn from existing 49 U.S.C. 10923(a), contains the registration provisions for freight forwarders and provides a freight forwarder must be fit, willing and able to provide the service and comply with regulations of the Secretary and the Board. The registration requirement is extended to all freight forwarders (not just those handling household goods). Freight forwarders of commodities other than household goods are not subjected to any further regulation of their activities beyond the registration requirement. It continues the current requirement that, when a freight forwarder acts in the capacity of a carrier for the entire move, it must be registered as a carrier as well.

Conference substitute

The Conference adopts the Senate provision.

BROKER REGISTRATION

House bill

Sec. 13904. Registration of brokers. This section transfers the responsibility for registration of brokers to the Secretary. Registra-

tion is based on whether the registrant is willing and able to provide the service and comply with requirements imposed by the Secretary and Panel.

Senate amendment

Sec. 13904 (Registration of motor carrier brokers), drawn from existing 49 U.S.C. 10924, would contain the registration provisions for brokers that require a broker to be fit, willing and able to be a broker and to comply with laws and regulations. A broker may provide transportation itself only if the broker also has been registered to provide transportation under the chapter.

Conference substitute

The Conference adopts the Senate provision with a technical modification.

PERIODS OF REGISTRATION

House bill

Sec. 13905. Effective periods of registration. This section transfers to the Secretary the requirement that a registration generally remain in effect for so long as the registrant maintains its insurance coverage. However, the Secretary may amend or revoke a registration on request of the registrant or suspend or revoke a registration on complaint or on the Secretary's initiative for cause. Cause for suspension or revocation may be unsafe operations, lack of the required insurance coverage, or failure to comply with regulatory requirements. This section also provides that any person currently having authority to provide transportation is deemed to be registered to provide transportation or service under this part.

Senate amendment

Sec. 13905 (Effective periods of registration), drawn from existing 49 U.S.C. 10925, provides for a registration generally to remain in effect for five years so long as the registrant maintains its insurance coverage (subsection (a)). However, the Secretary could amend or revoke a registration on request of the holder (subsection (b)), or suspend or revoke a registration on complaint or on the Secretary's own initiative for cause (subsections (b)–(d)). Cause for suspension or revocation could be unsafe operations, lack of the required insurance coverage, or failure to comply with regulatory requirements. The new section eliminates any advance notice requirement for the Secretary to address imminent safety hazards, given the nature of the hazards in such situations.

Conference substitute

The Conference adopts the House provision with a modification that the effective period of registration shall be for such periods as the Secretary determines appropriate, up to 5 years.

SECURITY REQUIREMENTS

House bill

Sec. 13906. Security of motor carriers, brokers, and freight forwarders. This section transfers to the Secretary the insurance or

bonding requirements for a motor carrier, broker, and freight forwarder needed to obtain and keep a registration to operate. Registration remains in effect only as long as the registrant continues to satisfy these security requirements. The provision also transfers the current authority for a motor carrier to qualify as a self-insurer under standards set by the Secretary. The section requires insurance carriers to notify the Secretary in advance of any cancellation of insurance, and directs that the insurance policy or surety bond provide for full coverage to the stated amount.

Senate amendment

Sec. 13906 (Security of motor carriers, brokers, and freight forwarders), drawn from existing 49 U.S.C. 10927, contains the minimum insurance or bonding requirements needed for a motor carrier, broker, or freight forwarder to obtain and keep a registration to operate. It would specify that a registration would remain in effect only as long as the registrant continues to satisfy these security requirements. The Secretary would determine the type and amount of security required, and under what circumstances a carrier could self-insure. It would maintain the ICC's current requirements that insurance carriers provide advance notice of any cancellation of insurance, and that full ("first-dollar") coverage be provided.

Conference substitute

The Conference adopts the House provision.

HOUSEHOLD GOODS AGENTS

House bill

Sec. 13907. Household goods agents. This section preserves the current law that permits agent-van line arrangements to receive antitrust immunity. It retains a household goods carrier's responsibility for its agents and their actions. It also retains Federal regulatory oversight over the agents used by such carriers and continues the antitrust immunity for discussions and agreements between such carriers and their agents but provides that the Panel may modify or terminate activities afforded antitrust immunity if not in the public interest. For purposes of this section, the term "household goods" has the meaning such term had under section 10102(11) on the day before the date of enactment.

Senate amendment

Sec. 13907 (Household goods agents), incorporating existing 49 U.S.C. 10934, retains a household goods carrier's responsibility for its agents and their actions. It would also retain Federal regulatory oversight over the agents used by such carriers, and continue the antitrust immunity for discussions and agreements between such carriers and their agents.

Conference substitute

The Conference adopts the House provision.

REFORM OF REGISTRATION

House bill

Sec. 13908. Registration and other reforms. This section directs the Secretary, in cooperation with the States and within 24 months, to issue regulations to consolidate the current Department of Transportation registration system, the single-state registration system and the current DOT insurance registration system into one unified, computerized system to be administered by the Secretary. The Secretary may establish fees to fully support the system. If the Secretary determines that no State should require insurance filings or collect fees for such filings, the Secretary may prevent any State or political subdivision from imposing filing requirements or fees that are for the same purposes as the new registration system under this section.

Senate amendment

Sec. 13908 (Registration and other reforms) directs the Secretary to conduct a study of whether, and to what extent, the various existing overlapping motor carrier registration provisions should be modified or replaced with a single, on-line Federal system. The existing systems to be studied include the DOT identification number system, the single-State registration system under section 14505, the system for administering the registration requirements of sections 13901–13095, and the system for administering the insurance provisions of section 13906. Section 13908 would enumerate some of the factors to be considered by the Secretary. It would also permit the Secretary to impose user fees that cover the full costs of maintaining these systems. Finally, it directs the Secretary to conclude the study within 18 months and report to Congress on the findings and any appropriate legislative changes needed.

Conference substitute

The Conference adopts the House provision with a modified subsection (d) concerning the single-State registration program. The modified subsection (d) provides that the Secretary can prevent States from requiring insurance filings and collecting fees only if the Secretary could ensure that fees collected by the Secretary under the new registration system and distributed to the States will provide each State with at least as much revenue as that State received in fiscal year 1995 under the single-State registration system.

Chapter 141—Operations of Carriers

Subchapter I—General Requirements

PROVIDING TRANSPORTATION

House bill

Sec. 14101. Providing transportation and service. This section preserves current law regarding the common carrier obligation—a carrier's obligation to provide transportation or service on reasonable request and to provide safe and adequate service, equipment,

and facilities. Carriers are allowed to enter into contracts and shippers may, in writing, waive all rights and remedies under this part for transportation covered by the contract.

Senate amendment

Sec. 14101 (Providing transportation and service), taken from existing 49 U.S.C. 11101, continues the basic common carrier obligation to provide transportation or service on reasonable request and to provide safe and adequate service, equipment, and facilities. It would expressly allow carriers to enter contracts for specific shipments (other than for residential household goods movements arranged and paid for directly by the householder) under which both parties may waive their rights and remedies (except for registration, insurance, or safety fitness requirements).

Conference substitute

The Conference adopts the Senate provision. Confidential contracts are currently allowed by water carriers in the noncontinuous domestic trade with Alaska. This subsection expands the trades in which confidential contracts may be used to include all of the noncontiguous domestic trades. This section does not prohibit the use of confidential contracts for the transportation by water of military household goods.

LEASED VEHICLES

House bill

Sec. 14102. Leased motor vehicles. This section transfers to the Secretary and preserves the current leasing provisions, regulating the relationship between registered carriers and the owner-operators that they may use for providing service.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

LOADING AND UNLOADING

House bill

Sec. 14103. Loading and unloading motor vehicles. This section preserved current law regarding “lumping” (the utilization of other persons to load or unload freight from a truck) in the trucking industry, whether or not the carriers involved are subject to jurisdiction under the act.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

HOUSEHOLD GOODS OPERATIONS

House bill

Sec. 14104. Household goods carrier operations. This section preserves the performance standards for household goods carriers.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

Subchapter II—Reports and Records

DEFINITIONS

House bill

Sec. 14121. Definitions. This section provides that requirements under this subchapter extend to receivers, trustees, and associations of carriers or brokers.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

RECORDS

House bill

Sec. 14122. Records: Form; inspection; preservation. This section preserves current law and allows the Secretary or the Panel, as applicable, to prescribe the form of records to be kept by carriers and brokers, to inspect those records, and to set how long those records must be retained by carriers and brokers.

