

108TH CONGRESS
1ST SESSION

S. 919

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.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2003

Mr. BURNS (for himself, Mr. ROCKEFELLER, Mr. DORGAN, Mr. CRAIG, Mr. BAUCUS, Mr. COLEMAN, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science and Transportation

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”.

1 (b) AMENDMENT OF TITLE 49, UNITED STATES
2 CODE.—Except as otherwise expressly provided, whenever
3 in this Act an amendment or repeal is expressed in terms
4 of an amendment to, or a repeal of, a section or other
5 provision, the reference shall be considered to be made to
6 a section or other provision of title 49, United States
7 Code.

8 **SEC. 2. CLARIFICATION OF RAIL TRANSPORTATION POL-**
9 **ICY.**

10 Section 10101 is amended—

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

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

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

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

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

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

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

4 **SEC. 3. ARBITRATION OF CERTAIN RAIL RATE, SERVICE,**
 5 **AND OTHER DISPUTES.**

6 (a) IN GENERAL.—

7 (1) AUTHORITY.—Chapter 117 of title 49 is
 8 amended by adding the following section after sec-
 9 tion 11707:

10 **“§ 11708. Arbitration of certain rail rate, service, and**
 11 **other disputes**

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

16 “(b) COVERED DISPUTES.—(1) Except as provided
 17 in paragraph (2), subsection (a) applies to any dispute be-
 18 tween a party described in subsection (a) and a rail carrier
 19 that—

20 “(A) arises under section 10701(c), 10701(d),
 21 10702, 10704(a)(1), 10707, 10741, 10745, 10746,
 22 11101(a), 11102, 11121, 11122, or 11706 of this
 23 title; and

24 “(B) involves—

25 “(i) the payment of money;

1 “(ii) a rate or charge imposed by the rail
2 carrier; or

3 “(iii) transportation or other service by the
4 rail carrier.

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

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

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

19 “(2) Policies, requirements, and procedures for
20 the compensation of each arbitrator for a dispute to
21 be paid by the parties to the dispute.

22 “(3) Procedures for expedited arbitration of a
23 dispute, including procedures for discovery author-
24 ized in the exercise of discretion by the arbitrator or
25 panel of arbitrators.

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

4 “(A) are experienced in transportation or eco-
5 nomic issues within the jurisdiction of the Board or
6 issues similar to those issues;

7 “(B) satisfy requirements for neutrality and
8 other qualification requirements prescribed by the
9 Secretary;

10 “(C) consent to serve as arbitrators under this
11 section; and

12 “(D) are not officers or employees of the
13 United States.

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

17 “(A) is selected by the parties to the dispute;
18 or

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

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

1 “(i) One arbitrator selected by the party elect-
2 ing the arbitration.

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

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

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

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

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

21 “(B) A decision under subparagraph (A) may not
22 provide for a rate for transportation by a rail carrier that
23 would result in a revenue-variable cost percentage for such
24 transportation that is less than 180 percent, as deter-

1 mined under standards applied in the administration of
2 section 10707(d) of this title.

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

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

1 “(1) In the case of a dispute involving
2 \$1,000,000 or less, 120 days.

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

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

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

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

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

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

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

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

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

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

14 **SEC. 4. ELIMINATION OF BARRIERS TO COMPETITION BE-**
15 **TWEEN CLASS I CARRIERS AND CLASS II AND**
16 **CLASS III CARRIERS.**

17 (a) RESTRICTION ON APPROVAL OR EXEMPTION OF
18 CARRIERS’ ACTIVITIES BY SURFACE TRANSPORTATION
19 BOARD.—Section 10901 is amended by adding at the end
20 the following new subsection:

21 “(e)(1) The Board may not issue under this section
22 a certificate authorizing an activity described in subsection
23 (a), or exempt from the applicability of this section under
24 section 10502 of this title such an activity that involves
25 a transfer of interest in a line of railroad, by a Class I

1 rail carrier to a Class II or III rail carrier if the activity
2 directly or indirectly would result in—

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

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

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

1 “(3) In this subsection:

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

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

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

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

2 (a) USE OF TERMINAL AREAS.—Section 11102(a) is
3 amended—

4 (1) by inserting “(1)” after “(a)”;

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

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

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

15 “(2) The rail carriers”; and

16 (5) by striking “may establish conditions” in
17 the penultimate sentence and inserting “shall estab-
18 lish conditions”.

19 (b) RECIPROCAL SWITCHING.—Section 11102(e) is
20 amended—

21 (1) in paragraph (1)—

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

24 (B) by striking “may establish” in the sec-
25 ond sentence and inserting “shall establish”;
26 and

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

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

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

8 Section 11101(a) is amended—

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

10 (2) by striking “A rail carrier” at the beginning
11 of the second sentence and inserting the following:

12 “(2) Upon the request of a shipper, a rail carrier
13 shall establish a rate for transportation and provide serv-
14 ice requested by the shipper between any two points on
15 the system of that carrier where traffic originates, termi-
16 nates, or may reasonably be interchanged. A carrier shall
17 establish a rate and provide service upon such request
18 without regard to—

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

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

1 “(C) whether the shipper has made arrange-
2 ments for transportation for any other part of that
3 movement; or

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

9 “(3) A rail carrier”.

