

108TH CONGRESS  
1ST SESSION

# H. R. 2924

To amend title 49, United States Code, to enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2003

Mr. BAKER (for himself, Mr. JOHN, Mr. VITTER, and Mr. POMEROY) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend title 49, United States Code, to enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49,**  
4       **UNITED STATES CODE.**

5       (a) SHORT TITLE.—This Act may be cited as the  
6       “Railroad Competition Act of 2003”.

7       (b) AMENDMENT OF TITLE 49, UNITED STATES  
8       CODE.—Except as otherwise expressly provided, whenever

1 in this Act an amendment or repeal is expressed in terms  
2 of an amendment to, or a repeal of, a section or other  
3 provision, the reference shall be considered to be made to  
4 a section or other provision of title 49, United States  
5 Code.

6 **SEC. 2. CLARIFICATION OF RAIL TRANSPORTATION POL-**  
7 **ICY.**

8 Section 10101 is amended—

9 (1) by inserting “(a) IN GENERAL.—” before  
10 “In regulating”; and

11 (2) by adding at the end the following:

12 “(b) PRIMARY OBJECTIVES.—The primary objectives  
13 of the rail transportation policy of the United States are  
14 as follows:

15 “(1) To promote effective competition among  
16 rail carriers at origins and destinations.

17 “(2) To maintain reasonable rates in the ab-  
18 sence of effective competition.

19 “(3) To maintain consistent and efficient rail  
20 transportation service for shippers, including the  
21 timely provision of rail cars requested by shippers.

22 “(4) To ensure that smaller carload and inter-  
23 modal shippers are not precluded from accessing rail  
24 systems due to volume requirements.”.

1 **SEC. 3. ARBITRATION OF CERTAIN RAIL RATE, SERVICE,**  
2 **AND OTHER DISPUTES.**

3 (a) IN GENERAL.—

4 (1) AUTHORITY.—Chapter 117 is amended by  
5 adding the following section after section 11707:

6 **“§ 11708. Arbitration of certain rail rate, service, and**  
7 **other disputes**

8 “(a) ELECTION OF ARBITRATION.—A dispute de-  
9 scribed in subsection (b) shall be submitted for resolution  
10 by arbitration upon the election of any party to the dispute  
11 that is not a rail carrier.

12 “(b) COVERED DISPUTES.—(1) Except as provided  
13 in paragraph (2), subsection (a) applies to any dispute be-  
14 tween a party described in subsection (a) and a rail carrier  
15 that—

16 “(A) arises under section 10701(c), 10701(d),  
17 10702, 10704(a)(1), 10707, 10741, 10745, 10746,  
18 11101(a), 11102, 11121, 11122, or 11706 of this  
19 title; and

20 “(B) involves—

21 “(i) the payment of money;

22 “(ii) a rate or charge imposed by the rail  
23 carrier; or

24 “(iii) transportation or other service by the  
25 rail carrier.

1       “(2) Subsection (a) does not apply to a dispute if the  
2 resolution of the dispute would necessarily involve the pro-  
3 mulgation of regulations generally applicable to all rail  
4 carriers.

5       “(c) ARBITRATION PROCEDURES.—The Secretary of  
6 Transportation shall prescribe in regulations the proce-  
7 dures for the resolution of disputes submitted for arbitra-  
8 tion under subsection (a). The regulations shall include  
9 the following:

10           “(1) Procedures, including time limits, for the  
11 selection of an arbitrator or panel of arbitrators for  
12 a dispute from among arbitrators listed on the ros-  
13 ter of arbitrators established and maintained by the  
14 Secretary under subsection (d)(1).

15           “(2) Policies, requirements, and procedures for  
16 the compensation of each arbitrator for a dispute to  
17 be paid by the parties to the dispute.

18           “(3) Procedures for expedited arbitration of a  
19 dispute, including procedures for discovery author-  
20 ized in the exercise of discretion by the arbitrator or  
21 panel of arbitrators.