Senate amendment

Sec. 14122 (Records; Form; inspection; preservation), imported from existing 49 U.S.C. 11144, allows the Secretary and the Board, as appropriate, to prescribe the form of records to be kept by carriers and brokers, to inspect those records, and to set how long those records must be retained by the carrier.

Conference substitute

The Conference adopts the House provision.

FINANCIAL REPORTING

House bill

Sec. 14123. Financial reporting. Section 14123 provides that the Secretary shall require annual financial reporting from Class I carriers and may require financial reporting from Class II carriers. Factors that the Secretary must consider in determining what matters must be covered by the reports are set forth. The Secretary may grant a three-year exemption from publication of re-

ports for privately held carriers which do not report to the Securities and Exchange Commission if necessary to avoid competitive harm and to avoid the disclosure of trade secrets or privileged or confidential information. The Secretary is directed to streamline and simplify reporting requirements.

Senate amendment

Sec. 14123 (Reports by carriers, brokers, and associations), drawn from existing 49 U.S.C. 11145, requires Class I and Class II carriers to file annual reports with the Secretary, but allows the Secretary to waive that requirement for one-year periods for individual carriers where necessary to avoid competitive harm and preserve confidential business information that is not otherwise publicly available.

Conference substitute

The Conference adopts a modified provision. The Secretary is directed to require annual financial reporting from Class I and Class II carriers. The Secretary may grant an exemption from the filing requirement for any party which can demonstrate an exemption is necessary to avoid competitive harm and preserve confidential business information not available elsewhere. Alternatively, the Secretary may grant an exemption from publication of reports (filing could still be required) for privately-held companies which do not file with the Securities and Exchange Commission in order to avoid competitive harm and avoid disclosure of trade secrets or privileged or confidential information. Exemptions shall be granted for three years. The Secretary may require quarterly reports from other parties and is directed to streamline and simplify reporting requirements. The Board may require carriers to file special reports.

Chapter 143—Finance

SECURITY INTERESTS

House bill

Sec. 14301. Security interests in certain motor vehicles. This section preserves current law governing the recordation of security interests in trucks, tractors, and trailers.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

POOLING

House bill

Sec. 14302. Pooling and division of transportation or earnings. This section preserves current law providing for Panel supervision and approval of pooling arrangements among motor carriers. Approval confers immunity from antitrust and other laws for approved pooling arrangements as current law provides. In this sec-

tion, the term 'household goods' has the meaning of the term in section 10102(11), as in effect the day before the date of enactment.

Senate amendment

Sec. 14302 (Pooling and division of transportation or earnings), drawn from existing 49 U.S.C. 11342, provides for Board supervision of pooling arrangements among motor carriers. It retains the immunity from antitrust and other laws currently in 49 U.S.C. 11341. It also includes a grandfather provision for existing approved arrangements.

Conference substitute

The Conference adopts the House provision, modified to include the Senate grandfather clause concerning existing agreements in subsection(g).

BUS MERGERS

House bill

Sec. 14303. Consolidation, Merger and Acquisition of Control of Motor Carriers of Passengers. This section retains current law providing for Panel approval of mergers or other consolidation of intercity bus carriers with aggregate gross operating revenues greater than \$2 million. A transaction approved under this section is exempt from antitrust laws as necessary to carry out the transaction.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision, modified to add three subsections to preserve current law regarding the applicability of certain requirements when a person who is not a carrier acquires control of at least one carrier (subsection (h)), temporary approval (subsection (i)), and continuing jurisdiction to issue supplemental orders (subsection (j)).

Chapter 145—Federal-State Relations

PREEMPTION OF STATE REGULATION

House bill

Sec. 14501. Federal authority over intrastate transportation. This section preserves existing prohibitions against intrastate regulation of intercity bus rates, scheduling, and discontinuances or reductions in service; the rates, routes, or services of freight forwarders and transportation brokers; and trucking prices, routes, or services. The section provides a new exemption (from the preemption of State regulation of intrastate regulation) relating to the price of transportation provided by tow trucks when the transportation is performed without the prior consent or authorization of the owner or operator of the vehicle.

Senate amendment

Sec. 14501 (Federal authority over intrastate transportation) incorporates existing prohibitions against intrastate regulation. The preemption would be narrowed, however, to allow State and local governments to regulate the price and related conditions of transportation provided by tow trucks if the transportation is performed at the request of a law enforcement agency or without the prior consent or authorization of the owner or operator of the vehicle.

Conference substitute

The Conference adopts the House provision, modified to allow States to continue to provide antitrust immunity for pooling and agent-van line operations under subsection (c)(3)(A), and to remove the effective date for the preemption as to the State of Hawaii.

Non-consent tows occur when vehicle owners/operators are unable to give their voluntary consent to the tow. Non-consent tows typically occur in emergency situations and when tows are made from private property. The tow truck provision in this section is designed to allow States and local governments to regulate the price of tows in non-consent cases.

The Conference is concerned about restrictive State entry requirements for household goods carriers and encourages States to review their entry requirements to ensure that they are consistent with efficiency and consumer protection.

TAX DISCRIMINATION

House bill

Sec. 14502. Tax discrimination against motor carrier transportation property. This section preserves current restrictions on the authority to State and local authorities to tax property used to provide interstate trucking service.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

WITHHOLDING OF STATE AND LOCAL TAX

House bill

Sec. 14503. Withholding State and local income tax by certain carriers. This section preserves the restrictions on the authority of State and local authorities to tax the earnings of employees of motor carriers and water carriers.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

STATE REGISTRATION

House bill

Sec. 14504. Registration of motor carriers by a State. This section transfers the current Single State Registration System for evidencing motor carrier insurance coverage to the Secretary until DOT develops a replacement under section 13908.

Senate amendment

Sec. 14505 (Single State Registration Systems) preserves the existing single state registration system for evidencing motor carrier insurance coverage.

Conference substitute

The Conference adopts the House provision with a technical modification in section (c)(2)(B)(v).

STATE TAX

House bill

Sec. 14505. State tax. This section prohibits a State or political subdivision of a State from levying a tax on bus tickets for interstate travel. This reverses a recent Supreme Court decision permitting States to do so and conforms taxation of bus tickets to that of airline tickets.

Senate amendment

The Senate amendment contains an identical provision in section 14504.

Conference substitute

The Conference adopts the House provision.

Chapter 147—Enforcement; Investigations; Rights; Remedies

AUTHORITY

House bill

Sec. 14701. General authority. This section gives the Secretary and the Panel the general authority to conduct investigations and hear complaints, with respect to the functions assigned to each, as the ICC has under current law.

Senate amendment

Sec. 14701 (General authority) gives the Secretary and the Board the same general authority to conduct investigations and hear complaints, with respect to the functions assigned to each, as the ICC has had under 49 U.S.C. 11701.

Conference substitute

The Conference adopts the Senate provision.

ENFORCEMENT BY REGULATORY AUTHORITY

House bill

Sec. 14702. Enforcement by the regulatory authority. This section preserves for the Secretary and the Panel, as to those regulatory functions transferred to each, the ICC's authority to bring civil enforcement actions in court.

Senate amendment

Sec. 14702 (Enforcement by the regulatory authority) preserves for the Secretary and the Board, as to those functions transferred to each under Part B, the ICC's authority in 49 U.S.C. 11702 to bring civil enforcement actions in court and, through its own attorneys, to bring or participate in civil actions involving undercharge claims.

Conference substitute

The Conference adopts the Senate provision.