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

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

13 “(3) Upon a challenge made by a shipper to the rea-
14 sonableness of any rate established by a rail carrier in ac-
15 cordance with subsection (c) or section 11101(a) of this
16 title, the Board shall determine the reasonableness of the
17 rate without regard to whether—

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

20 “(B) the shipper has made arrangements for
21 transportation for any other part of that movement;
22 or

23 “(C) the shipper currently has a contract with
24 a rail carrier for any part of the rail traffic involved,
25 except that any rate prescribed by the Board shall

1 not apply to transportation covered by such a con-
 2 tract.”.

3 **SEC. 8. PERIODIC STUDY OF COMPETITION AMONG RAIL**
 4 **CARRIERS.**

5 (a) REQUIREMENT FOR STUDY.—

6 (1) TRIENNIAL STUDY.—Chapter 101 is
 7 amended by adding at the end the following new sec-
 8 tion:

9 **“§ 10103. Periodic study of rail carrier competition**
 10 **and processes of the Surface Transpor-**
 11 **tation Board**

12 “(a) REQUIREMENT FOR STUDY.—Every three years,
 13 the Secretary of Transportation shall conduct a com-
 14 prehensive study of rail carrier competition and the proc-
 15 esses of the Board. The study shall include an assessment
 16 of the following:

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

19 “(2) The effectiveness of the processes of the
 20 Surface Transportation Board, including the process
 21 used for determining the reasonableness of rates of
 22 rail carriers.

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

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

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

12 “(1) The Board’s assessment of the overall level
13 of rail-to-rail competition in the rail carrier industry
14 in the United States.

15 “(2) The markets that have limited rail-to-rail
16 competition.

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

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

23 “(A) addressing complaints regarding
24 rates, charges, and service; and

1 “(B) promulgating regulations of general
2 applicability or taking other actions.

3 “(5) Any recommendations for modification of
4 any of the decisions of the Surface Transportation
5 Board (or decisions of the former Interstate Com-
6 merce Commission continuing in effect) or for modi-
7 fication of the general authority or jurisdiction of
8 the Board.

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

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

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

14 (b) TIME FOR FIRST STUDY.—The first study under
15 section 10103 of title 49, United States Code (as added
16 by subsection (a)), shall be carried out not later than two
17 years after the effective date specified in section 401.

18 **SEC. 9. AREAS OF INADEQUATE RAIL COMPETITION.**

19 (a) DESIGNATION AND REMEDIES.—

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

22 **“§ 10503. Areas of inadequate rail competition**

23 “(a) DESIGNATION.—The Board shall designate any
24 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) of this title; 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 chief executive of the State or another
8 official of the State who is designated to do so by
9 the chief executive or is authorized to do so under
10 the laws of that State.

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

12 “(3) As provided in section 10504 of this title,
13 the Rail Customer Advocate of the Department of
14 Agriculture and any State official referred to in sub-
15 section (a)(2) of such section.

16 “(4) A person that ships by rail or receives rail
17 shipments in that State or part of a State.

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

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

4 “(2) Haulage transportation of railroad cars by
5 a rail carrier to or from facilities that such carrier
6 alone physically serves on behalf of another rail car-
7 rier, for a fee prescribed by the Board.

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

12 “(A) expedited review of the reasonable-
13 ness of the rates under section 10701(d)(3) of
14 this title; or

15 “(B) expedited final offer arbitration of
16 the reasonableness of the rates under section
17 11708(e) of this title.

18 “(4) Expedited review, under section
19 10701(d)(3) of this title, of the reasonableness of—

20 “(A) increases in rates or other charges;
21 and

22 “(B) new transportation service tariffs.

23 “(5) Expedited review of whether a rate violates
24 the prohibition against discriminatory rates con-

1 tained in section 10741 of this title, without regard
2 to subsection (b)(2) of such section.

3 “(e) LIMITATIONS AND CONDITIONS APPLICABLE TO
4 SPECIFIC REMEDIES.—(1) In the case of a petition for
5 an order for reciprocal switching or access to tracks of
6 another rail carrier under subsection (d)(1), the Board
7 may not require that there be evidence of anticompetitive
8 conduct by a rail carrier as a prerequisite for ordering
9 such action.

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

13 “(A) the Board or arbitrator or panel of arbi-
14 trators, as the case may be, shall accord, with re-
15 spect to rail transportation of a specific commodity,
16 significant persuasive weight to evidence com-
17 paring—

18 “(i) rates charged for rail transportation of
19 various quantities of that commodity within the
20 area of inadequate rail competition; and

21 “(ii) rates charged for rail transportation
22 of similar quantities of that commodity or any
23 similar commodity or commodities in areas
24 where there is competition among rail carriers

1 for shipments of such commodity or commod-
2 ities; and

3 “(B) the Board or arbitrator or panel of arbi-
4 trators, as the case may be, shall not apply the
5 stand-alone cost test or any other test that the
6 Board applies in determining the reasonableness of
7 rates reviewed in cases not involving rail service in
8 an area of inadequate rail competition.