22       “(d) SELECTION OF ARBITRATORS.—(1) The Sec-  
23 retary of Transportation shall establish, maintain, and re-  
24 vise as necessary a roster of arbitrators who—

1           “(A) are experienced in transportation or eco-  
2           nomic issues within the jurisdiction of the Board or  
3           issues similar to those issues;

4           “(B) satisfy requirements for neutrality and  
5           other qualification requirements prescribed by the  
6           Secretary;

7           “(C) consent to serve as arbitrators under this  
8           section; and

9           “(D) are not officers or employees of the  
10          United States.

11          “(2) For a dispute involving an amount not in excess  
12          of \$1,000,000, the regulations under subsection (c) shall  
13          provide for arbitration by a single arbitrator who—

14               “(A) is selected by the parties to the dispute;  
15          or

16               “(B) if the parties cannot agree, is selected by  
17          the Secretary from among the arbitrators listed on  
18          the roster of arbitrators under paragraph (1).

19          “(3)(A) For a dispute involving an amount in excess  
20          of \$1,000,000, the regulations under subsection (c) shall  
21          provide for arbitration by a panel of three arbitrators se-  
22          lected as follows:

23               “(i) One arbitrator selected by the party elect-  
24          ing the arbitration.

1           “(ii) One arbitrator selected by the rail carrier  
2           or all of the rail carriers who are parties to the dis-  
3           pute, as the case may be.

4           “(iii) One arbitrator selected by the two arbitra-  
5           tors selected under clauses (i) and (ii).

6           “(B) If a selection of an arbitrator is not made under  
7           clause (ii) or (iii) of subparagraph (A) within the time lim-  
8           its prescribed in the regulations, then the Secretary shall  
9           select the arbitrator from among the arbitrators listed on  
10          the roster of arbitrators under paragraph (1).

11          “(e) DISPUTES OVER RATES OR CHARGES.—(1) The  
12          requirements of this subsection apply to a dispute sub-  
13          mitted under this section concerning a rate or charge im-  
14          posed by a rail carrier.

15          “(2)(A) Subject to subparagraph (B), the decision of  
16          an arbitrator or panel of arbitrators in a dispute on an  
17          issue described in paragraph (1) shall be the final offer  
18          of one of the parties to the dispute.

19          “(B) A decision under subparagraph (A) may not  
20          provide for a rate for transportation by a rail carrier that  
21          would result in a revenue-variable cost percentage for such  
22          transportation that is less than 180 percent, as deter-  
23          mined under standards applied in the administration of  
24          section 10707(d).

1       “(3) If the party electing arbitration of a dispute de-  
2       scribed in paragraph (1) seeks compensation for damages  
3       incurred by the party as a result of a specific rate or  
4       charge imposed by a rail carrier for the transportation of  
5       items for the party and the party alleges an amount of  
6       damages that does not exceed \$500,000 for any year as  
7       a result of the imposition of the specific rate or charge,  
8       the arbitrator, in making a decision on the dispute, shall  
9       consider the rates or charges, respectively, that are im-  
10      posed by rail carriers for the transportation of similar  
11      items under similar circumstances in rail transportation  
12      markets where there is effective competition, as deter-  
13      mined under standards applied by the Board in the admin-  
14      istration of section 10707(a).

15      “(f) TIME FOR ISSUANCE OF ARBITRATION DECI-  
16      SION.—Notwithstanding any other provision of this sub-  
17      title limiting the time for the taking of an action under  
18      this subtitle, the arbitrator or panel of arbitrators for a  
19      dispute submitted for resolution under this section shall  
20      issue a final decision on the dispute within the maximum  
21      period after the date on which the arbitrator or panel is  
22      selected to resolve the dispute under this section, as fol-  
23      lows:

24               “(1) In the case of a dispute involving  
25               \$1,000,000 or less, 120 days.

1           “(2) In the case of a dispute involving more  
2           than \$1,000,000, 180 days.