ENFORCEMENT BY ATTORNEY GENERAL

House bill

Sec. 14703. Enforcement by the Attorney General. This section preserves the Attorney General's authority to bring civil or criminal enforcement actions relating to this part, including orders or regulations of the Secretary or the Panel.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

RIGHTS AND REMEDIES

House bill

Sec. 14704. Rights and remedies of persons injured by carriers or brokers. This section provides for private enforcement of the provisions of the Motor Carrier Act in court. This expands the current law, which only permits complaints brought under the Act to be brought before the ICC. This section provides that an injured person may bring a civil action to enforce an order of the Secretary or the Board under this part. This section also provides that complaints brought to enforce the motor carrier leasing and lumping rules may also seek injunctive relief.

Senate amendment

Sec. 14704 (Rights and remedies of persons injured by carriers or brokers) incorporates from 49 U.S.C. 11705 the right of an injured person to bring a civil action to enforce an order of the Secretary or the Board under Part B. It would remove any requirement that an injured person bring the complaint to the agency first.

Conference substitute

The Conference adopts the House provision. The ability to seek injunctive relief for motor carrier leasing and lumping violations is in addition to and does not in any way preclude the right to bring civil actions for damages for such violations.

LIMITATIONS ON ACTIONS

House bill

Sec. 14705. Limitation on actions by and against carriers. This section preserves the current relevant statutes of limitations for bringing court suits by or against carriers and makes the time limits uniform for all types of traffic.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

LIABILITY

House bill

Sec. 14706. Liability of carriers under receipts and bills of lading. This section preserves the current liability provisions, which makes carriers and freight forwarders fully liable for loss or damage except to the extent there is a prior agreement between the carrier and shipper limiting the carrier's liability or if the carrier maintains a schedule of rules and rates which is provided to the shipper upon request. The Secretary is directed to submit to Congress within 18 months a report on whether any modifications or reforms should be made to the loss and damage provisions of this section.

Senate amendment

Sec. 14706 (Liability of carriers under receipts and bills of lading) preserves in Part B the "Carmack Amendment" contained in 49 U.S.C. 11707, which makes carriers and freight forwarders fully liable for loss or damage except to the extent the parties agreed in advance to limit the carrier's liability.

Conference substitute

The Conference adopts the House provision with modifications. The language in subsection (c)(1) has been revised to clarify that carriers may, subject to the provision of this chapter (including the requirements of section 13710(a)), establish rates under which the liability of the carrier is limited to a value established by written or electronic declaration of the shipper or by written agreement between the carrier and shipper if that value would be reasonable. If the motor carrier does not file a tariff with the Board, it shall provide under section 13710(a) to the shipper, upon request, the rate, classification, rules, and practices upon which any rate applicable to a shipment, or agreed to, is based. The new subsection also prohibits discussion, consideration or approval as to rules to limit

liability on the part of carriers acting under an agreement approved pursuant to section 13703. The conference agreement includes the Senate provision that the review by the Secretary on whether modifications or reforms should be made to the cargo loss and damage provision should be completed within 12 months.

The intention of this conference agreement is to replicate, as closely as possible, the practical situation which occurred prior to the enactment of the Trucking Industry Regulatory Reform Act of 1994 (TIRRA), which repealed the requirement that tariffs be filed with the ICC for individually determined rates. Prior to the enactment of TIRRA, carriers had the ability to limit liability as a part of the terms contained in the tariff. By signing a bill of lading which incorporated by reference the tariff, the shipper was deemed to have agreed to the tariff and its conditions and terms. However, the carrier was under no obligation to specifically notify the shipper of the conditions or terms of the tariff. It was the responsibility of the shipper to take an affirmative step to determine what was contained in the tariff—usually through the retaining of a tariff watching service. An unintended and unconsidered consequence of TIRRA was that, when the tariff filing requirement was repealed, carriers lost this particular avenue as a way of limiting liability. This provision is intended to return to the pre-TIRRA situation where shippers were responsible for determining the conditions imposed on the transportation of a shipment.

The provision continues an existing provision from section 10730, but substitutes a reference to new section 13710 for the old law's reference to section 10702. In the TIRRA, the Congress eliminated most individual tariff filings (provided for under 10702) and substituted a regime (contained in section 13710) where carriers would maintain schedules of rates, classifications, rules and practices and make such schedules available to shippers upon request.

PRIVATE ENFORCEMENT OF REGISTRATION

House bill

Sec. 14707. Private enforcement of registration requirement. This section preserves the current private enforcement of licensing (now registration) requirement by persons injured by unlicensed (unregistered) transportation or service.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

HOUSEHOLD GOODS DISPUTE SETTLEMENT

House bill

Sec. 14708. Dispute settlement program for household goods carriers. This section modifies the current arbitration provisions by requiring all household goods carriers to offer shippers the option of neutral arbitration as a means of settling disputes over household goods transportation involving individual householders. If a shipper requests arbitration, and the dispute involves a claim for

\$1,000 or less, it shall be binding on both parties. If the dispute involves a claim for more than \$1,000, the arbitration shall be binding only if the carrier agrees to arbitration. The arbitrator may determine which party shall pay the cost or portion of the arbitration proceedings. Certain other procedures and requirements are set forth in this section, as well as Secretarial review within 36 months.

Senate amendment

Sec. 14708 (Dispute settlement program for household goods carriers) modifies the existing arbitration provisions of 49 U.S.C. 11711, by requiring all household goods carriers to offer shippers the option of neutral arbitration as a means of settling disputes over household goods transportation.

Conference substitute

The Conference adopts the House provision with modifications. Subsection (b)(5) is revised to provide that no shipper may be charged more than half the cost of instituting an arbitration proceeding. In addition, the arbitrator may determine which party shall pay the cost or a portion of the total costs of the arbitration proceeding. This may include reimbursement of the shared costs initially paid by the parties in order to secure the arbitrator. The Secretary shall complete a review of the dispute settlement program within 18 months.

TARIFF RECONCILIATION RULES

House bill

Sec. 14709. Tariff reconciliation rules for motor carriers of property. This section preserves the right of the Panel to authorize departures by mutual consent of the carrier and shipper from the tariff rate for past shipments so as to avoid or resolve under- or overcharge claims.

Senate amendment

The Senate amendment contains a nearly identical provision, with one technical difference.

Conference substitute

The Conference adopts the House provision.

Chapter 149—Civil and Criminal Penalties

GENERAL CIVIL PENALTIES

House bill

Sec. 14901. General civil penalties. This section retains civil penalties for violating reporting and registration requirements or household goods consumer-protection requirements and updates some penalty amounts.

Senate amendment

Sec. 14901 (General civil penalties), imported from existing 49 U.S.C. 11901, contains civil penalties for violating reporting and

registration requirements, household goods consumer-protection requirements, and the prohibitions against rate reduction to third parties.

Conference substitute

The Conference adopts the House provision, modified by the addition of a new subsection (g) to allow water carriers to engage in customary business entertainment practices and to provide that such expenses are not to be included in determining the carriers rate base under section 13702.

CIVIL PENALTIES FOR REBATES

House bill

Sec. 14902. Civil penalty for accepting rebates from carriers. This section retains civil penalties for accepting rebates from a carrier and updates some penalty amounts.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

TARIFF VIOLATIONS

House bill

Sec. 14903. Tariff violations. This section retains current penalties for tariff violations and updates some penalty amounts.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision, modified to establish a civil penalty for a person that offers, grants, gives, solicits, accepts, or receives transportation by a carrier subject to chapter 135 at a rate different than the rate in effect under section 13702. Section 14903(b) is also modified to conform the criminal penalty to the requirements of section 3571 of title 18, United States Code.

ADDITIONAL RATE VIOLATIONS

House bill

Sec. 14904. Additional rate violations. This section retains penalties for violations regarding rebates by agent and undercharging and updates the penalty amounts.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

PENALTIES FOR LOADING AND UNLOADING VIOLATIONS

House bill

Sec. 14905. Penalties for violations of rules relating to loading and unloading motor vehicles. This section retains current specific civil and criminal penalties for violating the lumping provisions of section 14103 and updates the penalty amounts.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

EVASION OF REGULATION

House bill

Sec. 14906. Evasion of regulation of motor carriers and brokers. This section retains current penalties for evading regulations under part B and updates the penalty amounts.