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

13 “(A) the rail carrier shall have the burden of
14 proving the reasonableness of the increase or tariff
15 charge; and

16 “(B) the Board shall consider any evidence
17 comparing—

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

20 “(ii) corresponding rates, other charges, or
21 new service tariff charges, respectively, imposed
22 for rail transportation in areas where there is
23 a significant level of competition among the rail
24 carriers.”.

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

“10503. Areas of inadequate rail competition.”.

4 (b) STUDY AND REPORT ON AREAS OF INADEQUATE
5 RAIL COMPETITION.—

6 (1) STUDY REQUIRED.—The Rail Customer Ad-
7 vocate of the Department of Agriculture shall carry
8 out a study of the process provided under section
9 10503 of title 49, United States Code (as added by
10 subsection (a)), for challenging and remedying con-
11 ditions described in subsection (b) of such section in
12 States and parts of States designated under such
13 section as areas of inadequate rail competition inso-
14 far as such conditions adversely affect rail shippers
15 of agricultural or forestry commodities and products.

16 (2) FINDINGS ON EFFECTIVENESS OF PROC-
17 ESS.—The Rail Customer Advocate shall make find-
18 ings, on the basis of the study under paragraph (1),
19 regarding the effectiveness of the process for rem-
20 edying the conditions studied, particularly in the
21 case of customers that ship agricultural or forestry
22 commodities and products by rail in annual volumes
23 of 1,500 rail cars or less.

24 (3) REPORT.—Not later than three years after
25 the date of the enactment of this Act, the Rail Cus-

1 tomer Advocate shall submit to Congress a report on
 2 the results of the study under paragraph (1), includ-
 3 ing the findings required under paragraph (2).

4 **SEC. 10. RAIL CUSTOMER ADVOCATE IN THE DEPARTMENT**
 5 **OF AGRICULTURE.**

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

8 (1) AUTHORITY AND RESPONSIBILITIES.—

9 Chapter 105, as amended by section 9(a), is further
 10 amended by adding at the end the following new sec-
 11 tion:

12 **“§ 10504. Participation of Rail Customer Advocate in**
 13 **Board proceedings**

14 “(a) AUTHORITY.—The following persons are author-
 15 ized to petition the Board for an exercise of authority of
 16 the Board regarding rail transportation of any agricul-
 17 tural or forestry commodity or product, and to participate
 18 in any proceeding of the Board regarding rail transpor-
 19 tation of such a commodity or product:

20 “(1) The Rail Customer Advocate of the De-
 21 partment of Agriculture.

22 “(2) Any official of the government of a State
 23 whose functions are the same as or similar to the
 24 functions of the Rail Customer Advocate of the De-
 25 partment of Agriculture.

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

7 “(2) In disposing of any matter before the Board in
 8 which an official referred to in subsection (a) has partici-
 9 pated under the authority of such subsection, the Board
 10 shall present in writing a detailed explanation of any dis-
 11 agreement of the Board with matters presented to the
 12 Board by that official.”.

13 (2) CLERICAL AMENDMENT.—The table of sec-
 14 tions at the beginning of such chapter, as amended
 15 by section 9(a)(2), is further amended by adding at
 16 the end the following new item:

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

17 (b) ESTABLISHMENT AND DUTIES.—

18 (1) IN GENERAL.—Subtitle I of the Department
 19 of Agriculture Reorganization Act of 1994 (7 U.S.C.
 20 7005) is amended by adding at the end the following
 21 new section:

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

23 “(a) ESTABLISHMENT OF OFFICE.—There is estab-
 24 lished within the Department an Office of Rail Customer
 25 Advocacy.

1 “(b) RAIL CUSTOMER ADVOCATE.—

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

4 “(2) HEAD OF OFFICE.—The Rail Customer
5 Advocate is the head of the Office of Rail Customer
6 Advocacy.

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

9 “(1) PARTICIPATION IN STB PROCEEDINGS.—
10 To participate as a party in proceedings of the Sur-
11 face Transportation Board on petitions for action by
12 the Board regarding the regulation of rail transpor-
13 tation of agricultural or forestry commodities or
14 products, and to initiate any such action.

15 “(2) COMPILATION OF INFORMATION.—To col-
16 lect, compile, and maintain information regarding
17 the cost and efficiency of rail transportation of agri-
18 cultural commodities and products and forestry com-
19 modities and products.

20 “(3) STUDIES.—To perform studies regarding
21 rail transportation of agricultural commodities and
22 products and forestry commodities and products.

23 “(d) ACCESS TO STB INFORMATION.—To carry out
24 the functions under subsection (b), the Rail Customer Ad-

1 vocate shall have access to information, including data-
2 bases, of the Surface Transportation Board.”.

3 (2) CONFORMING AMENDMENTS.—Section
4 296(b) of the Department of Agriculture Reorga-
5 nization Act of 1994 (7 U.S.C. 7014(b)) is amend-
6 ed—

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

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

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

12 “(6) the establishment of the Office of Rail
13 Consumer Advocacy of the Department under sec-
14 tion 286.”.

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