3           “(g) AUTHORIZED RELIEF.—A decision of an arbi-  
4           trator or panel of arbitrators under this section shall grant  
5           relief in either or both of the following forms:

6           “(1) Monetary damages, to the extent author-  
7           ized to be provided by the Board in such a dispute  
8           under this subtitle.

9           “(2) An order that requires specific perform-  
10          ance under any applicable law, including any law  
11          limiting rates to reasonable rates, for any period not  
12          in excess of two years beginning on the date of the  
13          decision.

14          “(h) JUDICIAL CONFIRMATION AND REVIEW.—The  
15          following provisions of title 9 shall apply to an arbitration  
16          decision issued in a dispute under this section:

17          “(1) Section 9 (relating to confirmation of an  
18          award in an arbitration decision), which shall be ap-  
19          plied as if the parties had entered into an agreement  
20          under title 9 to submit the dispute to the arbitration  
21          and had provided in that agreement for a judgment  
22          of an unspecified court to be entered on the award  
23          made pursuant to the arbitration.

24          “(2) Section 10 (relating to judicial vacation of  
25          an award in an arbitration decision).”.



1           (2) CLERICAL AMENDMENT.—The table of sec-  
 2           tions at the beginning of such chapter is amended  
 3           by inserting after the item relating to section 11707  
 4           the following:

“11708. Arbitration of certain rail rate, service, and other disputes.”.

5           (b) TIME FOR IMPLEMENTING CERTAIN REQUIRE-  
 6           MENTS.—Not later than 180 days after the date of the  
 7           enactment of this Act, the Secretary of Transportation  
 8           shall promulgate regulations, prescribe a roster of arbitra-  
 9           tors, and complete any other action that is necessary for  
 10          the implementation of section 11708 of title 49, United  
 11          States Code (as added by subsection (a)).

12       **SEC. 4. ELIMINATION OF BARRIERS TO COMPETITION BE-**  
 13                               **TWEEN CLASS I CARRIERS AND CLASS II AND**  
 14                               **CLASS III RAIL CARRIERS.**

15          (a) RESTRICTION ON APPROVAL OR EXEMPTION OF  
 16          RAIL CARRIERS’ ACTIVITIES BY SURFACE TRANSPOR-  
 17          TATION BOARD.—Section 10901 is amended by adding at  
 18          the end the following new subsection:

19          “(e)(1) The Board may not issue under this section  
 20          a certificate authorizing an activity described in subsection  
 21          (a), or exempt from the applicability of this section under  
 22          section 10502 such an activity, that involves a transfer  
 23          of interest in a line of railroad, from a Class I rail carrier  
 24          to a Class II or III rail carrier, if the activity directly or  
 25          indirectly would result in—

1           “(A) a restriction of the ability of the Class II  
2           or Class III rail carrier to interchange traffic with  
3           other carriers; or

4           “(B) a restriction of competition between or  
5           among rail carriers in the region affected by the ac-  
6           tivity in a manner or to an extent that would violate  
7           antitrust laws of the United States (notwithstanding  
8           any exemption from the applicability of antitrust  
9           laws that is provided under section 10706 of this  
10          title or any other provision of law).

11          “(2) Any party to an activity referred to in paragraph  
12 (1) that has been carried out, or any rail shipper affected  
13 by such an activity, may request the Board to review the  
14 activity to determine whether the activity has resulted in  
15 a restriction described in that paragraph. If, upon review  
16 of the activity, the Board determines that the activity re-  
17 sulted in such a restriction and the restriction has been  
18 in effect for at least 10 years, the Board shall declare the  
19 restriction to be unlawful and terminate the restriction un-  
20 less the Board finds that the termination of the restriction  
21 would materially impair the ability of an affected rail car-  
22 rier to provide service to the public or would otherwise  
23 be inconsistent with the public interest.