Senate amendment

The Senate amendment contains an identical provision.

RECORD KEEPING, REPORTING VIOLATIONS

House bill

Sec. 14907. Record keeping and reporting violations. This section retains current specific penalties for withholding or falsifying records or reports that the Secretary or Panel requires and updates the penalty amounts.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

UNLAWFUL DISCLOSURE

House bill

Sec. 14908. Unlawful disclosure of information. This section preserves current law prohibiting entities covered by part B (or anyone receiving information from entities covered by part B) from disclosing confidential shipper information and updates the penalty amounts.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

DISOBEDIENCE TO SUBPOENAS

House bill

Sec. 14909. Disobedience to subpoenas. This section preserves current penalties for disobeying a subpoena issued by the Secretary or the Panel under part B and updates the penalty amounts.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

GENERAL CRIMINAL PENALTY

House bill

Sec. 14910. General criminal penalty when specific penalty not provided. This section preserves current general criminal penalties when specific penalties are not provided for violations under part B, including a condition of a registration of a foreign motor carrier or foreign motor private carrier under section 13902, and updates the penalty amounts.

Senate amendment

Sec. 14910 (General criminal penalty when specific penalty not provided), imported from existing 49 U.S.C. 11914, contains general criminal penalties when specific penalties are not provided for violations under Part B.

Conference substitute

The Conference adopts the House provision.

PUNISHMENT OF CORPORATION

House bill

Sec. 14911. Punishment of corporation for violations committed by certain individuals. This section preserves current law which extends the penalties of this chapter to corporate officials, agents, and successors in interest and updates the penalty amounts.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

WEIGHT-BUMPING

House bill

Sec. 14912. Weight-bumping in household goods transportation. This section preserves the penalties for weight-bumping and updates the penalty amounts.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

CONCLUSIVENESS OF RATES

House bill

Sec. 14913. Conclusiveness of rates in certain prosecutions. This section preserves current law regarding the conclusive proof of published or filed rates in certain proceeding and updates the penalty amounts.

Senate amendment

The Senate amendment contains an identical provision.

Conference substitute

The Conference adopts the provision.

SEC. 104. MISCELLANEOUS MOTOR CARRIER PROVISIONS.*House bill*

Sec. 104. Miscellaneous Motor Carrier Provisions. This section makes several amendments to other motor carrier provisions concerning the authority of a motor carrier to obtain insurance from more than one source, minimum financial responsibility requirements with respect to certain mass transportation service in rural areas near state borders, the definition of commercial motor vehicle relating to taxicabs and smaller passenger vehicles, and the continued enforcement of ICC self-insurance rules by the Secretary, and it requires the Secretary to issue a regulation amending the definition of automobile transporters under part 658 of title 23, Code of Federal Regulations, concerning race car transporters or specialty trailers designed for the racing industry.

Senate amendment

Section 451 amends 49 U.S.C. 31102(b)(1) to provide that States receiving Federal grants under the Commercial Motor Vehicle Safety program cooperate in the enforcement of the registration and insurance requirements of 49 U.S.C. 31140 and 31146.

Section 452 (Amendment of Section 31138), amends 49 U.S.C. 31138 to incorporate the existing ICC practice of allowing carriers to use multiple sources for satisfying the required level of insurance coverage (identical to House provision), and, in 452(b), to exclude from the Federal minimum insurance requirements certain subsidized mass transportation services, including specialized transportation for the elderly and disabled, in rural and urbanized areas.

Section 452 (Safety Fitness of Owners and Operators), amends 49 U.S.C. 31144 for conforming changes.

Section 453 (Self-Insurance Rules), directs the Secretary to continue the existing ICC practice of allowing carriers to meet the insurance requirements through self-insurance where appropriate (identical to House provision).

Section 217 (Transport vehicles for off-road, competition vehicles), amends section 31111(b)(1) of title 49 to provide that a State may not impose a limitation of less than 46 feet from the kingpin

to the center of the rear axle on trailers used exclusively or primarily in connection with motor sports competition events.

Conference substitute

The Conference adopts the Senate language in Section 451 regarding the Commercial Motor Vehicle Safety program, Section 452 regarding safety fitness of owners, and the identical provisions regarding multiple sources for satisfying insurance coverage and self-insurance rules. The Conference adopts the House provision in section 104(d) regarding the definition of commercial motor vehicle. The new definition includes those vehicles that transport passengers for compensation, except for vehicles that have a capacity to transport 6 or fewer passengers and provide taxicab services not on a regular route, and includes those vehicles that are designed or used to transport more than 15 passengers and are not used to transport passengers for compensation. By changing this definition, the Conference does not intend for the Department of Transportation to amend the regulations which require States to maintain motor carrier safety regulations for intrastate transportation within a zone of tolerance of Federal regulations to require States to regulate passenger vehicles less than 15 passengers in intrastate transportation to comply with the MCSAP program. The conference intends that the States not be required to regulate any additional passenger vehicles as a result of this change.

The Conference adopts the Senate provisions in section 452(b) regarding insurance levels for certain transit providers and the Senate provision in section 217 regarding transport vehicles for off-road, competition vehicles.

SEC. 105. CREDITABILITY OF ANNUAL LEAVE.

House bill

Sec. 105. Creditability of Annual Leave for Purposes of Meeting Minimum Eligibility Requirements for an Immediate Annuity. This section provides that an ICC employee who is separated from the government with the abolishment of the ICC may be given credit, for purposes of determining eligibility for and computing the amount of any annuity under subchapter III of chapter 83 or chapter 84 of title 5, U.S. Code, for accrued annual leave credited to such employee at the time of separation.

Senate amendment

The Senate amendment contains no comparable provision.

Conference substitute

The Conference adopts the House provision.

SEC. 106. PIPELINE CARRIERS.

House bill

The House bill contains no comparable provisions.

Senate amendment

The Senate amendment retains current law regarding the regulation of pipelines.

Conference substitute

The Conference adopts the Senate provision with modifications to streamline pipeline regulation. The Conference is committed to the elimination of unnecessary regulation but does not wish to interfere with regulation that is based on sound principles and aids in regulatory aims, *e.g.*, consumer protection. The Conference amendment also requires the General Accounting Office (GAO) to report within three years on the impact of regulations on the competitiveness of the pipeline industry. The GAO report should include recommendations on whether to continue, revise or sunset pipeline regulations. The Conference is particularly concerned about the impact of regulations on the transportation of anhydrous ammonia, which is a primary component of nitrogen fertilizers. Therefore, the Conference expects the GAO to consult with the U.S. Department of Agriculture, shippers, consumers, farmers and ranchers, and other interested parties. The report is due within three years after the enactment date.

TITLE II—SURFACE TRANSPORTATION BOARD

Section 201 of the bill creates a new chapter 7 of Subtitle I of Title 49, specifying the organization and responsibilities of the Surface Transportation Board. The individual provisions of this new Chapter 7 are discussed below.

*Subchapter I—Establishment***SEC. 701. ESTABLISHMENT OF THE BOARD.***House bill*

Section 701 delineates the organizational powers of the Transportation Adjudication Panel, including legal representation and budget matters.

Senate amendment

Section 201 amends 49 U.S.C. 10301 to establish the Intermodal Surface Transportation Board. The Board is placed within the Department of Transportation for administrative support.

The Board will start out as a 3-member body, but will increase to a 5-member body in 1997, when it inherits the remaining FMC functions. The Board will be bipartisan, with members appointed by the President, confirmed by the Senate, and removable by the President only for neglect of duty or malfeasance in office. At least 2 members are required to have a background in rail or motor transportation, transportation regulation, or agriculture. At least 1 member is required to have private-sector professional or business experience. Starting in 1997, at least 2 members are required to have professional standing and demonstrated knowledge in the fields of maritime transportation or its regulation. Board members could not have an interest in, or official relation with, any carrier, and could not engage in any outside business.

Seats on the Board are for 5-year fixed terms. A member is not allowed to serve more than two terms, nor remain in office for more than one year after the term expires. Board seats will initially be filled by the current sitting ICC Commissioners. On January 1,

1997, the 2 new seats will be filled by 2 sitting FMC Commissioners of different political parties, in order of the length of term remaining.

The President could appoint one of the Board members as the Chairman, with the administrative and supervisory powers for managing the Board. Significantly, the Board retains the ICC's longstanding independent litigating authority and the Board could submit appropriations requests to Congress independently.

Conference substitute

The Conference adopts a compromise provision. A three-member Surface Transportation Board is established within the Department of Transportation. The President will appoint a Chairman of the Board. Section 701 includes the qualifications of Board members and the appointment process for new Board members, as well as the powers of the Chairman. The FMC is not included.

SEC. 702. FUNCTIONS.

House bill

Section 702 specifies that, except as provided elsewhere in this Act, all functions of the former Interstate Commerce Commission are assumed as of the date of enactment.

Senate amendment

Section 201 allows the Board to perform all the functions of the ICC, except those repealed or transferred to the Secretary by this Act, and to perform the transferred functions of the FMC as of January 1, 1997.

Conference substitute

The Conference adopts the House language with modifications. The FMC is not included.

SEC. 703. ADMINISTRATIVE PROVISIONS.

House bill

Section 703 outlines the administrative status of the new Transportation Adjudication Panel within the Department of Transportation. In general, the Panel will be decisionally independent from the Department and will be authorized to represent itself in legal matters and budget requests.

Senate amendment

Section 201 would make the Board an independent agency, free from supervision or direction by DOT. The open meeting requirements of the Sunshine Act would apply to the Board. The Board would be authorized to appear in its own right, and be represented by its own attorneys in any civil suits related to a function vested in the Board. It would regulate the admission of individuals to practice before it. Its budget request would be sent to Congress, and the Board could communicate with Congress and make legislative requests without interference.

Conference substitute

The Conference adopts a compromise provision as section 703 which includes the basic elements of the House and Senate provisions.

SEC. 704. ANNUAL REPORT.

House bill

Section 704 requires an annual report by the Transportation Adjudication Panel to Congress.

Senate amendment

Section 201 requires the Board to submit an annual report to Congress on the Board's activities.

Conference substitute

The Conference adopts a compromise provision, which includes the basic elements of the House and Senate provisions.

SEC. 705. AUTHORIZATION OF APPROPRIATIONS.

House bill

Section 705 places the Transportation Adjudication Panel on a limited, cyclical reauthorization basis. This will ensure regular Congressional oversight and evaluation of the functioning of the TAP. (The ICC had a permanent authorization.) The bill provides for a 3-year authorization as follows:

[In millions of dollars]

Fiscal year:	
1966	¹ 8.421
1997	12.0
1998	12.0

¹This equals the FY 1996 DOT appropriation for transferred ICC functions. Funds for the first quarter of FY 1996 were separately appropriated for the ICC, which will terminate on December 31, 1995.

Senate amendment

Section 601 authorizes equivalent funding for (1) the closedown of the ICC and severance costs for its personnel, (2) the Board for fiscal year 1996, and (3) the Board for fiscal years 1997 and 1998 for the functions transferred from the ICC.

Conference substitute

The Conference combines the House and Senate language with modifications. The Conference intends that the funds authorized are to fund the Board. The Conference intends that 60 persons should be transferred from the ICC to DOT to carry out the motor carrier functions assigned to the Secretary. The Conference intends that these positions are to be funded through user fees collected by the Secretary from registrations (including the collection of fees for registering as both common and contract carriers), insurance filings and tariff filings, among other fees.

SEC. 706. REPORTING OFFICIAL ACTION.*House bill*

Section 706 retains existing procedures for making a record of official actions by the agency. It replaces former section 10310.

Senate amendment

The Senate amendment contains no comparable provision.

Conference substitute

The Conference adopts the House provision with modifications.

*Subchapter II—Administrative***SEC. 721. POWERS.***House bill*

Section 721 enumerates the general administrative powers of the Panel.

Senate amendment

Section 211 (Powers) would amend 49 U.S.C. 10321, enumerating the ICC's powers, in order to apply to the Board, to condense the language, and to remove references to entities and matters not related under Part A.

Conference substitute

The Conference adopts a compromise provision, which includes the basic elements of the House and Senate provisions.

SEC. 722. BOARD ACTION.*House bill*

Section 722 specifies rules of finality regarding agency decisions, including the agency's power to reopen or reconsider completed proceedings or decisions, as well as the standards for finality of an agency decision for subsequent judicial review. The section replaces former section 10324.

Senate amendment

The Senate amendment contains comparable provisions.

Conference substitute

The Conference adopts the House language with modifications.

SEC. 723. SERVICE OF NOTICE IN BOARD PROCEEDINGS.*House bill*

Section 723 specifies the means of giving legal notice in agency proceedings.

Senate amendment

Section 213 (Service of Notice in Commission Proceedings) amends 49 U.S.C. 10329, governing service of notice in ICC proceedings, to apply to the Board, to remove provisions regarding en-

tities not regulated under Part A, and to make other conforming changes.

Conference substitute

The Conference adopts a compromise provision, which includes the basic elements of the House and Senate provisions.

SEC. 724. SERVICE OF PROCESS IN COURT PROCEEDINGS.

House bill

Section 724 enumerates the proper means of serving process in court proceedings governed by the agency's statute.

Senate amendment

Section 214 (Service of Process in Court Proceedings) amends 49 U.S.C. 10330, governing service of process on regulated carriers in court proceedings, to apply to the Board, to remove provisions regarding entities not regulated under Part A, and to make other conforming changes.

Conference substitute

The Conference adopts the House language with modifications.

SEC. 725. ADMINISTRATIVE SUPPORT.

House bill

Section 725 requires the Secretary of Transportation to provide all administrative support for the Transportation Adjudication Panel. The Committee intends to minimize the cost of retained regulation by eliminating the separate and duplicative general administrative functions formerly performed by the ICC. Instead, although the Panel will be decisionally independent from the Secretary of Transportation and his subordinates, the Panel's general administrative functions (e.g., personnel and payroll records and processing, equal employment opportunity matters, the administration of the Freedom of Information Act) can be readily performed by the Department without the need for a separate bureaucracy unique to the Panel.

Senate amendment

Section 202 directs the Secretary to provide administrative support to the Board. While the Board is authorized to receive a separate appropriation and the Board's Chairman has discretion as to how those resources are allocated, the Committee intends that the goal of minimizing administrative bureaucracy should be advanced. For example, once established within DOT, the Board should not be required to maintain separate payroll, facilities and supplies, or equal employment opportunity offices. The Committee expects the administrative functions assumed by the Secretary to be covered by DOT's current funding authorization.

Conference substitute

The Conference adopts the Senate provision, which is substantively equivalent to the House provision. The Conference ex-

pects DOT to fund administrative functions performed by the Secretary from its own authorizations.

SEC. 726. RAILROAD-SHIPPER TRANSPORTATION ADVISORY COUNCIL.

House bill

No comparable provision.

Senate amendment

Section 378 establishes a Rail-Shipper Transportation Advisory Council, in 49 U.S.C. 10391, to advise the government on significant rail transportation policy issues of concern to small shippers and small railroads, including car supply, rates, competition, trackage rights, and effective procedures for addressing legitimate shipper and other claims. The Council would be directed to prevent or address obstacles to effective and efficient transportation through private-sector mechanisms, where possible, and, where unsuccessful, to suggest appropriate regulatory or legislative relief.

The Council would be composed of 15 members outside of the Federal government, to be appointed by the Board's Chairman within 60 days. The 9 voting members would include at least 4 representatives of small shippers and at least 4 representatives of small (Class II or III) railroads. The 6 nonvoting members would include 3 from Class I railroads and 3 from large shipper organizations. In addition, the Secretary and the Board members would serve as ex officio members. The Council would meet at least semi-annually and would be required to prepare an annual report of its activities.

Conference substitute

The Conference adopts the Senate provision with technical modifications.

SEC. 726. DEFINITIONS.