24          “(3) In this subsection:

1           “(A) The term ‘antitrust laws’ has the meaning  
 2           given that term in subsection (a) of the first section  
 3           of the Clayton Act (15 U.S.C. 12(a)), except that  
 4           such term also means section 5 of the Federal Trade  
 5           Commission Act (15 U.S.C. 45) to the extent that  
 6           such section 5 applies to unfair methods of competi-  
 7           tion.

8           “(B) The terms ‘Class I rail carrier’, ‘Class II  
 9           rail carrier’, and ‘Class III rail carrier’ mean, re-  
 10          spectively, a rail carrier classified under regulations  
 11          of the Board as a Class I rail carrier, Class II rail  
 12          carrier, and Class III rail carrier.”.

13          (b) APPLICABILITY TO PREVIOUSLY APPROVED OR  
 14          EXEMPTED ACTIVITIES.—Paragraph (2) of section  
 15          10901(e) of title 49, United States Code (as added by sub-  
 16          section (a)), shall apply with respect to any activity re-  
 17          ferred to in that paragraph for which the Surface Trans-  
 18          portation Board issued a certificate authorizing the activ-  
 19          ity under section 10901 of such title, or exempted the ac-  
 20          tivity from the necessity for such a certificate under sec-  
 21          tion 10502 of such title, before, on, or after the date of  
 22          the enactment of this Act.

23          **SEC. 5. COMPETITIVE RAIL SERVICE IN TERMINAL AREAS.**

24          (a) USE OF TERMINAL AREAS.—Section 11102(a) is  
 25          amended—

1 (1) by inserting “(1)” after “(a)”;

2 (2) by striking “may” in the first sentence and  
3 inserting “shall”;

4 (3) by inserting after the first sentence the fol-  
5 lowing: “In making any finding for the purposes of  
6 the preceding sentence, the Board may not require  
7 that there be evidence of anticompetitive conduct by  
8 a rail carrier from which access is sought.”;

9 (4) by striking “The rail carriers” at the begin-  
10 ning of the sentence following the sentence inserted  
11 by paragraph (3) and inserting the following:

12 “(2) The rail carriers”; and

13 (5) by striking “may establish conditions” in  
14 the penultimate sentence and inserting “shall estab-  
15 lish conditions”.

16 (b) RECIPROCAL SWITCHING.—Section 11102(c) is  
17 amended—

18 (1) in paragraph (1)—

19 (A) by striking “may require” in the first  
20 sentence and inserting “shall require”; and

21 (B) by striking “may establish” in the sec-  
22 ond sentence and inserting “shall establish”;  
23 and

24 (2) by adding at the end the following new  
25 paragraph:

1       “(3) In making any finding for the purposes of the  
2 first sentence of paragraph (1), the Board may not require  
3 that there be evidence of anticompetitive conduct by a rail  
4 carrier from which access is sought.”.

5 **SEC. 6. REQUIREMENT FOR RATE QUOTES.**

6       Section 11101(a) is amended—

7           (1) by inserting “(1)” after “(a)”; and

8           (2) by striking “A rail carrier” at the beginning  
9 of the second sentence and inserting the following:  
10       “(2) Upon the request of a shipper, a rail carrier  
11 shall establish a rate for transportation and provide serv-  
12 ice requested by the shipper between any two points on  
13 the system of that carrier where traffic originates, termi-  
14 nates, or may reasonably be interchanged. A carrier shall  
15 establish a rate and provide service upon such request  
16 without regard to—

17           “(A) the location of the movement on the rail  
18 system, including terminal areas;

19           “(B) whether the rate established is for only  
20 part of a movement between a point of origin and  
21 a destination;

22           “(C) whether the shipper has made arrange-  
23 ments for transportation for any other part of that  
24 movement; or

1           “(D) whether the shipper has a contract with  
 2           any rail carrier for part or all of its transportation  
 3           needs over the route of movement, in which case the  
 4           rate established by the carrier shall not apply to  
 5           transportation covered by the contract.

6           “(3) A rail carrier”.

7   **SEC. 7. REVIEW OF RATES FOR REASONABLENESS.**

8           Section 10701(d) is amended by striking paragraph  
 9   (3) and inserting the following:

10          “(3) Upon a challenge made by a shipper to the rea-  
 11          sonableness of any rate established by a rail carrier in ac-  
 12          cordance with subsection (c) or section 11101(a), the  
 13          Board shall determine the reasonableness of the rate with-  
 14          out regard to whether—

15               “(A) the rate is for only part of a movement be-  
 16          tween a point of origin and a destination;

17               “(B) the shipper has made arrangements for  
 18          transportation for any other part of that movement;  
 19          or

20               “(C) the shipper currently has a contract with  
 21          a rail carrier for any part of the rail traffic involved,  
 22          except that any rate prescribed by the Board shall  
 23          not apply to transportation covered by such a con-  
 24          tract.”.

1 **SEC. 8. FILING FEES.**

2 Section 721 is amended by adding at the end the fol-  
3 lowing new subsection:

4 “(f) **LIMITATION ON FEES.**—The Board may not  
5 charge a fee for the filing of a complaint, protest, or other  
6 request for relief in an amount greater than fees charged  
7 by district courts of the United States for a comparable  
8 filing.”.

9 **SEC. 9. PERIODIC STUDY OF COMPETITION AMONG RAIL**  
10 **CARRIERS.**

11 (a) **REQUIREMENT FOR STUDY.**—

12 (1) **TRIENNIAL STUDY.**—Chapter 101 is  
13 amended by adding at the end the following new sec-  
14 tion:

15 **“§ 10103. Periodic study of rail carrier competition**  
16 **and processes of the Board**

17 “(a) **REQUIREMENT FOR STUDY.**—Every three years,  
18 the Secretary of Transportation shall conduct a com-  
19 prehensive study of rail carrier competition and the proc-  
20 esses of the Board. The study shall include an assessment  
21 of the following:

22 “(1) The availability of effective competitive op-  
23 tions among and between rail carriers.

24 “(2) The effectiveness of the processes of the  
25 Board, including the process used for determining  
26 the reasonableness of rates of rail carriers.

1           “(3) The availability to rail users of effective  
2       regulatory dispute resolution options.

3           “(b) STUDY TO INCLUDE ASSESSMENT OF RAIL-TO-  
4 RAIL COMPETITION.—In carrying out the study, the Sec-  
5 retary shall assess the overall level of rail-to-rail competi-  
6 tion in the rail carrier industry in the United States. In  
7 making the assessment, the Secretary shall consider the  
8 views of users of the services of rail carriers.

9           “(c) REPORT TO CONGRESS.—Not later than Novem-  
10 ber 15 of each year in which a study is conducted under  
11 subsection (a), the Secretary shall submit a report on the  
12 results of the study to Congress. The report shall include  
13 the following:

14           “(1) The Secretary’s assessment of the overall  
15 level of rail-to-rail competition in the rail carrier in-  
16 dustry in the United States.

17           “(2) The markets that have limited rail-to-rail  
18 competition.

19           “(3) Any recommendations for enhancing rail-  
20 to-rail competition, particularly in markets identified  
21 as having limited rail-to-rail competition.

22           “(4) An assessment of the Board’s performance  
23 of its purpose to promote and enhance competition  
24 among and between railroads by—



1           “(A) addressing complaints regarding  
2 rates, charges, and service; and

3           “(B) promulgating regulations of general  
4 applicability or taking other actions.

5           “(5) Any recommendations for modification of  
6 any of the decisions of the Board (or decisions of the  
7 former Interstate Commerce Commission continuing  
8 in effect) or for modification of the general authority  
9 or jurisdiction of the Board.

10          “(6) Any other findings, analyses, assessments,  
11 and recommendations that result from the study.”.