House bill

Section 726 provides that terms used in the chapter describing the Panel and its operations have the same meaning as defined elsewhere in subtitle IV.

Senate amendment

No comparable provision.

Conference substitute

The Conference adopts the House provision with modifications.

SEC. 202. REORGANIZATION.

House bill

Section 202 provides that the Panel retains the legal powers and organizational prerogatives of the ICC to the extent not altered by amendments made elsewhere in the bill.

Senate amendment

Section 203 (Reorganization) authorizes the Board's Chairman to change the organizational structure of the Board from that of the ICC or the FMC.

Conference substitute

The Conference adopts the House language with modifications.

SEC. 203. TRANSFER OF ASSETS AND PERSONNEL.*House bill*

Section 203 provides that, unless specified elsewhere, the Panel shall assume control of all assets, personnel, and funds of the former Interstate Commerce Commission.

Senate amendment

Section 104 transfers ICC personnel and property to the Board or Secretary, as applicable, and unexpended ICC funds to the Board. The Committee intends that the functions are assumed in accordance with Congressional intent.

Conference substitute

The Conference adopts a compromise provision, which includes the basic elements described in the House and Senate provisions. The Conference intends that the Board should receive all library assets that are of continuing usefulness, and make suitable arrangements for materials of historical interest to be placed in the custody of an institution or institutions where the materials would be available for use by the public.

SEC. 204. SAVINGS PROVISION.*House bill**1. Legal documents*

Subsection (a) is intended to ensure that existing orders and regulations issued by the ICC remain in force unless superseded by administrative action or operation of law.

2. Proceedings

Subsection (b) provides that the Transportation Adjudication Panel shall assume responsibility for all pending ICC proceedings, except for matters with respect to which the applicable statute is repealed by the bill. Pending cases transferred under this section are to be decided under the statute prior to the enactment of this bill.

3. Suits

Subsection (c) specifies that enactment of the bill does not affect court proceedings begun before the date of enactment, which are to be concluded under the applicable prior law. However, if a court remands a matter to the Transportation Adjudication Panel as the successor of the ICC, any further administrative proceedings shall be conducted under the law as amended by the bill.

4. Exercise of authorities

Subsection (d) clarifies that all legal authorities and functions of the ICC, other than those repealed or amended elsewhere, are to be assumed by the Transportation Adjudication Panel.

Senate amendment

Section 102(a) would preserve all orders determinations, rules, regulations, licenses, and privileges currently in effect until changed by the Board or the Secretary, within their respective jurisdictions. Subsection (b) would preserve proceedings, pending before the ICC, insofar as they relate to functions that are retained, and would provide for their transfer to the Board or the Secretary. Subsection (c) would preserve pending suits and subsection (d) would preserve actions by or against the ICC or its officials. Subsection (e) would substitute the Board or the Secretary, as applicable, for the ICC in suits involving a transferred function.

Conference substitute

The Conference adopts a compromise provision, which includes the basic elements described in the House and Senate provisions.

SEC. 205. REFERENCES.

House bill

This provision specifies that all former statutory references to the Interstate Commerce Commission in other Federal laws or documents are deemed to refer to the Panel.

Senate amendment

Section 103 would treat references to the ICC in other Federal laws as references to the Board or Secretary, as applicable, and would treat references to the ICC as a government agency as references to the Board.

Conference substitute

The Conference adopts a compromise provision, which includes the basic elements described in the House and Senate provisions.

TITLE III—CONFORMING AMENDMENTS

Title III makes numerous conforming amendments to provisions of the United States Code containing references to the Interstate Commerce Commission.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. COMMERCIAL SPACE LAUNCHES.

House bill

This House bill contains no comparable provision.

Senate amendment

Sec. 527 (Certain Commercial Space Launch Activities) provides that the licensing of a launch vehicle or launch site operator under chapter 701 of title 49 shall not be considered a major Fed-

eral action for purposes of section 102(C) of the National Environmental Policy Act of 1969 if the Department of the Army has issued a permit and if the Corps of Engineers determines the activity has no significant impact.

Conference substitute

The Conference adopts the Senate provision in section 401 of the conference report.

SEC. 402. DESTRUCTION OF MOTOR VEHICLES, TRAINS.

House bill

This House bill contains no comparable provision.

Senate amendment

Sec. 218 (Destruction of Motor Vehicles or Motor Vehicle Facilities; Wrecking Trains) amends section 33 of title 18 to provide that persons convicted of committing crimes involving a motor vehicle or a train carrying high-level radioactive waste or spent nuclear fuel shall be imprisoned for not less than 30 years.

Conference substitute

The Conference adopts the Senate provision in section 402 of the conference report.

SEC. 403. GRADE CROSSING VIOLATIONS.

House bill

This House bill contains no comparable provision.

Senate amendment

Sec. 529 (Violation of Grade-Crossing Laws and Regulations) directs the Secretary to issue regulations establishing sanctions and fines for operators of commercial motor vehicles who violate railroad-highway crossing laws and regulations. The penalty for a single grade cross violation is not less than a 60-day disqualification of the driver's commercial driver's license. An employer that knowingly allows, authorizes or requires an employee to violate grade crossing laws shall be fined not more than \$10,000.

Conference substitute

The Conference adopts the Senate provision in section 403 of the conference report.

SEC. 404. MISCELLANEOUS TITLE 23 AMENDMENT.

House bill

This House bill contains no provision.

Senate amendment

The Senate amendment contains no provision.

Conference substitute

The Conference adopts a provision in section 404 of the conference report to provide that if a certain segment of U.S. Route 220 between Bedford and Bald Eagle, Pennsylvania, is designated

as part of the Interstate System, the various weight limitations in section 127 of title 23 shall not apply with respect to currently operating vehicles.

SEC. 405. TECHNICAL AMENDMENTS.

House bill

The House bill contains no provision.

Senate amendment

The Senate amendment contains no provision.

Conference substitute

The Conference adopts a provision in section 405 of the conference report to provide for a series of technical changes to the National Highway System Designation Act of 1995 (Public Law 104-59).

SEC. 406. FIBER DRUM PACKAGING.

House bill

The House bill contains no comparable provision.

Senate amendment

Sec. 525 (Fiber Drum Packaging) directs the Secretary to issue a rule within 60 days authorizing the continued use of fiber drums with removable heads for the transportation of liquid hazardous materials if the transportation is in compliance with regulations in place before October 1, 1991, will not be used for the transportation of materials that are poisonous by inhalation, and are used in domestic transportation only. Section 122 of the Hazardous Materials Transportation Authorization Act of 1994 is repealed.

Conference substitute

The Conference adopts a modification to the Senate provision in section 406 of the conference report. Section 406 directs the Secretary to issue a final rule within 60 days authorizing the continued use of fiber drum packaging with removable heads for the transportation of liquid hazardous materials with respect to those liquid materials transported by such drums pursuant to regulations in effect on September 30, 1991, if the packaging is in compliance with regulations in effect on September 30, 1991, and the packaging will not be used for the transportation of hazardous materials that include materials which are poisonous by inhalation or materials in Packaging Groups I and II. This regulation will expire on September 30, 1997, or the date upon which funds are authorized to carry out chapter 51 of title 49 U.S.C. for any fiscal year beginning after September 30, 1997.

Section 406 also directs DOT to contract with the National Academy of Sciences within 90 days after enactment to conduct a study to determine whether the requirements relating to safe transportation of hazardous materials for fiber drum packaging with a removable head can be met with standards other than performance-oriented packaging standards adopted under docket HM-181 and whether a packaging standard for such drums other than

the standards adopted under HM-181 will provide an equal or greater level of safety for transportation of liquid hazardous materials than would be provided if HM-181 were in effect.

In determining whether there are standards that will provide an equal or greater level of safety for the transport of liquid hazardous materials than would be provided if HM-181 packaging standards were in effect, the study shall rely, in part, upon the Department of Transportation's Hazardous Materials Incident Reporting System pertaining to open-head fiber drums used for liquids and the fiber drum industry's shipping safety record for such drums from January 1, 1974, until the date the National Academy of Sciences' study begins.

The Conferees expect that the Department of Transportation will expend approximately \$200,000 for this study. The study shall be completed before March 1, 1997.

By September 30, 1997, the Secretary is directed to issue final regulations to determine which standards should apply to fiber drum packaging with a removable head for transportation of liquid hazardous materials after September 30, 1997. In issuing the regulations, the Secretary shall give full and substantial consideration to the results of the study.

SEC. 407. STUDY OF NONCONTIGUOUS DOMESTIC TRADE.

House bill

The House bill contains no comparable provision.

Senate amendment

The Senate amendment contains no comparable provision.

Conference substitute

The Conference adopts a provision in section 407 of the conference report to require the Secretary of Transportation to conduct a study of the competitiveness of the noncontiguous domestic trades and to submit the report to Congress within 6 months after the date of enactment of this Act.

SEC. 408. RULEMAKING.

House bill

The House bill contains no comparable provision.

Senate amendment

Sec. 216 (Federal Highway Administration Rulemaking) directs the Federal Highway Administration to issue by not later than March 1, 1996, an advance notice of proposed rulemaking dealing with a variety of fatigue-related issues. The Administration shall issue a notice of proposed rulemaking relating to such issues within 1 year after the advance notice and issue a final rule 2 years later.

Conference substitute

The Conference adopts the Senate provision in section 408 of the conference report.

DISPOSITION OF INTERSTATE COMMERCE ACT PROVISIONS WITHIN TITLE 49 OF THE UNITED STATES CODE

Prior section	Part A (Rail)	Part B (Motor, Water)	Part C (Pipeline)	Subject
10101			15101	National Transp. Policy.
10101a	101101	13101		Rail Transp. Policy.
10102	10102	13102	15102	Definitions.
10103	10501(b)	13103	15103	Remedies.
10301	701	701	701	Organization.—General.
New	702	702	702	Transfer of functions.
New	703	703	703	Independence of Board.
10302				Org.—Divisions.
10303				Org.—Secretary.
10304				Org.—Employee Boards
10305				Org.—Delegation of Authy.
10306				Org.—Conduct of Proceedings.
10307				Org.—Office and sessions.
10308	703(e)	703(e)	703(e)	Org.—Admission to Practice.
10309				Org.—Cong. Access to records.
10310	706	706(a)	706(a)	Org.—Reporting official action.
10311	704	704	704	Org.—Annual Report.
New	705	705	705	3-yr. Authorization of appropriations.
10321	721	13301	721	Powers.
10322				Nonrail procedures.
10323				[previously repealed]
10324	722(a)-(b)	722(a)-(b)	722(a)-(b)	Agency action.
10325				[previously repealed]
10326				Limitations in Rail Rulemakings.
10327	722(c)-(d)	722(c)-(d)	722(c)-(d)	Rail Procedures.
10328		13302		Intervention.
10329	723	13303	723	Service of notice.
10330	724	13304	724	Service of process.
10341-10344				Joint Boards.
10361-10364				Rail Services Planning Office.
10381-10388				Rail Public Counsel.
New	725	725	725	Admin. support for Board.
New	726	726	726	Definitions same as subtitle IV.
10501	10501(a), (b)		15301	Rail/Pipeline General Jurisdiction.
10502				Express Carrier Transportation.
10503	10703			Rail-Water Connections.

DISPOSITION OF INTERSTATE COMMERCE ACT PROVISIONS WITHIN TITLE 49 OF THE UNITED STATES CODE—Continued

Prior section	Part A (Rail)	Part B (Motor, Water)	Part C (Pipeline)	Subject
10504	10501(c)			Exempt rail mass transp.
10505	10502	13541	15302	Exemption Authy.
10521		13501		Motor General Jurisdiction.
10522		13502		Exempt Transp.—Alaska.
10523		13503		Exempt Terminal Areas transp.
10524		13505		Transp. Furthering Primary Business.
10525		13504		Transp. Entirely in 1 State.
10526		13506		Misc. Motor Exemptions.
10527				Written contracts for certain exempt agricultural movements.
10528				Mixed regulated & unregulated.
10529		13507		Cooperative Ass'ns.
10530		13508		Foreign Carrier registrations.
10531		13902(c)		Mass Transp. Exemption.
10541				Water General Jurisdiction.
10542		13521		Water—Exempt bulk transp.
10543				Water—Exempt incidental transp.
10544				Water—Misc. Exemptions.
10561		13531		Frt. Forwarder—General Jurisd'n.
10701	10701(a), (b)		15501	Rate Reas. Reqts.
10701(f)		13701(a)		Undercharge settlements.
10701a		13709		Rail Rate Reas. Reqts.
10702	10701(c), (d)		15502	Carrier Authy to set rates.
10703	10702			Carrier Authy for Through Routes.
10704	10703	13705		ICC Authy to prescribe rates.
10705	10704	13701(b)	15503	ICC Authy to set through routes.
10705a	10705	13701(b)		Joint rate surcharges.
10706	10706			Collective activities & antitrust exemption.
10707		13703		Suspension of new rail rates.
10707a				Zone of rate flexibility.
10707a(2)(B)				Rail cost adjustment factor.
10708	10708			Suspension of new nonrail rates.
10709	10707			Market Dominance.
10710				Discrim. against recyclables.
10711				Effect of certain sections.
10712				Inflation-based increases.
10713	10709			Contract transp.

10721	.....	10721	.....	13712	.....	15504	.....	Govt. Transp.
10722	.....	.....	.....	.....	.....	.....	.....	Special passenger rates.
10723	.....	.....	.....	.....	.....	.....	.....	Charitable.
10724	.....	.....	.....	.....	.....	.....	.....	Emergency rates.
10725	.....	.....	.....	.....	.....	.....	.....	Special frt. forwarder rates.
10726	.....	.....	.....	.....	.....	.....	.....	Long- and short-haul rates, transp. [previously repealed].
10727	.....	.....	.....	.....	.....	.....	.....	Separate rates for distinct services. [previously repealed].
10728	.....	.....	.....	.....	.....	.....	.....	Released rates.
10729	.....	.....	.....	.....	.....	.....	.....	Recyclables rates.
10730	.....	11706(c)(3)	.....	.....	.....	.....	.....	Food and grocery transp.
10731	.....	.....	.....	.....	.....	.....	.....	Recyclable rates.
10732	.....	.....	.....	13713	.....	.....	.....	Car utilization.
10733	.....	.....	.....	.....	.....	.....	.....	HHG—binding estimates.
10734	.....	10722	.....	.....	.....	.....	.....	Anti-discrimination.
10735	.....	.....	.....	13704	.....	15505	.....	Facilities for interchange.
10741	.....	10741	.....	.....	.....	15506	.....	Payment of rates.
10742	.....	10742	.....	.....	.....	.....	.....	Liability for payment of rates.
10743	.....	.....	.....	13707	.....	.....	.....	Continuous carriage of freight.
10744	.....	10743	.....	.....	.....	.....	.....	Commodities clause.
10745	.....	10744	.....	13706	.....	.....	.....	Facilities provided by shipper.
10746	.....	.....	.....	.....	.....	.....	.....	Transp. of livestock.
10747	.....	10745	.....	.....	.....	.....	.....	HHG frt. forwarders—exch. of services.
10748	.....	.....	.....	.....	.....	.....	.....	Demurrage.
10749	.....	.....	.....	.....	.....	.....	.....	Business entertainment expenses.
10750	.....	10746	.....	.....	.....	.....	.....	Tariff required.
10751	.....	.....	.....	13702(a)	.....	.....	.....	Tariff requirements.
10761	.....	.....	.....	13702 (b)-(d)	.....	.....	.....	Undercharge applicability.
10762	.....	.....	.....	13710 (a)	.....	.....	.....	Shipper routing.
10763	.....	10762(a) (3)-(5)	.....	.....	.....	.....	.....	Arrangements between carriers.
10764	.....	.....	.....	.....	.....	.....	.....	Water arrangements with other carriers.
10765	.....	.....	.....	.....	.....	.....	.....	Frt. Forwarder traffic agreements.
10766	.....	.....	.....	.....	.....	.....	.....	Billing and collecting practices.
10767	.....	.....	.....	13708	.....	.....	.....	Rail property valuation.
10781-10786	.....	.....	.....	.....	.....	.....	.....	Undercharge—Unreas. practice from NRA (now a stat. note to 1070).
New	.....	.....	.....	13711	.....	.....	.....	Construction and operation.
10901	.....	10901, 10902	.....	.....	.....	.....	.....	Safe and adequate facilities.
10902	.....	.....	.....	.....	.....	.....	.....	Abandonment approval/disapproval.
10903	.....	10903	.....	.....	.....	.....	.....