12          (2) CLERICAL AMENDMENT.—The table of sec-  
13 tions at the beginning of such chapter is amended  
14 by adding at the end the following:

“10103. Periodic study of rail carrier competition and processes of the Board.”.

15          (b) TIME FOR FIRST STUDY.—The first study under  
16 section 10103 of title 49, United States Code (as added  
17 by subsection (a)), shall be carried out not later than two  
18 years after the date of the enactment of this Act .

19 **SEC. 10. AREAS OF INADEQUATE RAIL COMPETITION.**

20          (a) DESIGNATION AND REMEDIES.—

21           (1) IN GENERAL.—Chapter 105 is amended by  
22 adding at the end the following new section:

23 **“§ 10503. Areas of inadequate rail competition**

24          “(a) DESIGNATION.—The Board shall designate any  
25 State or part of a State as an area of inadequate rail com-

1 petition after finding either of the grounds set forth in  
2 subsection (b). An area of inadequate rail competition may  
3 be limited to be composed of the facilities of a group of  
4 shippers or receivers of one or more specific commodities  
5 within a geographic area.

6 “(b) GROUNDS FOR DESIGNATION.—The grounds for  
7 designating a State or part of a State as an area of inad-  
8 equate rail competition are as follows:

9 “(1) The State or part of a State encompasses  
10 a significant number of rail shipping origins and  
11 destinations that are served exclusively by only one  
12 Class I railroad.

13 “(2) A significant number of the persons that  
14 ship by rail or receive rail shipments in the State or  
15 part of a State—

16 “(A) usually find it necessary to pay rates  
17 for the rail shipments that exceed the rates nec-  
18 essary to yield recovery by the rail carrier of  
19 180 percent of revenue-variable costs, as deter-  
20 mined under standards applied in the adminis-  
21 tration of section 10707(d); or

22 “(B) have experienced competitive dis-  
23 advantage in the marketplace or other economic  
24 adversity because of high cost or poor quality of

1 rail service in the State or part of a State, as  
2 the case may be.

3 “(c) AUTHORIZED PETITIONERS.—The following per-  
4 sons are authorized to petition the Board for a designation  
5 of a State or part of a State as an area of inadequate  
6 rail competition:

7 “(1) The Governor from the State.

8 “(2) A Member of Congress from the State.

9 “(3) As provided in section 10504, the Rail  
10 Customer Advocate of the Department of Agri-  
11 culture and any State official referred to in sub-  
12 section (a)(2) of such section.

13 “(d) ACTIONS.—Upon designating a State or a part  
14 of a State as an area of inadequate rail competition, the  
15 Board shall attempt to resolve, within 60 days after the  
16 date of the designation, the conditions described in sub-  
17 section (b) that justify the designation. In addition to pro-  
18 viding other remedies authorized by law, the Board may,  
19 when requested in a petition, order any of the following  
20 actions:

21 “(1) Provision of reciprocal switching and ac-  
22 cess to tracks of another rail carrier beyond the lim-  
23 its specified in section 11102(a) of this title.

24 “(2) Haulage transportation of railroad cars by  
25 a rail carrier to or from facilities that such carrier

1 alone physically serves on behalf of another rail car-  
2 rier, for a fee prescribed by the Board.

3 “(3) Regarding rates on any rail segments  
4 within or connected to the area of inadequate rail  
5 competition on which rail service is susceptible to  
6 delay or interruption due to traffic congestion—

7 “(A) expedited review of the reasonable-  
8 ness of the rates under section 10701(d)(3); or

9 “(B) expedited final offer arbitration of  
10 the reasonableness of the rates under section  
11 11708(e).

12 “(4) Expedited review, under section  
13 10701(d)(3), of the reasonableness of—

14 “(A) increases in rates or other charges;  
15 and

16 “(B) new transportation service tariffs.

17 “(5) Expedited review of whether a rate violates  
18 the prohibition against discriminatory rates con-  
19 tained in section 10741, without regard to sub-  
20 section (b)(2) of such section.

21 “(e) LIMITATIONS AND CONDITIONS APPLICABLE TO  
22 SPECIFIC REMEDIES.—(1) In the case of a petition for  
23 an order for reciprocal switching or access to tracks of  
24 another rail carrier under subsection (d)(1), the Board  
25 may not require that there be evidence of anticompetitive

1 conduct by a rail carrier as a prerequisite for ordering  
2 such action.

3 “(2) In the case of a petition for expedited review  
4 of rates or final offer arbitration of rates under subsection  
5 (d)(3)—

6 “(A) the Board or arbitrator or panel of arbi-  
7 trators, as the case may be, shall accord, with re-  
8 spect to rail transportation of a specific commodity,  
9 significant persuasive weight to evidence com-  
10 paring—

11 “(i) rates charged for rail transportation of  
12 various quantities of that commodity within the  
13 area of inadequate rail competition; and

14 “(ii) rates charged for rail transportation  
15 of similar quantities of that commodity or any  
16 similar commodity or commodities in areas  
17 where there is competition among rail carriers  
18 for shipments of such commodity or commod-  
19 ities; and

20 “(B) the Board or arbitrator or panel of arbi-  
21 trators, as the case may be, shall not apply the  
22 stand-alone cost test that the Board applies in deter-  
23 mining the reasonableness of rates reviewed in cases  
24 not involving rail service in an area of inadequate  
25 rail competition.

1       “(3) In the case of a petition for expedited review,  
 2 under subsection (d)(4), of an increase of a rate or other  
 3 charge or the imposition of a new service tariff by a rail  
 4 carrier—

5               “(A) the rail carrier shall have the burden of  
 6 proving the reasonableness of the increase or tariff  
 7 charge; and

8               “(B) the Board shall consider any evidence  
 9 comparing—

10               “(i) the increased rate or other charge, or  
 11 the tariff charge, as the case may be; and

12               “(ii) corresponding rates, other charges, or  
 13 new service tariff charges, respectively, imposed  
 14 for rail transportation in areas where there is  
 15 a significant level of competition among the rail  
 16 carriers.”.

17       (2) CLERICAL AMENDMENT.—The table of sec-  
 18 tions at the beginning of such chapter is amended  
 19 by adding at the end the following new item:

“10503. Areas of inadequate rail competition.”.

20       (b) STUDY AND REPORT ON AREAS OF INADEQUATE  
 21 RAIL COMPETITION.—

22               (1) STUDY REQUIRED.—The Rail Customer Ad-  
 23 vocate of the Department of Agriculture shall carry  
 24 out a study of the process provided under section  
 25 10503 of title 49, United States Code (as added by

subsection (a)), for challenging and remedying conditions described in subsection (b) of such section in States and parts of States designated under such section as areas of inadequate rail competition insofar as such conditions adversely affect rail shippers of agricultural or forestry commodities and products.

(2) FINDINGS ON EFFECTIVENESS OF PROCESS.—The Rail Customer Advocate shall make findings, on the basis of the study under paragraph (1), regarding the effectiveness of the process for remedying the conditions studied, particularly in the case of customers that ship agricultural or forestry commodities and products by rail in annual volumes of 1,500 rail cars or less.

(3) REPORT.—Not later than three years after the date of the enactment of this Act, the Rail Customer Advocate shall submit to Congress a report on the results of the study under paragraph (1), including the findings required under paragraph (2).

**SEC. 11. RAIL CUSTOMER ADVOCATE IN THE DEPARTMENT  
OF AGRICULTURE.**

(a) PARTICIPATION OF RAIL CUSTOMER ADVOCATE  
IN STB PROCEEDINGS.—

(1) AUTHORITY AND RESPONSIBILITIES.—

Chapter 105, as amended by section 10(a), is fur-

1       ther amended by adding at the end the following  
2       new section:

3       **“§ 10504. Participation of Rail Customer Advocate in**  
4               **Board proceedings**

5       “(a) AUTHORITY.—The following persons are author-  
6       ized to petition the Board for an exercise of authority of  
7       the Board regarding rail transportation of any agricul-  
8       tural or forestry commodity or product, and to participate  
9       in any proceeding of the Board regarding rail transpor-  
10      tation of such a commodity or product:

11           “(1) The Rail Customer Advocate of the De-  
12      partment of Agriculture.