DISPOSITION OF INTERSTATE COMMERCE ACT PROVISIONS WITHIN TITLE 49 OF THE UNITED STATES CODE—Continued

Prior section	Part A (Rail)	Part B (Motor, Water)	Part C (Pipeline)	Subject
10904	10903			Abandonment procedures.
10905	10904			Financial assistance.
10906	10905			Public use of abandoned lines.
10907	10906, 10501(b)(2), 10102(5)			Spur track exemption.
10908				Passenger route discontinuance—interstate.
10909				Passenger route discontinuance—intrastate.
10910				Feeder line development.
10921	10907			License requirement.
10922	13901			Motor carrier license.
10923	13902			Frt. forwarder license.
10924	10903			Broker license.
10925	13904			Duration of licenses.
10926	13905			Transfers of licenses.
10927	13906			Security (insurance) requirement.
10928				Temporary authority.
10929				Temporary water authority.
10930				Limitations on licenses.
10931				Intrastate licensing.
10932				Motor savings provision.
10933				Ceasing HHG frt. forwarder service.
10934	13907			HHG Agents.
10935				Bus route discontinuances.
10936				Limit on intrastate bus regulation.
New				Replacement unified registration system.
11101	11101			Providing transp. (Common carrier oblig'n).
11101(c)			15701	Undercharge—contract vs. common disputes.
11102	11102			Classification of carriers.
11103	11103			Use of terminal facilities.
11104				Switch connections.
11105				Protective services (heat and cold).
11106				Identification of vehicles.
11107				Leased vehicles (owner-operators).
11108	14102			Water—unreals. discrimination.
11109				Lumping.
11110	14103			HHG operations.
11111	14104			CB radios on buses.

11121	.....	11121	.....	.....	Car service criteria.
11122	.....	11122	.....	.....	Car service compensation.
11123	.....	11123	.....	.....	Emergency situations.
11124	.....	11123	.....	.....	Rerouting.
11125	.....	11123	.....	.....	Directed service.
11126	.....	.....	.....	.....	Distribution of coal cars.
11127	.....	.....	.....	.....	HHG frt. Forwarder services.
11128	.....	.....	.....	.....	War Emergencies.
11141	.....	11141	.....	15721	Reports and records
11142	.....	11141	.....	.....	Uniform accounting system.
11143	.....	11142	.....	.....	Depreciation charges.
11144	.....	11144	.....	15722	Records inspection and retention.
11145	.....	11145	.....	15723	Reports by carriers.
11161	.....	.....	.....	.....	Railroad Accounting Principles Board (RAPP)
11162	.....	.....	.....	.....	Cost accounting principles.
11163	.....	.....	.....	.....	Implementing accounting principles accounting.
11164	.....	.....	.....	.....	Certification of carrier's accounting.
11165	.....	.....	.....	.....	Cost info. made available.
11166	.....	.....	.....	.....	Cost reporting.
11167	.....	.....	.....	.....	RAPP report.
11168	.....	.....	.....	.....	RAPP funding authorized.
11301	.....	.....	.....	.....	Securities issuances.
11302	.....	.....	.....	.....	[previously repealed.]
11303	.....	.....	.....	.....	Equipment trusts.
11304	.....	11301	.....	.....	Security interests in motor vehicles.
11321	.....	.....	.....	.....	Ownership of water carriers.
11322	.....	.....	.....	.....	Restrictions on officers & directors.
11323	.....	11328	.....	.....	Ownership of carriers by HHG frt. forwarders.
11341	.....	.....	.....	.....	Scope of authority (antitrust immunity).
11342	.....	.....	.....	.....	Pooling.
11343	.....	11321	.....	14302(f), 14303(f)	Mergers & consolidations.
11344	.....	11322	.....	14302	Merger procedures—general.
11345	.....	11323, 10902	.....	14303(a), (g)	Merger procedures—rail.
11346	.....	11324	.....	14303(b)	Merger procedures—motor.
11347	.....	11325	.....	14303(c)-(e)	Expedited merger procedure.
11348	.....	.....	.....	.....	Labor protection for mergers.
11349	.....	11326	.....	.....	Authority over noncarrier in control.
11350	.....	.....	.....	.....	Temporary authy for mergers.
11351	.....	.....	.....	.....	Mergers—DOT sponsorship
		11327	.....	14303(f)	Mergers—supplemental orders.

DISPOSITION OF INTERSTATE COMMERCE ACT PROVISIONS WITHIN TITLE 49 OF THE UNITED STATES CODE—Continued

Prior section	Part A (Rail)	Part B (Motor, Water)	Part C (Pipeline)	Subject
11361-11367				Financial Structure.
11501		14501		State preemptions.
11502				Conferences & jt. hearings w/states.
11503	11501			Tax discrim.—rail.
11503a		14502		Tax discrim.—motor.
11504	11502	14503		Withholding st. and local income tax.
11505				St. actions to injoin abandonments by rail or HHG frt. forwarders.
11506		14504		Single-State registration.
11507				Prison-made property.
New		14505		Bus sales tax.
11701	11701	14701	15901	General enforcement authority.
11702	11702	14702	15902	ICC enforcement.
11703	11703	14703	15903	Atty. Gen. enforcement.
11704				Private actions to injoin HHG frt. forwarder cessation of service.
11705	11704	14704	15904	Rights and remedies of injured persons.
11706	11705	14705	15905	Statute of limitations.
11707	11706	14706	15906	Liability of common carriers under bills of lading.
11708		14707		Private enforcement of licensing.
11709				Liability for securities issuances.
11710	11707			Liability for misrouting.
11711		14708		HHG Arbitration program.
11712		14709		Tariff reconciliation rules (undercharges).
11901	11901	14901	16101	General civil penalties.
11902		14902		Penalties for rebates.
11902a				Penalties for lumping.
11903		14903		Rate, discrim. and tariff violations.
11904		14904		Additional rate and discrim. violations.
11905				Free transp.
11906		14906		Evasion of regulation.
11907	11902			Interference with car supply.
11908				HHG Frt. Forwarder abandonment of service.
11909	11903	14907	16102	Record keeping and reporting violations.
11910	11904	14908	16103	Unlawful disclosure of info.
11911				Unlawful securities issuances.
11912				Merger—violations by noncarriers.
11913	11905	14909	16104	Disobedience to subpoenas.

11913a	.....	.....	.....	Accounting principles violations.
11914	.....	11906	.....	General criminal penalties.
11915	.....	11907	.....	Corporate liability.
11916	.....	.....	.....	Conclusiveness of rates.
11917	.....	.....	.....	HHG weight-bumping.
		14910	.....	.....
		14911	.....	.....
		14913	.....	.....
		14912	.....	.....
		16105	.....	.....
		16106	.....	.....

From the Committee on Transportation and Infrastructure, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

BUD SHUSTER,
BILL CLINGER,
TOM PETRI,
HOWARD COBLE,
SUSAN MOLINARI,
NICK RAHALL,

As additional conferees from the Committee on the Judiciary, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

HENRY HYDE,
CARLOS J. MOORHEAD,

Managers on the Part of the House.

LARRY PRESSLER,
TED STEVENS,
CONRAD BURNS,
TRENT LOTT,
KAY BAILEY HUTCHISON,
JOHN ASHCROFT,
FRITZ HOLLINGS,
DANIEL K. INOUE,
J.J. EXON,
JAY ROCKEFELLER,
JOHN BREAU,

Managers on the Part of the Senate.

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