13           “(2) Any official of the government of a State  
14      whose functions are the same as or similar to the  
15      functions of the Rail Customer Advocate of the De-  
16      partment of Agriculture.

17       “(b) CONSIDERATION OF PRESENTATIONS BY ADVO-  
18      CATE.—(1) The Board shall accord significant persuasive  
19      weight to any material evidence, proposal, or view that is  
20      presented by an official referred to in subsection (a) with  
21      respect to rail transportation of an agricultural or forestry  
22      commodity or product.

23           “(2) In disposing of any matter before the Board in  
24      which an official referred to in subsection (a) has partici-  
25      pated under the authority of such subsection, the Board



1 shall present in writing a detailed explanation of any dis-  
 2 agreement of the Board with matters presented to the  
 3 Board by that official.”.

4 (2) CLERICAL AMENDMENT.—The table of sec-  
 5 tions at the beginning of such chapter, as amended  
 6 by section 10(a)(2), is further amended by adding at  
 7 the end the following new item:

“10504. Participation of Rail Customer Advocate in Board proceedings.”.

8 (b) ESTABLISHMENT AND DUTIES.—

9 (1) IN GENERAL.—Subtitle I of title II of the  
 10 Department of Agriculture Reorganization Act of  
 11 1994 (7 U.S.C. 7005) is amended by adding at the  
 12 end the following new section:

13 **“SEC. 286. RAIL CUSTOMER ADVOCATE.**

14 “(a) ESTABLISHMENT OF OFFICE.—There is estab-  
 15 lished within the Department an Office of Rail Customer  
 16 Advocacy.

17 “(b) RAIL CUSTOMER ADVOCATE.—

18 “(1) APPOINTMENT.—The Secretary shall ap-  
 19 point the Rail Customer Advocate.

20 “(2) HEAD OF OFFICE.—The Rail Customer  
 21 Advocate is the head of the Office of Rail Customer  
 22 Advocacy.

23 “(c) FUNCTIONS.—The Rail Customer Advocate has  
 24 the following functions:

1           “(1) PARTICIPATION IN STB PROCEEDINGS.—

2           To participate as a party in proceedings of the Sur-  
3           face Transportation Board on petitions for action by  
4           the Board regarding the regulation of rail transpor-  
5           tation of agricultural or forestry commodities or  
6           products, and to initiate any such action.

7           “(2) COMPILATION OF INFORMATION.—To col-

8           lect, compile, and maintain information regarding  
9           the cost and efficiency of rail transportation of agri-  
10          cultural commodities and products and forestry com-  
11          modities and products.

12          “(3) STUDIES.—To perform studies regarding

13          rail transportation of agricultural commodities and  
14          products and forestry commodities and products.

15          “(d) ACCESS TO STB INFORMATION.—To carry out

16          the functions under subsection (c), the Rail Customer Ad-  
17          vocate shall have access to information, including data-  
18          bases, of the Surface Transportation Board.”.

19          (2) CONFORMING AMENDMENTS.—Section

20          296(b) of the Department of Agriculture Reorga-  
21          nization Act of 1994 (7 U.S.C. 7014(b)) is amend-  
22          ed—

23                  (A) in paragraph (4), by striking “or” at  
24          the end;

1 (B) in paragraph (5), by striking the pe-  
2 riod at the end and inserting “; or”; and

3 (C) by adding at the end the following:

4 “(6) the establishment of the Office of Rail  
5 Consumer Advocacy of the Department under sec-  
6 tion 286.”.

